

**POLYGAMY IN SUB-SAHARAN AFRICA AND THE *MUNUS DOCENDI*:  
CANONICAL STRUCTURES IN SUPPORT OF CHURCH DOCTRINE AND  
EVANGELIZATION**

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## **ABSTRACT**

The practice of polygamy poses some challenging canonical and pastoral problems for the Christian churches in sub-Saharan Africa. This work explores these problems from the perspective of Roman Catholic canon law in light of traditional African cultural values and Roman Catholic theology. It develops some strategies for evangelization and catechesis which are consistent with the Catholic Church's teaching and which support the pastoral care of people living in polygamous societies.

In the first of four chapters, the thesis considers various cultural aspects of polygamy in sub-Saharan Africa: its practice, prevalence, effects on Christian marriage and family life, civil law considerations, and related questions such as the rights of women and children in polygamous unions. The second chapter surveys the principal aspects of the Church's teachings on marriage and polygamy, teachings that are rooted in Scripture and the great Tradition as consistently taught by councils, popes, and most Catholic theologians and canonists. The third chapter treats various canonical norms related to marital unity in general and to polygamous marriages in particular. The fourth and final chapter focuses on canonical and pastoral approaches to evangelization in polygamous societies today that conform to the requirements of the Catholic faith and its canon law. In particular, it explores how existing canonical structures in both the universal law and in the laws and customs of local African churches may be utilized in the service of the doctrine of the Church on marital unity and its mission of evangelization.

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## ABBREVIATIONS

|            |  |
|------------|--|
| AA         | SECOND VATICAN COUNCIL, Decree <i>Apostolicam actuositatem</i>   |
| AAS        | <i>Acta Apostolica Sedis</i>   |
| AG         | SECOND VATICAN COUNCIL, Decree <i>Ad gentes</i>  |
| AMECEA     | Association of Member Episcopal Conferences in Eastern Africa  |
| ANA        | The Apostolate to the Nomads within AMECEA   |
| c.         | canon  |
| cc.        | canons   |
| CCEO       | <i>Codex canonum Ecclesiarum orientalium</i>   |
| CCLA       | CAPARROS, E. et al. (eds.), <i>Code of Canon Law Annotated</i>   |
| CD         | SECOND VATICAN COUNCIL, declaration <i>Christus dominus</i>  |
| CDF        | Congregation for the Doctrine of the Faith   |
| CIC/17     | <i>Codex iuris canonici, Pii X Pontificis Maximi iussu digestus</i>                                      |
| CIC        | <i>Codex iuris canonici, auctoritate Ioannis Pauli PP. II promulgates</i>                                |
| CLD        | <i>Canon Law Digest</i>  |
| CLSA       | Canon Law Society of America   |
| CLSA Comm1 | CORIDEN, J., T.J. GREEN, and D.E. HEINTSCHEL (eds.), <i>The Code of Canon Law: A Text and Commentary</i> |
| CLSA Comm2 | BEAL, J.P., J.A., CORIDEN, T.J. GREEN (eds.), <i>New Commentary on the Code of Canon Law</i>             |
| CSEL       | <i>Corpus scriptorum ecclesiasticorum latinorum</i>  |
| DH         | SECOND VATICAN COUNCIL, declaration <i>Dignitatis humanae</i>  |
| DHS        | Demographic and Health Surveys   |
| EN         | Paul VI, Apostolic Exhortation <i>Evangelii nuntiandi</i>  |

|                        |   |
|------------------------|---|
| <i>Exegetical Comm</i> | MARZOA, A., J. MIRAS, R. RODRÍGUEZ-OCAÑA (eds.) and E. CAPARROS (gen. ed. of English translation), <i>Exegetical Commentary</i> |
| <i>FC</i>              | Post-synodal Apostolic Exhortation <i>Familiaris consortio</i>  |
| FLANNERY1              | FLANNERY, A. (gen. ed.), <i>Vatican Council II</i> , vol. 1   |
| FLANNERY2              | FLANNERY, A. (gen. ed.), <i>Vatican Council II</i> , vol. 2   |
| <i>GE</i>              | SECOND VATICAN COUNCIL, declaration <i>Gravissimum educationis</i>  |
| <i>GS</i>              | SECOND VATICAN COUNCIL, Pastoral Constitution <i>Gaudium et spes</i>  |
| ICEL                   | International Committee on English in the Liturgy   |
| <i>IM</i>              | SECOND VATICAN COUNCIL Decree <i>Inter mirifica</i>   |
| <i>LG</i>              | SECOND VATICAN COUNCIL, Dogmatic Constitution <i>Lumen gentium</i>  |
| <i>PB</i>              | JOHN PAUL II, Apostolic Constitution <i>Pastor bonus</i>  |
| <i>PO</i>              | SECOND VATICAN COUNCIL, Decree <i>Presbyterorum ordinis</i>   |
| RCIA                   | Rite of Christian Initiation of Adults  |
| <i>RM</i>              | JOHN PAUL II, Encyclical Letter <i>Redemptoris missio</i>   |
| <i>SC</i>              | SECOND VATICAN COUNCIL, Constitution <i>Sacrosanctum concilium</i>  |
| SCC                    | Small Christian community   |
| SECAM                  | Symposium of Episcopal Conferences of Africa and Madagascar   |
| <i>UR</i>              | SECOND VATICAN COUNCIL, Decree <i>Unitatis redintegratio</i>  |
| USCCB                  | United States Conference of Catholic Bishops (since 1 July 2001)  |

## GENERAL INTRODUCTION

The existence of polygamy in sub-Saharan Africa goes back beyond the reach of human memory and was found to exist by the earliest European explorers in the fifteenth century. During the sixteenth and subsequent centuries, Catholic missions were established in different parts of the world, including the West Indies, Central America, Mexico, Florida, South America, Africa, and Asia. In some of these areas, the Church encountered different cultures that permitted or even encouraged polygamy, and the missionaries had to come to terms with the pastoral and canonical questions that surfaced when polygamists wished to convert to Christianity. The prospective converts were in complicated marital situations, most of which were fundamentally incompatible with the Church's teaching on marriage. Some of these marital situations could be solved through the use of the Pauline privilege, whereas many others either certainly or probably did not fulfill the conditions required for the use of this privilege.

Already in the sixteenth century, the Church recognized that the traditional Pauline privilege was often unsuitable or inapplicable in resolving the marital situation of polygamists.<sup>1</sup> It was on grounds of such pastoral difficulties that the missionaries earnestly requested the Holy See to provide pastoral guidance. In response, three popes of the sixteenth century issued constitutions (treated in chapter three) to facilitate the conversion of polygamists. These constitutions are the antecedents of cc. 1148 and 1149

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<sup>1</sup> F.J. BURTON, *A Commentary on Canon 1125 together with a History of the Legislation Contained in the Canon*, Canon Law Studies, 121, Washington, DC, Catholic University of America, 1940, pp. 14-25.

of the 1983 Code of Canon Law (*CCEO*, cc. 859, 860), which are central to any canonical study of polygamy.

The term polygamy comes from the Greek, literally meaning “many marriages.” In social anthropology, polygamy is understood as a condition or practice of marriage to more than one spouse (wife or husband) simultaneously, as opposed to monogamy where each person has only one spouse at a time.<sup>2</sup> Like monogamy, the term “polygamy” is often used in a *de facto* sense, applying regardless of whether the relationships are recognized by the state or not. The word “polygyny” refers to the relationship of a man who is married to or involved in a stable sexual relationship with a number of different females at one time. This is by far the more common form of polygamy.<sup>3</sup> In this thesis, the more familiar term “polygamy” will be used consistently but with the knowledge that, in fact, it nearly always refers to the condition of a man who has two or more wives at the same time. This practice is a socially valid form of marriage in different regions of the world, including parts of India, Papua New Guinea, most of the Islamic world, and it is the common form of polygamy in sub-Saharan Africa.<sup>4</sup>

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<sup>2</sup> Our thesis deals with simultaneous polygamy. Simultaneous polygamy means that a man, while still retaining his lawful wife, marries one or more additional wives or, having repudiated or divorced his lawful wife, still retains a plurality of wives. The term “successive” polygamy is also sometimes used to mean that a man or woman has a plurality of spouses after repeated divorces but has only one spouse at a time. In this thesis such successive marriages will be understood as monogamous, not polygamous.

<sup>3</sup> Polyandry is the condition or practice of a woman marrying more than one husband at the same time. This type of polygamy occurs very rarely and only in a few isolated tribal societies where there are fewer women than men.

<sup>4</sup> See E. HILLMAN, *Polygamy Reconsidered: African Plural Marriage and the Christian Churches*, New York, Maryknoll, Orbis Books, 1975, p. 12; see also J. BINET, *Le mariage en Afrique noire*, Paris, Éditions du Cerf, 1959, p. 61.

The term “sub-Saharan Africa” refers to those countries which are fully or partially located south of the Sahara;<sup>5</sup> it contrasts with North Africa, which is part of the Arab world.<sup>6</sup> The forty-nine countries of sub-Saharan Africa include thousands of different ethnic groups and languages, but they have a deeply rooted cultural homogeneity in basic respects, including a tradition of polygamy. It is in this vast region that polygamy is socially accepted amongst a great many of the people.

Because of its relative prevalence, polygamy in sub-Saharan Africa has been the subject of a number of books and articles whose authors express varied ideas and conclusions. Several African dioceses, through meetings, seminars, workshops, and diocesan synods, attempted to deal with this problem in creative and positive ways. The record of these gatherings reveals that polygamy is considered a key pastoral challenge. Many questions on polygamy are still being raised in this third millennium. The problem has not yet been resolved and is still a major obstacle to conversion to the faith. Some African episcopates have long recognized this reality.

Despite the consistency of the teaching of the Church on polygamy, there are still theological debates on it even today. For instance, the possibility of admitting polygamists to the sacraments of initiation is argued from both canonical and theological

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<sup>5</sup> The countries included in this region are: Angola, Benin, Botswana, Burkina Fasso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo, Democratic Republic of Congo, Côte d'Ivoire, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritius, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, Sudan, Swaziland, Tanzania, Togo, Uganda, Zambia and Zimbabwe. See <http://www.acdi-cida.gc.ca/CIDAWEB/acdicida.nsf/En/JUD-5177557-FZJ> (20 August 2009).

<sup>6</sup> Only six African countries are not geographically part of sub-Saharan Africa. These are Algeria, Egypt, Libya, Morocco, Tunisia and Western Sahara.

viewpoints. The Polygamy Consultation Committee of the Apostolate to the Nomads of AMECEA (ANA) discussed this issue during one of its meetings but could not come to a clear answer even after consulting internationally distinguished Catholic theologians and canon lawyers.<sup>7</sup>

Compulsory monogamy in the societies that traditionally practice polygamy remains a challenge for the Church in this twenty-first century. Are there existing canonical structures/approaches that may be of assistance in addressing the persons in polygamous unions who want to convert to Christianity? How should particular Churches deal with this issue in a pastoral and creative way without contradicting the canonical norms and the teachings of the Church? These are the central questions we intend to address in our study. From a Christian point of view, the practice of polygamy contradicts the unity of marriage; it negates the plan of God as revealed by Jesus Christ, and it is contrary to the equality and personal dignity of men and women who in matrimony give themselves to one another permanently with a love that is total and, therefore, unique and exclusive (cf. *GS* 49; *FC* 19).

While polygamists often are attracted to Catholicism and wish to be baptized, they find this very difficult because, for the husbands, it entails abandoning marital relations with their additional wives or, in the case of a wife, it may entail abandoning her husband and children. It is a real dilemma for them: to accept Christianity, they have to live according to the Christian way of life, which requires that they give up certain deeply entrenched customs and cultural mores that are incompatible with Christianity,

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<sup>7</sup> Cf. F. PONSÌ, "A Report on ANA's Polygamy Consultation," 30 November 1985, Nairobi, AMECEA, 1985, pp. 2, 8-10, 24, 26.

and this involves considerable social, familial, and personal sacrifice.

Canon 1148 of the Code of Canon Law requires the polygamous convert to dismiss all wives but one. This is not easily implemented in the societies dominated by the polygamous mentality. Although a theoretical possibility, it most often is a practical impossibility. This canonical solution of dismissing the other wives has been challenged by many people, not only those from polygamous societies but by Catholics as well. It may rightly be questioned whether there might be a better solution than the one that makes the Church appear to be a destroyer of family unity and kinship bonds and to have little regard for the children whose mothers are dismissed.<sup>8</sup>

Critics ask whether the demand of dismissing the other wives forces the polygamist to commit serious injustice towards those women who had married him in good faith and who were actually and faithfully united to the husband by a conjugal bond.<sup>9</sup> It is difficult for the dismissed women to get new husbands because society views them negatively,<sup>10</sup> and so they choose to remain in their pagan beliefs, or they turn to

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<sup>8</sup> See E. HILLMAN, "On Polygamy: A Response to Urrutia," in *African Ecclesial Review*, 23 (1981), p. 293.

<sup>9</sup> "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 real injustice and misery to both wives and children. To impose this upon other defenseless people is a strange way of preparing for Baptism." A. HASTINGS, *Christian Marriage in Africa: Being a Report Commissioned by the Archbishop of Cape Town, Central Africa, Kenya, Tanzania and Uganda*, London, A.S.C.K., 1973, p. 77.

<sup>10</sup> "The use of this privilege by the convert can result in severe hardship for the first wife and any other wives who are dismissed. In some places dismissed wives are reduced to supporting themselves through prostitution. Thus, the local ordinary is to see that appropriate provision is made for their support, presumably by their former husband. Criteria for the adequacy of this support are to be derived from the moral, cultural, and economic conditions of the area. This support is not merely a matter of charity. It is also due as a matter of justice and natural equity." J.P. BEAL, "The Separation of Spouses (cc. 1141-1155)," in *CLSA Comm2*, p. 1371.

other religions, such as Islam. This is a real and pressing pastoral challenge for the local Church, which is commissioned by Jesus Christ to proclaim the Gospel message to all peoples of the world (Mt 28:18-20). Therefore, the Church must respond to this problem in a way that is both pastoral and faithful to its teaching and canonical norms.

This work aims to make some contribution in this regard by showing how existing canonical structures, both of universal and particular law, can be employed to assist the Church in its *munus docendi*,<sup>11</sup> in particular, the evangelization of the people in the polygamous societies of sub-Saharan Africa. Our work is arranged in four chapters. Chapter one considers cultural roots and aspects of polygamy in sub-Saharan Africa. We will try to answer some important questions about polygamy, for example: What are the origins of this practice? How prevalent is polygamy in sub-Saharan African societies? What effect does it have on family life? What do civil laws say about polygamy and related questions, such as the rights of women and children in polygamous unions? What are the positive and negative effects of polygamy on Christian marriage and family life?

Any canonical/pastoral approach to polygamy cannot overlook the theological foundations behind the issue because the Church's law on marriage, like many other canonical institutes, is rooted in its doctrine.<sup>12</sup> Therefore, the second chapter will survey the principal aspects of the Church's teaching on marriage as it pertains to polygamy, briefly treating the nature and ends of marriage, sacramental marriage, and the essential

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<sup>11</sup> The *munus docendi* is one of the three functions (*tria munera*) of the Church, the others being the *munus sanctificandi* and *munus regendi*. The *munus docendi* comprises the mission of the Church, given by her divine founder, to go forth and spread the Gospel (Mt 28:19), to evangelize. See D.M. LECLAIR, *The Deacon's Participation in the tria munera in the Latin and Ukrainian Catholic Churches: A Historical-Canonical Analysis*, doct. diss., Ottawa, Saint Paul University, 2008, pp. 181-182.

<sup>12</sup> Cf. J.A. CORIDEN, "Law in Service to the People of God," in *The Jurist*, 41 (1981), pp. 10-11.

elements and properties of marriage.

The Church's doctrine on marriage finds concrete expression in its legislation. The third chapter will be on marital unity and polygamy in canon law. It will look at the canonical norms related to marital unity in general and polygamous marriages in particular. We will first treat briefly the Pauline privilege and its applicability to polygamous marriages. Because canon 1148 is directly concerned with polygamy, we will study this canon carefully and consider its pastoral impact. Part of this study will involve an investigation of the *Decretals of Gregory IX* (X 4, 19, c. 8), three sixteenth century constitutions and canon 1125 of the 1917 Code. We will also treat the dissolution of the bond in favour of the faith, the presumption of law in favour of the faith and the nullity of marriage on the ground of an exclusion of marital unity or fidelity due to simulation or determining error.

In keeping with the practical nature of canon law, the fourth and final chapter will focus on canonical and pastoral approaches to evangelization in polygamous societies today. We will explore how existing canonical structures in both the universal law and in particular African churches may be of service in supporting Church doctrine on marital unity and its mission of evangelization. We will attempt to bring together the data and conclusions drawn from the different areas studied in the earlier chapters that are relevant to our central theme in order to shed light on the canonical and pastoral issues related to the Church's approach to polygamy and its mission of evangelization.

This study is not without its limitations. The first limitation concerns the parameters of the subject matter. Polygamy is considerably widespread in parts of both the north and south of Africa as well as in certain other areas of the world, but we will

focus our discussion on sub-Saharan Africa, which is predominately non-Islamic<sup>13</sup> and has a certain historical-cultural homogeneity. The second limitation is its scope. Our study will be limited to the Latin Code but, wherever appropriate, reference will be made to comparable canons of the Eastern Code, especially *CCEO* c. 859, and any major differences between the two Codes will be noted. The third limitation is that only the specific notion of polygamy will be the subject of our investigation; we will not look into related issues such as multiple serial marriages, which is a problem that also exists increasingly in African societies. The fourth limitation is related to the research itself: it will draw on published sources and literature, not on original field research or surveys of diocesan norms and practices. However, wherever appropriate, references based on pastoral experiences will be included. Despite these limitations, it is our hope that we can make a modest contribution to the canonical science and be of some practical assistance to Church authorities and ministers in the evangelization and pastoral care of people living in polygamous societies.

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<sup>13</sup> In African countries south of the Sahara Desert, people follow many different religions. Some are Muslims, although the majority of the people are Christians. North Africa is predominantly Muslim. However, there are Muslim majorities in the Sahel and Sudan regions and along the East African coast in Gambia, Sierra Leone, Guinea, Mali, Niger, Senegal, and Somalia. Comparable numbers of Christians and Muslims exist in Chad, Nigeria, and Burkina Faso, and significant Muslim communities are in Ethiopia, Tanzania and Eritrea. See [http://en.wikipedia.org/wiki/Sub-Saharan\\_African#Religion](http://en.wikipedia.org/wiki/Sub-Saharan_African#Religion) (20 December 2011); [http://wiki.answers.com/Q/What\\_religions\\_are\\_in\\_North\\_Africa](http://wiki.answers.com/Q/What_religions_are_in_North_Africa) (20 December 2011).

**CHAPTER ONE**  
**CULTURAL CONSIDERATIONS ON POLYGAMY**  
**IN SUB-SAHARAN AFRICA**

**Introduction**

Polygamy poses a particular canonical and pastoral challenge to the Church in sub-Saharan Africa because of its deep roots in the culture of its people, a problem that directly affects many who wish to embrace Christianity but are barred from doing so due to their marital situation. People are born and grow up within the context of a polygamous society in which the practice is not only legally permissible but culturally can be a sign of social status and wealth.

The term polygamy is used in related ways in social anthropology, sociobiology and sociology.<sup>1</sup> The anthropological and sociological sciences can shed light on the understanding of polygamy and how this marital practice functions in these societies. In this chapter, we will examine polygamy in sub-Saharan Africa and establish the cultural context for our study which, though primarily canonical, has significant pastoral implications. The chapter is divided into three major parts. The goal of part one will be to present the cultural roots of polygamy as practiced in sub-Saharan African societies, its prevalence, its origins, and the cultural milieu of these societies. Part two will treat the effects, both positive and negative, of polygamy on Christian marriage and family life. Finally, part three of the chapter will be on civil law and polygamy and related questions, such as the status of religious freedom and government policies on polygamy.

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<sup>1</sup> See <http://en.wikipedia.org/wiki/polygamy> (4 August 2009).

## 1.1 – Cultural Roots of Polygamy as Practiced in sub-Saharan African Societies

Polygamy exists in sub-Saharan African societies as an aspect of culture and/or religion. It is not just a type of marriage but is also part of a value system which is socially acceptable to the societies due to a number of reasons, including economic security, increased social prestige and power, satisfaction of the desire for large families, and a solution for barren women.<sup>2</sup>

### 1.1.1 – Prevalence of polygamy in sub-Saharan African societies

It is an undeniable fact that polygamy prevails in many places in sub-Saharan African societies. It is more common in Africa than elsewhere in the world and poses one of the greatest problems for Christians and those who wish to embrace Christianity.<sup>3</sup> A highly significant aspect of sub-Saharan African societies,<sup>4</sup> the problem of polygamy has been at the heart of an ongoing debate within the Church in Africa, especially from the mid-nineteenth century until the 1970s.<sup>5</sup> The debate continues today.

In his book, *Polygamy Reconsidered: African Plural Marriage and the Christian Churches*, Hillman shows that polygamy is a preferential form of marriage in seventy-eight percent of African tribes south of the Sahara. The estimate in 1967 was that the average incidence of polygamy in the sub-Saharan region was thirty-five

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<sup>2</sup> Y. HAYASE and K. LIAW, “Factors on Polygamy in sub-Saharan Africa: Findings Based on the Demographic and Health Surveys,” in *The Developing Economies*, 3 (1997), p. 293.

<sup>3</sup> E.G. PARRINDER, *The Bible and Polygamy: A Study of Hebrew and Christian Teaching*, London, S.P.C.K., 1958, p. 8.

<sup>4</sup> HAYASE and LIAW, “Factors on Polygamy,” p. 294.

<sup>5</sup> HASTINGS, *Christian Marriage in Africa*, London, p. 72.

per cent, with 245 wives per one hundred polygamous men, or 150 wives per one hundred husbands.<sup>6</sup> Though these data are dated, the practice of polygamy remains a challenge for the Church because it is still relatively prevalent in sub-Saharan Africa in this twenty-first century.

More recent statistics can be drawn from a study, “Factors on Polygamy in sub-Saharan Africa,” written by Y. Hayase and K. Liaw. In their survey/research on factors on polygamy in sub-Saharan Africa, they analysed Demographic and Health Surveys (DHS) data.<sup>7</sup> The DHS archive has data sets available for forty-seven sub-Saharan African countries. Four of them—Senegal in 1986, Ghana in 1988, Kenya in 1989, and Zimbabwe in 1988/1989—are selected as a representative sampling.

This paper uses the micro data of the Demographic and Health Surveys (DHS) to gain some insights into the effects of several socio-demographic factors on married women’s propensities of being in polygamous unions in four sub-Saharan countries: Senegal and Ghana, selected from the regions with the highest level of polygamy (West Africa: 30 to over 50%); Kenya from the region with a moderate level (East Africa: 20 to 35%); and Zimbabwe from the region with the lowest level (Southern Africa: less than 20%). [...]

The DHS data indicate that a few East African countries also have relatively low polygamy proportions (Burundi: 11.6%; and Rwanda: 14.4%).<sup>8</sup>

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<sup>6</sup> HILLMAN, *Polygamy Reconsidered*, p. 94.

<sup>7</sup> The DHS project has earned a worldwide reputation for collecting and disseminating accurate, nationally representative data on health and population in developing countries. The project is implemented by Macro International, Inc., and is funded by the United States Agency for International Development (USAID) with contributions from other donors such as UNICEF, UNFPA, WHO, UNAIDS.

Since 1984, the DHS project has provided technical assistance to more than two hundred demographic and health surveys in seventy-five countries, advancing global understanding of health and population trends in developing countries. More specifically, the DHS surveys collect information on fertility and total fertility rate (TFR), reproductive health, maternal health, child health, immunization and survival, HIV/AIDS; maternal mortality, child mortality, malaria and nutrition among women and children. Its strategic objective is to improve and institutionalize the collection and use of data by host countries for program monitoring and evaluation and for policy development decisions.

The DHS works to put high-quality survey data into the hands of program managers, health care providers, researchers, members of the media and others who can act to improve public health. Cf. [http://en.wikipedia.org/wiki/Demographic\\_and\\_Health\\_Surveys](http://en.wikipedia.org/wiki/Demographic_and_Health_Surveys) (7 August 2009).

<sup>8</sup> HAYASE and LIAW, “Factors on Polygamy,” p. 294.

The DHS data show that polygamy is prevalent in sub-Saharan Africa, though differences in its extent are notable. These differences are due largely to different stages in the transition toward a modernized society that exist in various regions.

Some literature shows that the prevalence of polygamy as a type of marriage in sub-Saharan African societies has declined substantially in some parts, especially in the region where the adoption of plough cultivation and commercial livestock raising as the basic economic activity have reduced the importance of the participation of female labourers and hence have reduced the incentive to have multiple wives.<sup>9</sup> The practice of polygamy has certainly declined notably in recent decades, leading one author to assert that “many [...] scholars of anthropology and social sciences, including Christians, have repeatedly said in books, televisions and radio interviews and in seminars [even in the internet websites] that the ancient African cow of polygamy is sick and is dying and, in the near future, it will die completely.”<sup>10</sup> This forecast, written some twenty years ago, has proven to be overly optimistic, as polygamy continues to be strongly rooted in the traditional social structures of many societies today. Even for educated persons who belong to these societies, polygamy remains a viable option. It is not surprising even today, in this third millennium, to have educated people in sub-Saharan Africa marrying more than one wife. They justify their choice with expressions like, “polygamy in my life is more important than the Church structure of monogamy,” or statements like

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<sup>9</sup> Ibid., p. 293.

<sup>10</sup> D.G. MAILLU, *Our Kind of Polygamy*, Nairobi, Heinemann Kenya Ltd., 1988, p. 139.

“polygamy is beautiful; it is a symbol of that which is truly African.”<sup>11</sup> In asserting the view that polygamy has nothing to do with the Christian faith or their belief in God, such voices witness to an attitude of indifference to, if not rejection of, Church doctrine and morality.

Despite an overall decline in the practice, polygamy still prevails in some sub-Saharan African societies even in this twenty-first century. This reality was noted by Pope John Paul II in an address to the Roman Rota.

As you well know, in the world there are still peoples among whom the practise of polygamy has not disappeared. Indeed, even among Catholics there are people who, in the name of respect for the culture of these people, 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.

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.<sup>12</sup>

The prevalence of polygamy in sub-Saharan Africa is, therefore, both a canonical and pastoral challenge to the whole Church which is commissioned by Jesus Christ to proclaim the Gospel message to all peoples of the world (Mt 28:18-20). There is a need to harmonize culture with Christianity, but it is a complex task. To show the

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<sup>11</sup> See W.D. REYBURN, “Polygamy, Economy and Christianity in Eastern Cameroun,” in *Practical Anthropology*, 6 (1959), p. 2.

<sup>12</sup> JOHN PAUL II, Allocution to the Roman Rota, 28 January 1991, in *AAS*, 83 (1991), pp. 951-952; English trans. in W.H. WOESTMAN (ed.), *Papal Allocutions to the Roman Rota, 1939-2002*, Ottawa, Saint Paul University, 2002, p. 217. The original text of this quotation, which is found in *AAS*, 83 (1991), pp. 951-952, is written in the Italian language and reads as follows: “Com’è noto, vi sono tuttora nel mondo popoli presso i quali non è scomparsa del tutto la consuetudine della poligamia. Orbene, anche tra i Cattolici c’è chi, in nome del rispetto della cultura di tali popoli, vorrebbe in qualche modo giustificare o tollerare una simile prassi nelle comunità cristiane. Nei miei viaggi apostolici non ho mancato di riproporre la dottrina della Chiesa sul matrimonio monogamico e sulla parità di diritti tra l’uomo e la donna. Non si può ignorare, infatti, che presso tali culture resta ancora da fare non poco cammino nel campo del pieno riconoscimento della pari dignità dell’uomo e della donna.”

difficulty of this task of harmonizing culture with Christianity, the Second Vatican Council, in its “Pastoral Constitution in the Modern World,” *Gaudium et spes*, stated:

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. These difficulties do not necessarily harm the life of faith but can rather stimulate a more precise and deeper understanding of that faith.<sup>13</sup>

The degree of prevalence of polygamy in African societies varies greatly from society to society. The wider possibility of polygamy depends upon women marrying at an earlier age than men. The more polygamous a society, the greater will be the difference of the age for marrying between the two sexes, particularly among the poor. A higher degree of polygamy frequently goes with a high level of bride-wealth. The older and richer men are in a position to secure extra wives. The younger and poorer men have to wait, making do perhaps with a secret arrangement with someone else’s junior wife. With a strong bride-wealth system, a single son with several sisters can obtain several wives by making use of the bride-wealth of his sisters. This prevalence of polygamy continues to challenge the Church and her ministers to find the way to assist these families and, in a particular way, those who wish to embrace Christianity but are impeded by a polygamous union.

### **1.1.2 – The origins of the practice of polygamy**

There is no known particular time or starting point which marks the beginning of polygamy in sub-Saharan Africa. Some sub-Saharan African societies have been practising polygamy as far back as the records can take us.<sup>14</sup> It is therefore immemorial in the sense that it goes back beyond the reach of human memory or any

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<sup>13</sup> *GS*, no. 62; English trans. in FLANNERY1, p. 966.

<sup>14</sup> MAILLU, *Our Kind of Polygamy*, p. 1.

written records. There is no doubt that polygamy is rooted in the culture of the people who practice it. Polygamous people are born and grow up within the context of a polygamous society in which the practice is not only legally permissible but culturally can be a sign of social status and wealth.

Because it is deeply rooted in the culture of its people, the institution of polygamy is nothing strange to Africans in sub-Saharan, especially among those who traditionally practice it. It was the acceptable form of marriage in sub-Saharan Africa prior to the arrival of the first missionaries who introduced Christianity, and it has continued subsequently. Taryor points out: "Polygamy is a feature of the African people and it is a fabric of their culture. In Africa, before the introduction of Christianity, polygamy was a common cultural pattern. It has been and still is an integral part of the framework of the African society."<sup>15</sup> To show that polygamy is deeply rooted in the culture of people in sub-Saharan Africa, Burton, in his commentary on c. 1125 of the 1917 code, pointed out that already the first missionaries to visit Africa in the latter part of the fourteenth century found this problem of polygamy and saw it as the great stumbling block in the path of Christian conversion.<sup>16</sup>

Y. Hayase and K. Liaw report that, having tried to trace the cultural basis for the practice of polygamy, they could only conclude with a presumption rather than historical or scientific fact. According to them, it is to be presumed that polygamy in

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<sup>15</sup> N.K. TARYOR, *Impact of the African Tradition on African Christianity*, Chicago, IL, Strugglers' Community Press, 1984, p. 112.

<sup>16</sup> BURTON, *A Commentary on Canon 1125*, p. 25.

sub-Saharan Africa exists within the cultural context of the cult of ancestry and gerontocracy.<sup>17</sup>

Having presumably the ability to communicate with the deceased ancestors<sup>18</sup> who are believed to possess the powers to reward good behavior and to punish bad behavior, the old patriarch of a family has authority over all of his descendants. [...] The main goal of the cult is to have many descendants so that the family line is strengthened, and the deceased ancestors are given the opportunities of rebirth within the family. Polygamy serves as a means to maintain the endless line of births and rebirths and to strengthen the power of the family as well as the status of the old patriarch through the growth in family size and the expansion of conjugal linkages to other clans.<sup>19</sup>

As far as cultural roots are concerned, polygamy has been an institution practiced in the sub-Saharan African societies for hundreds of years. In other words, we can say that this practice is and presumably has always been a way of life in this part of Africa.

Siahyonkron Nyanseor, in his article about polygamy in Africa before and after the arrival of Christianity, explains the rationale given for the practice of polygamy in Africa provided by two schools of thought, the social and the economic. He states his explanation as follows:

Proponents of the social school explained that at the time polygamy was established as the legal form of marriage, the ratio of women to men in Africa was about 10 to 1. As a result, those who were responsible for establishing social institutions, the elders, including women, decided to come up with a marriage system that would address this problem. Their aim at the time was to provide a balance and equal distribution of social, material, security and economic benefits to both women and men. Furthermore, these social architects or elders felt that if the problem regarding the need of unmarried women were not addressed, what would eventually happen was

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<sup>17</sup> HAYASE and LIAW, "Factors on Polygamy," p. 295.

<sup>18</sup> See SECRETARIATE FOR NON-CHRISTIANS, *Meeting the African Religions*, Rome, Libreria editrice Ancora, 1969, p. 163. Here the term "ancestors" is defined as "the dead who, thanks to the accomplishment of all the religious and social ceremonies, have resumed the condition of tranquility and harmony of the other world which is conceived as a reflection and a continuity of the society of the living.

"One does not become an ancestor with death or even with burial but in the course of a ceremonial process which varies with races and social conditions."

<sup>19</sup> HAYASE and LIAW, "Factors on Polygamy," pp. 295-296.

the snatching away of other women's husbands, or the unmarried women would, for example, engage in prostitution since as human beings, the sexual, social, psychological and economic needs had to be taken care of.

On the other hand, the proponents of the economic school reasoned that polygamy was established to address the prevailing economic issues of the period. They explained that during the pre-colonial era in Africa, the economic activities were centered on subsistence agriculture. This type of farming requires lots of manpower. In order to establish the mode of production that was going to be beneficial to the entire society, the polygamous form was preferred. Since this form of marriage emphasized collective responsibilities, communal ownership of farms, wealth and the economic benefit of the extended family.<sup>20</sup>

The major concept of both schools of thought, that is, the social and economic schools, was centered on the male marrying more than one wife. This situation depended on the amount of dowry (bride price) he or his family could afford.<sup>21</sup> For instance, in the traditional African societies where this arrangement was prevalent, a man who had four wives was obliged to provide a farm for each one. Moreover, the children and the relatives of each wife were required to work and maintain the farm. It was the responsibility of the husband to provide periodic assistance as well as to

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<sup>20</sup> S. NYANSEOR, "Polygyny (Polygamy) Is Already a Practice," (n.d), in [http:// www.theperspective.org/polygyny.html](http://www.theperspective.org/polygyny.html) (25 March 2009).

<sup>21</sup> The bride price is connected with the ancestral form of marriage. The payment may be in livestock, in other chattels (e.g. hoes, brass rods, or clothes), or in money. For instance, in the Akan culture in Ghana (in which polygamy is practiced), first there is a preliminary bride price such as a bottle of Schnapps, calabash of wine and other presentable objects. More often today, the bride price means a sum of money and gifts. These are required from the man as an essential condition for legal betrothal. If the man is slow to pay the bride price, it is permissible for the girl's father to give her to another man. See F. DARTEY, *The Discovery of the Dignity of Women in the Synod of Africa and Their Call to the Church's Evangelisation in Akanland*, Rome, Pontificia Universitas Urbaniana, 1999, p.75-77.

There is a considerable difference of opinion as to the significance of the institution of the bride price. It is variously interpreted: as being primarily in the nature of compensation to the woman's family for the loss of one of its members (and that member a potential childbearer); as part of a transaction in which the dominant emphasis is on the formation of an alliance between two kinship groups; as a species of "marriage insurance" designed to stabilize the marriage and/or to give protection to the wife; as a symbol or seal marking the formal conclusion of the marriage contracts. See L.P. MAIR, *African Marriages and Social Change*, London, Frank Cass & Co. Ltd., 1969, pp. ix-x.

care for all members of the extended family. The resources derived from these were pooled together in order to provide material and economic benefits for the entire family.<sup>22</sup>

### **1.1.3 – Polygamy and the culture of people**

“Every human being is a member of a culture and of a society, because every human culture exists within a human society.”<sup>23</sup> There is no human being who is not a member of a culture and of a society. The institution of marriage is influenced by the culture and the society, and the forms it takes are part and parcel of the culture of that people.<sup>24</sup> Marriage is a reality which exists and is perceived, chosen and lived within a concrete socio-cultural milieu.<sup>25</sup>

#### **1.1.3.1 – Polygamy as a form of marriage**

Polygamy as a form of marriage does not exist by itself in a vacuum but within the concrete context of a human society with its own particular culture. Hence, in order to understand well polygamy as a particular form of sub-Saharan African marriage and to make an unbiased judgment about its compatibility with Christian marriage, we must not view it exclusively from the vantage point of the Church’s teachings about marriage. Rather, we have to examine it as an integral part of the whole of a particular culture and society.<sup>26</sup>

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<sup>22</sup> NYANSEOR, “Polygyny (Polygamy) Is Already a Practice.”

<sup>23</sup> W.A. HAVILAND, *Cultural Anthropology*, New York, Holt, Rinehart and Winston, 1975, p. 14.

<sup>24</sup> J. OMOREGBE, “Is Polygamy Incompatible with Christianity?” in *African Ecclesial Review*, 21 (1979), p. 368.

<sup>25</sup> See A. MENDONÇA, “Selected Questions in Canonical Jurisprudence,” (Class notes), Ottawa, Saint Paul University, 2009, p. 20.

<sup>26</sup> W. BLUM, *Forms of Marriage: Monogamy Reconsidered*, Nairobi, AMECEA, Gaba Publications, 1989, p. 24.

Culture and society are two closely related realities.<sup>27</sup> Any form of marriage takes place in a given society and in a given culture.<sup>28</sup> Polygamy in sub-Saharan Africa existed in the culture of these societies long before the contact of Africans with the outside world. Though sub-Saharan Africa has had a long history of contacts with the outside world, these contacts did not make these societies abandon their polygamous culture. Polygamy continued to exist as a cultural practice although, since the arrival of the missionaries in sub-Saharan Africa, there has been a concentrated effort on the part of the Church to abolish it. Despite the struggle against it, polygamy has persisted because it is deeply rooted in the culture of its people.

A great deal has been done to eradicate polygamy in sub-Saharan Africa, yet the tradition has continued to survive.<sup>29</sup> Some people have thought for a long time that the practice of polygamy and all customs related to it would die out, but it has not.<sup>30</sup> In fact, this temporary attitude of tolerance will not lead to the disappearance of polygamy but will perpetuate it because, being a traditional practice, it is passed on from one generation to another.

Kahiga Joseph believes that polygamy as a cultural practice is a consequence of African communitarian metaphysics.<sup>31</sup> This view shows the seriousness of the

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<sup>27</sup> HAVILAND, *Cultural Anthropology*, p. 14.

<sup>28</sup> OMOREGBE, "Is Polygamy Incompatible with Christianity?" p. 369.

<sup>29</sup> MAILLU, *Our Kind of Polygamy*, p. 1.

<sup>30</sup> See HILLMAN, *Polygamy Reconsidered*, p. 87.

<sup>31</sup> He writes: "There are many cultural perspectives of polygamy. Many people will give their own perspectives or pastoral experience based on practical ideas. But, it is in the communitarian base of African communities [sub-Saharan Africa] that one will find the metaphysical foundations of community, hence, family, clan, etc. The fact that one affirms his or her being on account of the others within the community, polygamy becomes a consequence of African communitarian metaphysics. This is why 'our African women' will willingly share a husband so as to enhance the communitarian spirit. However, this is rarely

problem of polygamy in the culture of the people and how difficult it is for the Church to carry out her mission of evangelizing the people when polygamy is part and parcel of their culture.

In order to understand the seriousness of the problem of polygamy in the culture of a people and for the Church in its mission of evangelization, we need to know first of all the meaning of culture and the role it plays in a polygamous society. Providing effective pastoral care of people in polygamous marriages and their families involves not only the proper understanding and equitable application of the law but also a prior understanding of the concrete situation of these people in which the law is to be applied.<sup>32</sup> Culture flows from man's rational and social nature,<sup>33</sup> and this social nature of human beings and their culture are intimately linked together.<sup>34</sup> Though this task of understanding people in their culture is a difficult one, it can still

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applicable to men-folk who would rather be very jealous in respect of sharing his wife with others. This, however, is not totally absent, since among the polygamous societies, people of the same age group, which is in itself a community of young people bonded through initiation, the sharing of wives is a sacrosanct ritual thereby enhancing the communitarian metaphysics. Further, if a man was sterile, he would allow his wife to go with a close relative provided he was not denied his marital rights. If a man died and left his wife, the culture of wife inheritance enhances the communitarian metaphysics; the children begotten belong to the dead brother. Thus, the metaphysics of a people is the ground behind what they do.

“One of the greatest challenges is to marry the African cultural mentality with the Christian mentality.... An African polygamist is rightly a polygamist according to African customary law. Making an African polygamist a Christian is a practical impossibility although it is a theoretical possibility, so we normally live in a world of theories in so far as we ignore the African cultural law. Christianity may claim great numbers in terms of theoretical membership, but in practice polygamy and African cultural values is a reality. It cannot be ignored. You cannot marry an African polygamist to canon law; they are strange bedfellows. Each side claims authority and would not like to give up.”

Personal correspondence (20 May 2009) with J. KAHIGA, a senior lecturer in the Department of Philosophy and Religious Studies at Moi University, Eldoret. He is attached to the Moi University Catholic Community of the same University and its environs. Kahiga is also a member of the AMECEA Gaba Advisory Editorial Board.

<sup>32</sup> MENDONÇA, “Selected Questions in Canonical Jurisprudence,” p. 20.

<sup>33</sup> See *GS*, no. 59.

<sup>34</sup> *Ibid.*, no. 53.

be done by attentive persons, including canonists and the Church's pastors, who will make every effort to know the language of these societies, their way of life and other ways of communicating meaning, their perceptions of reality, and the social context in which meanings are transmitted.<sup>35</sup>

The interpretation of cultural data is a human act. Embodied in each interpreter are his or her personal modes of perception, cognitive style, skills, limitations, and biases that always influence the interpretative process, and interpretations can vary and conflict even within the same culture.<sup>36</sup> The correct interpretation and clear understanding of the culture of the polygamous societies is the central and important starting point which is necessary for proposing the possible canonical and pastoral approaches that can be practically applied to all polygamous marriages and families. This challenge is key to the Church's evangelizing efforts, not only for specialized institutions devoted to the study of culture,<sup>37</sup> but for all who must interpret Church doctrine and law and apply it in practice.

### **1.1.3.2 – The meaning of culture**

“The concept of culture is very rich and multidimensional, for it embraces the totality of a people's way of life in response to the needs and circumstances of its

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<sup>35</sup> J.M. HUELS, “Interpreting Canon Law in Diverse Cultures,” in *The Jurist*, 47 (1987), p. 288.

<sup>36</sup> See *ibid.*, pp. 272-273; see also L. ÖRSY, “The Interpreter and His Art,” in *The Jurist*, 40 (1980), pp. 50-51.

<sup>37</sup> In an address to the Pontifical Council for Culture on 15 January 1985, Pope John Paul II said that this pontifical council is called to investigate the important questions raised by the challenges of the world today and to help the Church to respond to the fundamental questions of the culture for the Church's mission of evangelization. See JOHN PAUL II, Address to the Pontifical Council for Culture, 15 January 1985, in *L'Osservatore romano*, 6 (1985), p. 9.

The Pontifical Council for Culture could play a great role in aiding the Church and society as a whole in understanding the concrete situation and culture of polygamous societies.

existential situation.”<sup>38</sup> Many different definitions have been given to the meaning of culture. This shows how difficult it is to encompass in a single definition all the meanings attached to culture. Because of the plurality of cultures, the difficulty to explain the meaning of culture in general was implicitly acknowledged by the Second Vatican Council. According to the Council, “culture necessarily has historical and social overtones, and the word ‘culture’ often carries with it sociological and ethnological connotations; in this sense one can speak about a plurality of cultures.”<sup>39</sup>

After surveying and analyzing more than 160 definitions,<sup>40</sup> A.L. Kroeber and Clyde Kluckhohn summarize the basic ideas about the meaning of culture as follows.

Culture consists of patterns, explicit and implicit, of and for behavior acquired and transmitted by symbols, constituting the distinctive achievement of human groups, including their embodiments in artifacts; the essential core of culture consists of traditional (i.e., historically derived and selected) ideas and especially their attached values; culture systems may, on the one hand, be considered as products of action, on the other as conditioning elements of further action.<sup>41</sup>

To say that a culture is historically derived means that it is passed on from one generation to the next.<sup>42</sup> The transmission of culture differs from the biological heritage of humans or animals.<sup>43</sup> It is internalized in individuals and becomes part of their environment through the medium of other individuals and cultural products. The

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<sup>38</sup> OMOREGBE, “Is Polygamy Incompatible with Christianity?” p. 368.

<sup>39</sup> GS, no. 53; English trans. in FLANNERY1, p. 958.

<sup>40</sup> G.O. LANG, “Culture,” in B.L. MARTHALER et al. (eds.), *New Catholic Encyclopedia*, vol. IV, 2<sup>nd</sup> ed., Detroit, Thomson/Gale, 2003, p. 426.

<sup>41</sup> A.L. KROEBER and C. KLUCKHOHN, *Culture: A Critical Review of Concepts and Definitions*, Peabody Museum of American Archaeology and Ethnology, New York, Harvard University Press, 1952, p. 357.

<sup>42</sup> F. LYNCH, “Anthropology, Cultural” in *New Catholic Encyclopedia*, vol. I, New York, McGraw-Hill Book Co., 1967, p. 597.

<sup>43</sup> E.A. NIDA, *Customs and Cultures: Anthropology for Christian Missions*, New York, Evanston, Harper & Row, 1954, p. 28.

acts of a person's life take place in an environment made up of other persons. But because acts take place in time, the past continues to influence the present.<sup>44</sup> In this line of thought, institutions that are deeply rooted in the culture of people, such as polygamy, become part of their way of life, and this way of life is transmitted from one generation to another by the human society that models it as a good, or at least as an acceptable option.

### 1.1.3.3 – The role of culture

There is a diversity of cultures in sub-Saharan Africa that must be recognized when speaking of “culture” and its influence on marital practice. “Each culture ought to be judged according to its own parameters; thus each culture is unique and specific and must not be judged in reference to the other culture.”<sup>45</sup> Nevertheless, it is clear that polygamy does not result from a genetic predisposition but is learned from one's culture, albeit with some differences. S. Nyanseor states:

Culture provides lenses of perception, the way of looking at reality, a world view; culture provides standards of evaluation; what is good and what is evil; what is legitimate and what is illegitimate are rooted in criteria provided by culture. Culture conditions motivation; what motivates individuals to act or refrain from acting, what inspires individuals to perform well or to really exert themselves, is partly inspired by cultural factors. Culture is the medium of communication; the communicative aspects of culture range from language in the literal sense to physical gestures and modes of dress. Culture provides a basis of stratification, a pecking order in society. Status, rank and class are partly the outcome of a cultural order.<sup>46</sup>

He goes on to say that the key responsibility of culture is the establishment of social institutions which will maintain the orderly existence of a society. These institutions

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<sup>44</sup> KROEBER and KLUCKHOHN, *Culture*, pp. 367-368.

<sup>45</sup> J.K. KAHIGA, “Polygamy: A Pastoral Challenge to the Church in Africa,” in *African Ecclesial Review*, 49 (2007), p. 123.

<sup>46</sup> NYANSEOR, “Polygyny (Polygamy) Is Already a Practice.”

serve to promote a system of values<sup>47</sup> which are a set of ideas, concepts and practices to which strong sentiments are attached and therefore, in this view, one can easily understand how polygamy became the ideal institution of marriage in Africa.<sup>48</sup>

Polygamy is an institution that is a part of the culture of the people. It may be rooted in the culture so deeply that the people themselves cannot easily take a distance from it and explain why it exists. Some say that they are polygamous just as their ancestors were polygamous, and therefore they believe that this is the way things should be. A related response is that polygamy is the custom of their people,<sup>49</sup> and therefore men may marry as many women as they can support.<sup>50</sup>

#### **1.1.4 – Lifestyle of polygamists and their cultural world view**

It is quite impossible to speak or write on polygamous families without taking into account their lifestyle. Knowledge about their style of life is a good step towards the possible pastoral approaches which can be practically applied to these families. The lifestyle of people, polygamists included, is determined by the geographical, cultural, economic and political environment in which they are found. For instance, the harvesters (farmers), the hunters, the squatting smallholders, and the nomadic shepherds have types of life and centres of interest so different that their culture has

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<sup>47</sup> Culture forms values in a community and conveys community's values. See J. MARATTIL, *Reverential Fear as a Ground of Marriage Nullity with Particular Reference to the Indian Culture*, doct. diss., Ottawa, Saint Paul University, 2009, pp. 16-17.

<sup>48</sup> NYANSEOR, "Polygyny (Polygamy) Is Already a Practice."

<sup>49</sup> "Customs form part and parcel of the pattern of life of people." M.J. LUSENA, *The Application of Selected Capita of Canonical Jurisprudence to the Practice of "Proposed Marriage" in Sri Lanka*, Canon Law Studies, 534, Washington, DC, Catholic University of America, 1990, p. 14.

<sup>50</sup> See C.P. KOTTAK, *Cultural Anthropology*, New York, Random House, 1982, p. 152.

not produced a mentality with identical moral values and spiritual realities.<sup>51</sup> Some of these polygamous societies are nomadic and have a mobile lifestyle, regularly moving from one place to another. Others, such as the agriculturalists, have a lifestyle that is more stable in the sense that their activities are bound to the land.

Since the lifestyle of polygamists in agricultural and non-agricultural societies differs from each other in one way or another, evangelization of the people in these polygamous societies should take account of the differences. This necessitates different approaches depending on the society and its environment. For instance, ministers of the Church may find it easier to evangelize stable polygamist families, such as agriculturalists, because they are trained for this and are used to this stable structure. But they encounter greater canonical and pastoral challenges when they want to work among the polygamists who are characterized by a mobile lifestyle. In this case it is difficult, and often impossible, to maintain the Christian communities as genuinely Eucharistic communities, particularly in view of the scarcity of celebrants and the difficulty of maintaining contact with a people on the move. What, then, should be the approach to this challenge, and how should evangelization be carried out among these mobile polygamous societies? Since they are a mobile people, should the Church and the ministry within the Church also be mobile? What needs to be changed to address this reality, the Church structures or these people themselves who are on move? Should such mobile societies be self-ministering? These kinds of questions pose a particular challenge to those who are faced with the interpretation and application of canon law and Church teaching in such settings.

Most of the polygamous families have a simple, traditional lifestyle. It has proven difficult to change their way of life and traditional way of thinking about

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<sup>51</sup> SECRETARIATE FOR NON-CHRISTIANS, *Meeting the African Religions*, p. 29.

marital practices and to lead them to a better way in keeping with the canonical norms and the Church's teaching on marital unity. Some polygamous families lack contact with other notions of marriage and family. They "live in their own world" and think that polygamy is the only way of life.

The world for them is like a "closed shop" made by God with certain rules, regulations, and laws which cannot change. They would find it very strange for someone from outside their world to tell them that their immemorial practice is wrong and contrary to God's law. The best way to make one's way in this world in which they belong is to follow the customs, ways, and laws of one's forefathers, which is the polygamous way of life. The approach and evangelization of the polygamous families that have such a strong conviction is difficult because their world is limited by unchangeable traditional boundaries. Anything outside these boundaries is strange and threatening. The introduction of Christianity and the requisite internal changes that must be made within their culture are seen as a threat to their original way of life. Persisting within this boundary and way of belief and thinking, they feel, with a sort of proud independence, that they have what they need without relying on what other societies can offer, not only religiously but economically and socially as well. Contact is minimal between them and members of other societies which do not practice the same culture or custom and usually is done only for necessary activities such as commerce.

The cultural identity of people in traditional societies is extremely strong. This could be interpreted either as a healthy pride and acceptance of themselves or as a sort of dogmatism, an exclusivity born of a culture that feels its existence threatened by outside forces. Some consider the way in which Christianity is presented to them as meaningless. For them, Christianity does not answer their problems. It has not

been incarnated into their culture and is seen as a superficial, secondhand religion that has been imposed from the outside and is associated with colonial domination.

Some believe that there is no life after death. For them, the meaning of life and its fulfillment must be realized here on earth. This belief makes their focus of life only their children and the wealth to be passed on to them. The number of wives, children and cattle are marks of prestige. Hence, what is important is to improve one's life here on earth by acquiring wealth, many wives and many children. The concept of the end of the world is meaningless because everything follows an unending rhythm of nature.

African traditional religion maintains that there is no "end" to this continuous rhythm and cycles, and there is no "world to come." People neither worry about the future nor build castles in the air. Time has no end. Therefore, from this traditional influence, a Messiah [...] would promise to change the present conditions of life to make things better for his people. His concern is with here and now.<sup>52</sup>

In this situation, where there is no belief about life after death, the approach in evangelizing these societies is not easy but must proceed gradually, step by step, starting from the pre-evangelization.

While some believe that there is no life after death, there are other polygamous families who believe in the presence of God and life after death. In this case, the approach to evangelization becomes a bit easier, because there is already an element of faith within these polygamous families. For them, God is creator and mover of man and creation. He is father in the qualities of protector, provider, ruler, guide and source of strength. He is mother in his compassion, love, understanding warmth and refuge. He created the world and still governs its course. He sometimes hears and answers people's prayers, though he is basically a distant God with whom

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<sup>52</sup> TARYOR, *Impact of the African Tradition on African Christianity*, p. 264.

they would like to restore the special relationship their ancestors had with him, but they see no way of reestablishing that bond and bringing him close to them again.

While there is a strong integration of the secular and sacred, there is equally a sense of loss and frustration, especially in the face of the inevitability and absolute finality of death. Because of this frustration, the people pray and frequently make pilgrimages to mountains and trees where God had met with elders. They sing hymns and offer sacrifice but do so even though things are not and cannot be as they once were. We can recognize in the lifestyle of such polygamous families certain fundamental beliefs and practices that are important for evangelization because they share some traits in common with Christianity: belief in the presence of God, dependence on God, a strong sense of interdependence and communitarian life. This reality was also pointed out by Pope John Paul II in his Post-Synodal Apostolic Exhortation *Ecclesia in Africa*.

Africans have a profound religious sense, a sense of the sacred, of the existence of God the Creator and of a spiritual world. The reality of sin in its individual and social forms is very much present in the consciousness of these peoples, as is also the need for rites of purification and expiation. [...] African cultures have an acute sense of solidarity and community life. In Africa it is unthinkable to celebrate a feast without the participation of the whole village. Indeed, community life in African societies expresses the extended family.<sup>53</sup>

The close relationship between the culture and the means of spreading the Good News of Christ is a reality well expressed by the fathers of the Second Vatican Council.

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<sup>53</sup> JOHN PAUL II, Post-Synodal Apostolic Exhortation *Ecclesia in Africa*, 14 September 1995, in *AAS*, 88 (1996), p. 28; English trans. in *L'Osservatore romano*, 38 (1995), Suppl. p. v. The original text reads as follows: "Africani alto religionis sensu praediti sunt, sacrarum rerum sensu, Dei creatoris existentiae sensu et rerum spiritualium. Peccatum, in suis tum privatis tum socialibus formis, in illorum populorum conscientia inest, atque necessitas quoque purificationis et expiationis rituum animadvertitur. [...]"

"Afrorum cultus acri humanae necessitudinis vitaeque communis sensu fruuntur. Nulla intellegitur in Africa celebritas quam integer pagus non participet. Reapse, in Africanis societatis communis vita significatio est ampliatae familiae."

There are many links between the message of salvation and culture. [...] Similarly the Church has existed through the centuries in varying circumstances and has utilized the sources of different cultures in its preaching to spread and explain the message of Christ, to examine and understand it more deeply, and to express it more perfectly in the liturgy and in various aspects of the life of the faithful. [...]

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.<sup>54</sup>

The existence and preservation of these priceless cultural gifts is a good step which can be used as a starting point in preparation for the mission of evangelization in polygamous societies.

### 1.1.5 – Polygamy and customary marriages

“For African peoples, marriage is the focus of existence. It is the point where all members of a given community meet: the departed, the living and those yet to be born.”<sup>55</sup> Everyone’s existence has been vitally influenced by the institution of marriage,<sup>56</sup> whether compulsory monogamous marriage, which is the normative form of marriage (cf. c. 1055), or by polygamous marriage, which in c. 1148 is explicitly declared to be contrary to Christian teaching. The act of entering marriage is not an end in itself but the beginning of what should be an intimate relationship between a man and a woman who commit themselves to a partnership of the whole life (cf. c. 1055, §1). Hence, it is not just an event but a process which, if normal and blessed, yields another great event, the birth of a child.<sup>57</sup>

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<sup>54</sup> GS, no. 58; English trans. in FLANNERY1, pp. 962-963.

<sup>55</sup> J.S. MBITI, *African Religions and Philosophy*, New York, F.A. Praeger 1969, p. 133.

<sup>56</sup> See E. WESTERMARCK, *The History of Human Marriage*, London, Macmillan, 1891, p. 39; see also idem, *Origine du mariage dans l’espèce humaine*. Traduit de l’anglais par Henry de Varigny, Paris, Gaillaumin, 1895, p. 40.

<sup>57</sup> MAILLU, *Our Kind of Polygamy*, p. 3.

In the corporate African society, marriage is a duty. According to the African custom, failure to get married under normal circumstances means that the person concerned has rejected society, and society rejects him in return. Such a person is considered by the society as a rebel, a lawbreaker, and abnormal. Marriage and procreation go together, because marriage and procreation in African communities are a unity: without procreation marriage is incomplete.<sup>58</sup>

To die without getting married and without children is to be completely cut off from the human society, to be disconnected, to become an outcast and to lose all links with mankind.

Everybody, therefore, must get married and bear children: that is the greatest hope and expectation of the individual for himself and of the community for the individual. If we bear this in mind, it will throw some light on our understanding of the many customs and ideas connected with African marriages, such as the giving of the bride presents, polygamy, inheriting the wives of the deceased brother, parents arranging marriages for their children, and the like.<sup>59</sup>

Marriage is important in African societies and involves many people, not just the husband and wife. Once the marriage is contracted, it is extremely hard to dissolve it. Therefore, a good and permanent relationship between man and woman is insisted upon by the community itself. As one defender of polygamy puts it: “This relationship should not be tampered with by ideological or factory manufactured emotions and aspirations. Hence, in traditional Africa, a man and woman relate to each other as closely as possible to the principles laid down by nature. Polygamy is, indeed, a natural order.”<sup>60</sup>

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<sup>58</sup> MBITI, *African Religions and Philosophy*, p. 133.

<sup>59</sup> *Ibid.*, p. 134.

<sup>60</sup> MAILLU, *Our Kind of Polygamy*, p. 141.

In every culture we find the institution of marriage as being one of the most important components of that culture.<sup>61</sup> Polygamy as a form of marriage is just one aspect of African life, which is closely related to many other elements of societal living.<sup>62</sup> Polygamous unions between Africans have been recognized as valid for purposes of the internal law governing the civil status and relations of Africans.<sup>63</sup> “Universally, a marriage according to native law and custom is potentially polygamous in the sense that there is during its subsistence no legal impediment to the contracting of another marriage [...] by the husband.”<sup>64</sup> Generally, compulsory monogamy is understood by polygamists as a self-denying ordinance, which means that a man voluntarily renounces or abstains from polygamy, or it is dictated by inability to afford more than one wife due to economic constraint.<sup>65</sup>

Any treatment of polygamy cannot avoid taking into consideration an examination of customary marriages in general. “Customary unions, including polygamous ones, were regarded as valid and given effect according to native law and customs, subject to the general conditions regulating the operation of that system.”<sup>66</sup> A prominent feature of customary marriage in sub-Saharan Africa is its polygamous character. Customary marriage does not involve the obligation of monogamy, which

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<sup>61</sup> E. KATHLEEN GOUGH, “The Nayers and the Definition of Marriage,” in *Marriage, Family and Residence*, 1968, p. 71.

<sup>62</sup> BLUM, *Forms of Marriage: Monogamy Reconsidered*, p. 4.

<sup>63</sup> A. PHILIP and H. MORRIS, *Marriage Laws in Africa*, London, Oxford University Press, 1971, p. 11.

<sup>64</sup> L.P. MAIR, *African Marriages and Social Change*, London, Frank Cass & Co. Ltd., 1969, p. ix.

<sup>65</sup> Ibid.

<sup>66</sup> A. REUTER, *Native Marriage in South Africa according to Law and Custom*, Münster, Aschendorffsche Buchdruckerei, 1963, p. 296.

is compulsory for Christian marriages. This situation constitutes the central point of conflict between Christian marriages and sub-Saharan African customs.<sup>67</sup>

The majority of polygamists tend to find their spouses within their own communities or traditional network of like communities. In many cases, this involves daughters of polygamous families entering into arranged marriages with much older men who already have a number of wives. In some cases, a man marries a woman who has children from a previous marriage(s) and then adopts (takes custody of) the children.

Girls are the most affected group in polygamous life. They are victims of polygamists. Most of them are deprived of their fundamental rights to go to school because they are forced to marry. The majority are married at a young age, that is, below fourteen years of age, which is canonically the legal minimum (c. 1083, §1). Worse still, the agreement to give her in marriage (an arranged marriage) is often made between a man and the family already at birth or sometimes even before the girl child is born. "This means that if in one household there is a young boy, his parents go to another household where there is a young girl or where there is an expectant mother and put in an 'application' for the present girl or for the child to be born in the event that it is a girl."<sup>68</sup> Due to this situation, most of the time it happens that a man, for instance, one who is forty-five years old with several wives, marries a very young girl of twelve years of age.

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<sup>67</sup> To show the conflict which exists between Christian marriages and customary marriages, Kahiga points out the property of indissolubility in polygamous marriages: "The African cultural practice agrees with Christian ethics on marriage, but they differ essentially on the polygamy issue. For the African, polygamy is acceptable and that is also indissoluble. But the condition given for an African polygamist to join the church is to dismiss (dissolve) other wives and remain with one [c. 1148, §1], that is compatible with Christian epistemology." KAHIGA, "Polygamy: A Pastoral Challenge to the Church in Africa," p. 131.

<sup>68</sup> MBITI, *African Religions and Philosophy*, p. 135.

The marriages arranged with much older men who already have many wives are common in polygamous families. It is also not uncommon for fairly close relatives to marry. Those who are geographically separated from other polygamists in their culture use other possible means to find additional spouses such as through their friends, social clubs and gatherings. Since science and technology are not so advanced in these societies, the traditional means are mostly used. The use of the other, more advanced means, such as internet, to find additional spouses is not common.

### **1.1.6 – Important stages in sub-Saharan African customary marriages**

There are stages to be followed whenever someone wants to marry according to the African customs. The preparatory process takes a long time. The key moments are marked with rituals in which young people are introduced to matters of sex, marriage, procreation and family life.<sup>69</sup> These stages are important and, if taken carefully into consideration, can shed light on the canonical and pastoral issues related to the Church's approach to polygamy and its mission of evangelization. According to the sub-Saharan African tradition,<sup>70</sup> the important stages are: sex education at puberty, information about courtship, exchange of gifts or a token to affirm the agreement to marry, and the celebration of the customary marriage.<sup>71</sup>

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<sup>69</sup> Ibid., p. 134.

<sup>70</sup> Taryor explains African tradition as one which includes all the oral information that has been handed down from past generations of Africans to their offspring about certain beliefs, customs, religious practices, thought pattern, mannerisms, ethical systems, socio-political system, forms of education, etc. According to him, African tradition, in short, is the African way of life which includes the methods and process by which African social institutions are maintained and it is expressed in stories, proverbs, carvings, music, dance, rituals (both verbal and non-verbal), rules and conduct. Cf. TARYOR, *Impact of the African Tradition on African Christianity*, pp. 262-263.

<sup>71</sup> Pastoral care and relevant Christian teaching should be part of preparing couples for customary marriage. If the Church is involved at each stage, it will be a good

### 1.1.6.1 – Sex education

Sex education is a special responsibility of the elders. This education occurs about the time that children reach puberty. This is the stage where morality and sexual taboos are taught to the youth. Later, the youth who have reached the age of maturity are given additional sexual education as a way to prepare for customary marriage. During this stage, certain beliefs, customs, religious practices, thought patterns, mannerisms, ethical systems and other important traditional information such as rules of conduct, guides for behaviour, family organization authority system, and the explanation of reality<sup>72</sup> are handed down to this group in order to maintain them. This is expressed in stories, proverbs, carvings, music, dance and rituals.

### 1.1.6.2 – Courtship and information

At the time of courtship, each of the families seeks more information about the boy and the girl to be married. This seeking of information is normally done by parents and relatives;<sup>73</sup> then follows the discussions on different levels by the parents. The parents of both families meet and discuss the marriage of their youth. If they agree with each other, the necessary rituals are carried out. The girl's consent is sought through her parents.<sup>74</sup> Since marriage in the African context and particularly in polygamous families is necessary for the perpetuation of tribal society and for the

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opportunity to advise the couple who are preparing for customary marriages and teach them about monogamous marriages. This instruction should be done according to the Church's teaching and juridical norms related to marital unity as expressed in fundamental canons on marriage (cc. 1055; 1056; 1057, §2; 1134; 1135; CCEO cc. 776, §§ 1-2; 776, § 3; 817, § 1; 776, §§ 2-3; 777). This issue will be explored in depth in the fourth chapter.

<sup>72</sup> TARYOR, *Impact of the African Tradition on African Christianity*, p. 264.

<sup>73</sup> See MBITI, *African Religions and Philosophy*, p. 135.

<sup>74</sup> KAHIGA, "Polygamy: A Pastoral Challenge to the Church in Africa," p. 123.

extension of the family clan, it is the interest and concern of the family clan that one chooses a suitable partner. Most of the time, a boy or a girl does not choose a partner he or she likes; the choice is made by parents who persuade the youth to accept their choice.<sup>75</sup>

### **1.1.6.3 – Exchange of gifts**

The next stage is the exchange of gifts to confirm the agreement, which is the sign of fidelity and commitment. Following a period of observation, the parents of the man who intends to marry present the dowry. Other clan members are responsible for the dowry payment as per custom. In this way, the act of matrimonial consent or exchange of vows is not simply an individual matter, as it primarily is in canon law (cf. c. 1104, §2), but it is a corporate action. Within the African cultural context, marriage is more a clan or community based reality than an individual matter between two people.<sup>76</sup>

### **1.1.6.4 – The celebration of the customary marriages**

The final stage is the celebration of the customary marriage. The celebration of customary marriages in sub-Saharan African culture is traditionally a long process. There is no real moment, as in Christian marriage, when an African customary marriage becomes effective.<sup>77</sup> As P. Kalanda points out, it may be difficult to identify exactly what constitutes the marriage celebration in the precise canonical sense of the moment when consent is exchanged.

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<sup>75</sup> D.C. LUCAS (ed.), *Liturgy and Life in Rural Africa*, Kampala, Gaba Publications, 1971, p. 28.

<sup>76</sup> KAHIGA, “Polygamy: A Pastoral Challenge to the Church in Africa,” p. 123.

<sup>77</sup> See C.K. SHAYO, *Marriage among the Chagga of Kilimanjaro: Towards the Problem of Indissolubility: An Anthropological Approach*, Rome, Pontificia Universitas Lateranensis, Academia Alfonsiana, 1982, p. 30.

In African customary law, there is usually no set of ceremonies which can be identified as corresponding to the solemnization or celebration of a marriage which we have under Church law. The marriage transaction is a long drawn-out process, and it is often difficult to tell the exact moment at which the parties become husband and wife; and which of the ceremonies and observances are strictly essential to the conclusion of a valid marriage, that is, which act is considered to express the mutual matrimonial consent.<sup>78</sup>

It has been said, perhaps with only slight exaggeration, that there are as many wedding customs as there are African peoples.<sup>79</sup> Marriage is celebrated traditionally according to the local customs, and each tribe in sub-Saharan Africa has its own ways of celebrating the customary marriage, although there are commonalities. The customs are often quite elaborate, as the following examples illustrate. The first is from the Batoro society.

When the marriage gift<sup>80</sup> has been given, a night is fixed for the wedding to take place. That night the bridegroom sends nine strong men to get the bride. On reaching her home, they must first remove a bundle of leaves (*ekikarabo*) which has been on top of the roof of parents' house. Should the strong men fail to remove this bundle, they have also failed to get the girl and no wedding takes place. If they succeed, then they are allowed to take the bride. But this is not a simple matter, for they must carry the girl on their shoulders up to her new home. On the way back, the men sing to comfort the girl, who now is crying, and to warn the people at home that the bride is on her way. On arrival, the party is met by the bridegroom who comes to the doorway of the courtyard and stands there holding a spear. The bride is brought into the house where the bridegroom's parents are sitting against the wall.

A rite is performed by which the bridegroom sits on and off, four times, first on his father's lap and then on his mother's lap. The bride repeats this act, but only three times. She is then taken to another house which has been specially prepared for the occasion. At the door of this house stands someone who has already been married from this same family. The person says to the bride, "You found me married in this home; you will go away and

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<sup>78</sup> P. KALANDA, "Customary Marriage and Baptism," in *African Ecclesial Review*, 9 (1967), p. 67.

<sup>79</sup> MBITI, *African Religions and Philosophy*, p. 138.

<sup>80</sup> This includes at least two calabashes of local beer. According to the African customs, beer is the symbol of friendship, communion, oneness and acceptability. It is used by many African societies in ceremonies, festivals and covenant-making. For instance, the beer which the boy's parents take to those of the girl (cf. celebration of the customary marriages in Batoro societies) shows their friendly attitude, their willingness to establish fellowship with the other family, and their readiness to form a marriage covenant. Cf. MBITI, *African Religions and Philosophy*, p. 138.

leave me in here as you have found me!” These words are intended to stop the bride or discouraging her from leaving her new home. They are also the signal for dancing and feasting to start.

The following morning, the guests who had been invited to the party return to their own homes. The bride and her husband wash themselves in very cold water which has been placed in the courtyard enclosure and which is guarded by the bride’s sister. When they come to this water they undress themselves, and each splashes the other with water. This is the ritual of binding themselves to each other and of cleansing themselves from the former state of unmarried life. Symbolically these ritual ablutions are partly the death of the former life of unproductivity, and partly the resurrection of new life of procreation. For two days the bride is hidden from the public; and when this period is over, relatives from her own home come to bring presents. These relatives are given a very cordial welcome and treated with great respect. They receive a pipe to smoke and coffee berries<sup>81</sup> as well as food and drink. The bride is now brought out and introduced to the public. The things brought from her home are counted, and some are distributed among her husband’s relatives who took part in the marriage arrangements. The bride’s aunt is given the biggest present, because she is the one who has accompanied the bride from her former home to the new one and remains with her during the period of seclusion. If the girl is found to be a virgin the aunt is given a cow, and another cow is sent to her mother together with the sheets having the stains of the blood of virginity.[...] <sup>82</sup>

The celebration of marriage according to the Gikuyu customs is another representative example.<sup>83</sup> Before the wedding day, the boy has to make the necessary preparations for housekeeping. When he has provided himself with a hut and made the necessary preparations for housekeeping, he approaches his parents, especially his

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<sup>81</sup> The light and puffing/smoking of the pipe symbolizes acceptability; it is a token of sharing something together—breathing in unity the breath of life. On the other hand, coffee berries symbolize fertility, productivity and fruitfulness. Cf. *ibid.*

<sup>82</sup> *Ibid.*, pp. 138-140. The question of physical virginity, as Jomo Kenyatta pointed out, “is very important, and parents expect their daughters to go to their husbands as physical virgins. This must be reported to the parents of both sides. The boy has to show by certain signs that the girl was a virgin; the girl too, has to do the same to show that the boy is physically fit to be a husband. In the case of impotency on either side, the matter is put before the families’ council and the marriage is annulled at once.” J. KENYATTA, *Facing Mount Kenya: The Tribal Life of the Gikuyu*, New York, Vintage Books, 1965, p. 166.

<sup>83</sup> The Gikuyu customary law of marriage provides that a man may have as many wives as he can support, and that the larger one’s family the better it is for him and the tribe. The love of the children is also an encouraging factor of desiring to have more than one wife. The customs provide that all women must be under the protection of men; and that in order to avoid prostitution (in the Gikuyu language no word exists for “prostitution”) all women must be married by the age of fifteen to twenty. There is no term in the Gikuyu language for “unmarried” or “old maids.” See KENYATTA, *Facing Mount Kenya*, p. 168.

mother, and asks them to arrange for a special day suitable for bringing his wife home. The arrangement is made according to certain propitious days of the moon, in accordance with the clan's history and traditions. For example, many clans may not hold any wedding between the old and new moon, since this is regarded as a "dark period." The preferable period is the interval between the new moon and the full moon.<sup>84</sup>

After receiving and accepting the request of the boy who prepares for marriage, the family members meet together in council and fix the day for the wedding. The marriage is celebrated according to the Gikuyu customs, as related by Jomo Kenyatta.

On the wedding day the boy's female relatives set out to watch the girl's movements. She might be in a garden, weeding, or in a forest collecting firewood, etc. When they have obtained the necessary information as to where she is working, they search for her. On finding her they return with her, carrying her shoulder-high. This is a moment of real theatrical acting. The girl struggles and refuses to go with them, protesting loudly and even seeming to shed tears, while the women giggle joyously and cheer her with songs and dances. The cries and cheers can be heard for miles around and the Gikuyu people will know that the son of So-and-so has taken the daughter of So-and-so in marriage [...]<sup>85</sup>

In some cases, where the families are large, a counterfeit fight is staged between the women of both sides. This provides great entertainment for the women and is followed by a liberal feast at the bridegroom's homestead. The girl's cries, which are uttered theatrically in a singing manner, include such phrases as: "I do not want to get married! I will kill myself if you take me away from my parents! Oh! How foolish I was to leave my home alone and put myself into the hands of merciless people! Where are my relatives? Cannot they come and release me and prevent being taken to a man who I do not love?" and so on. This goes on until the girl reaches the boy's homestead, where she is led into her new hut, while children greet her, singing praises for the new bride. [...]

After the bride is comfortably settled in her new hut, the whole party of women from both clans, who a short while ago were engaged in a mock fight, join together and start dancing, singing and cheering hilariously. In the evening the bride is visited by her age-group of both sexes, who bring presents by way of food and ornaments. The bride entertains them with songs

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<sup>84</sup> Ibid., p. 164.

<sup>85</sup> This wedding drama can mislead foreigners who do not understand the Gikuyu customs into thinking that the girls are forced to marry, and even that they are treated as chattel. The drama may easily be mistaken for reality. See *ibid.*, pp. 164-165.

called *kerero*, i.e., “weeping” in which girls only take part while the boys listen. The *kerero* songs are mostly connected with the collective activities of the girl’s age-group, and the part played by the girl. It is considered as the age-group mourning for the loss of the services and companionship of one of their number who, by marriage, has passed to another age-group.

The mourning songs are continued for eight days, during which time the bride is frequently visited by her friends and age-group of both sexes.

During this period the bride may not go out publicly or do any work. She has a special back path which she may use when she leaves the hut during the day to sit under a tree for fresh air. Her girl-friends keep her company, together with the children of the family. The *kerero* goes on the whole day and a part of the evening, except for a few intervals between the arrival and departure of the visitors. About ten o’clock in the evening the bride and bridegroom are left to themselves until the neighbourhood of nine o’clock next morning, when the visitors begin to pour in.

[...] On the eighth day, when the *kerero* ceases, a sheep is killed, the fat of which is fried and the oil is used to anoint the bride in a ceremony of adoption into the new clan. After she has been admitted as a full member of the husband’s family, she is free to mingle with its members and take an active part in the general work of the homestead. When the adoption ceremony is concluded, a day is fixed immediately for her to pay a visit to her own parents. Care is taken in appointing the day, for she must not travel or cook during her menstrual period. On this particular visit she carries a small calabash with beer in it for the use of her parents in blessing her. On her way she is led by a small girl, who goes before her holding one end of a stick, the other end of which is held by the bride, who follows as though she were blind. She is supposed to be unable to see, and may not speak with any stranger she may meet during her journey. She goes all the way with bent head, hiding her face shyly, especially when somebody passes by her. She returns back in the evening (if the parents are in the neighbourhood) with presents from her parents. Sometimes, when the parents are rich, she is given two or three sheep or goats. Her father-in-law also gives her presents; these vary in some cases from five to ten sheep and goats or a cow and a piece of fertile land. These presents are regarded as an act of “warming” the bride’s hut, and they end the marriage ceremonial.<sup>86</sup>

Customary marriages are recognised and respected by many countries in sub-Saharan Africa. For instance, on 17 November 2000, South Africa launched a *New Customary Marriages Act*.<sup>87</sup> According to the South African Deputy Minister of Justice and Constitutional Development, Cheryl Gillwald, this new Customary Marriage Act enables women, who are about to enter into customary marriages, to

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<sup>86</sup> Ibid., pp.165-167.

<sup>87</sup> Customary Marriages Act no. 120 of 1998. See B. NKOMO, “New Customary Marriages Act sees women as equal partners,” 17 November 2000, at [http://www.afrol.com/Categories/Women/wom010\\_sa\\_marriage.htm](http://www.afrol.com/Categories/Women/wom010_sa_marriage.htm) (9 September 2009).

have equality with their husbands. She said that it repeals the “infamous section 11(3) of the Black Administration Act of 1927 which condemned African women to a legal state of ‘perpetual minority’.” She added that the Act engenders a new respect for the African legal tradition, elevates the status of women and children by improving their position, and identifies the rights and duties of spouses in contracting a marital union in accordance with customary laws. The Act recognizes marriages entered into in accordance with customary law or traditional rites, whether these marriages are monogamous or polygamous. The Deputy Minister said that polygamy was not banned because “the ban would be almost impossible to enforce [...]”<sup>88</sup>

Botswana is another example of the sub-Saharan African countries which recognize traditional marriages. To show the importance of these marriages to the societies concerned, Botswana has formed customary courts and has ruled that traditional marriages are best dealt with by these customary courts. For instance, the customary courts determine the grounds of divorce for a customary marriage based on the customary rules of law which apply in the particular tribe or tribal community in the country to which the parties belong and which give a legal right to a party to divorce in case of their breach.<sup>89</sup>

Customary marriages that are recognized by the civil law are also considered valid in canon law provided that both parties are non-Catholics and provided that their own law recognizes its validity, if either party belongs to a Church or ecclesial

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<sup>88</sup> Ibid.

<sup>89</sup> L. TUTWANE, “Botswana High Court leaves traditional marriages to customary courts,” 17 November 2000, at [http:// www. afrol.com/ Categories/Women/ wom010 sa marriage htm](http://www.afrol.com/Categories/Women/wom010_sa_marriage.htm) (9 September 2009).

community that has its own marriage law.<sup>90</sup> Canon 22 which states that: “When the law of the Church remits some issue to the civil law, the latter is to be observed with the same effects in canon law, in so far as it is not contrary to divine law, and provided is not otherwise stipulated in canon law,” implicitly reflects this recognition. Therefore, when the civil law conflicts with the divine law, divine law prevails. For example, any civil or customary law that permits divorce and remarriage would not be recognized by canon law since such would be contrary to the divine law.

## 1.2 – Effects of Polygamy on Marriage and Family Life

Polygamy has survived in African societies despite more than a century of Christianization and social change. This could not be the case if there were no positive effects of polygamy. Still, the negative effects are substantial and, in the estimate of many, outweigh the positive. One of the most significant negative effects, from the Church’s vantage point, is the challenges it presents for evangelization.

Polygamy was widely practised and is still widely admired in some societies in sub-Saharan Africa. Though it has been the norm for the powerful and the rich,<sup>91</sup> who are not content with one wife or two,<sup>92</sup> it is also practised by ordinary people who are not powerful or rich. Many poor people are expected to endure it, for instance, by inheriting the wife (widow) of a deceased brother.<sup>93</sup> A. Malone states: “A

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<sup>90</sup> See PONTIFICAL COUNCIL FOR LEGISLATIVE TEXTS, Instruction *Dignitas connubii*, 25 January 2005, Libreria editrice Vaticana, 2005, art. 4, §1, no. 2.

<sup>91</sup> GOUGH, “The Nayars and the Definition of Marriage,” p. 25.

<sup>92</sup> PARRINDER, *The Bible and Polygamy*, p. 10.

<sup>93</sup> “Brother” here means not only the son of one’s mother but any other close relatives. In this wide usage and understanding of that term, a person may have many brothers due to the extensive kinship system found in most sub-Saharan African societies. The brother who inherits the wife and children of his deceased relative has all the duties pertaining to a husband and father. The children born after this inheritance generally belong

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."<sup>94</sup> In these societies, polygamy is culturally instituted and has been explained and recorded by different anthropologists as an acceptable or even normative form of marriage. Despite this traditional, cultural support, polygamy has negative as well as positive effects on marriage and family life.

### 1.2.1 – Positive effects of polygamy

Polygamy can provide many advantages to a society as a whole as well as to the spouses, children, and the extended families of polygamous unions. Those societies which practise polygamy maintain that polygamy, on a small scale, provides protection for widows and handicapped girls, who might otherwise get no husband at all. According to the belief of those who practise it, polygamy can indeed, in its own way, strange as it may seem to some, contribute to the liberation of women. It helps solve the problems of childlessness and widowhood and takes care of the children of the deceased relative.

The Apostolate to the Nomads within AMECEA<sup>95</sup> (ANA) conducted different workshops on polygamy from the early 1980s, and its report shows that, during the

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to the deceased man, but in some societies they are children of the "new" father. See MBITI, *African Religions and Philosophy*, p. 144.

<sup>94</sup> A.J. MALONE, *The Canonical and Pastoral Implications of Canon 1148*, doct. diss., Ottawa, Saint Paul University, 1992, p. 10.

<sup>95</sup> AMECEA is the Association of Member Episcopal Conferences in Eastern Africa. It is a service organization for the National Episcopal Conferences of the eight countries of Eastern Africa, namely Eritrea (1993), Ethiopia (1979), Kenya (1961), Malawi (1961), Sudan (1973), Tanzania (1961), Uganda (1961) and Zambia (1961). Somalia (1995) and Djibouti (2002) are affiliate members.

The supreme internal authority over all AMECEA's activities rests with the Plenary Assembly of all the bishops of the eight countries. The Plenary Assembly takes place every three years, with the venue rotating from one country to another within the region covering

group discussion or study session, many participants shared different ideas, views, opinions, proposals, guidelines and answers regarding this issue of polygamy in sub-Saharan Africa.<sup>96</sup> There are many reasons which were given to show why these societies accept polygamy and recognize it as the ideal form of marriage. In some places, polygamous marriages are regarded as valid according to the native law and custom.<sup>97</sup> Almost all societies which practice polygamy believe and are convinced that polygamy has advantages for them. As William Blum puts it, “polygamous societies accept polygamy, because, in some respects, it embodies some of the society’s ideas.”<sup>98</sup>

Many of the values associated with polygamy are related to the status of these societies. Advantages sought after by polygamous men include not only one area of life, such as economic activity, but also in other areas: the social, sexual, political and religious. Therefore, those people in societies which practise polygamy believe and are convinced that polygamy was suited to the social and economic structures of their ancestors and, according to them, it continues to have the economic and social “advantages” for them today.

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the countries concerned. Sixteen of them have been held since the foundation of AMECEA in 1961.

Between the Plenary Assembly, the Executive Board takes the necessary decisions, according to the AMECEA priorities. The day to day decisions are taken on behalf of the chairman by the General Secretary.

AMECEA is one of the ten regions of the Symposium of Episcopal Conferences of Africa and Madagascar (SECAM). Cf. <http://www.amecea.org/amecea/> (3 August 2009).

<sup>96</sup> ASSOCIATION OF MEMBER EPISCOPAL CONFERENCES IN EASTERN AFRICA, “Study Conference,” 28 April 1986, Nairobi, AMECEA, 1986, pp. 5-6.

<sup>97</sup> REUTER, *Native Marriages in South Africa according to Law and Customs*, pp. 296 and 301.

<sup>98</sup> BLUM, *Forms of Marriage: Monogamy Reconsidered*, p. 102.

### **1.2.1.1 – Economic “advantages” of having many wives**

The spirit of teamwork in the economy of agricultural societies is regarded as one of the advantages because many wives play a vital and significant role where they do much work and become contributors to the wealth of the household. Hence, men are motivated to have as many wives and children as they can because their wives and children serve as a form of cheap labour.

Providing food for the family is the first prerequisite in any society. The food supply for a family is more assured if more than one wife is responsible for providing it. Polygamy offers economic advantages when women engage in the acquisition or production of food, normally through agricultural work. In agricultural societies, polygamy is more common where custom dictates that the women have an equal or a greater share than the men in the work.

In pastoralist societies where food is acquired through hunting or the grazing of cattle, additional wives may not represent such an economic asset. The men may be primarily responsible for the family's food. In such societies, polygamy may offer other social advantages as explained below.

The prospect of begetting additional children plays a role in the economy. In polygamist societies children can carry out economically profitable work, and so they may also be considered as valuable economic assets.

Polygamy is also used as an expression for a man's wealth. In circumstances where a wealthy man lacks an outlet to spend his wealth, he may find a way to gainfully “invest” wealth by marrying another wife. In such societies, additional wives come to be regarded as having both economic value and as a manifestation of prestige for the husband.

### 1.2.1.2 – Social “advantages”

“Africans desire to have many children, and to be heads of large families.”<sup>99</sup> Africans want to be recognised by their neighbours and the communities which surround them. For Africans, children are regarded as the glory of marriage, and the more there are of them the greater the glory.<sup>100</sup> They are a sign for a man being recognized by the society. Polygamy offers advantages which are not only economic but also, and even more so, social because children raise the social status of the family concerned. Children enable the man to gain social recognition and distinction. They are a source of entertainment to his neighbours and friends, and they serve the guests. The traditional African society is based upon the extended family, and all within the family and its alliances are *ndugu*, a Swahili word which means “brothers and sisters.” In such societies, polygamy is regarded as the ordinary way of multiplying alliances and reinforcing this extended family.<sup>101</sup> There are clearly advantages of having many marriage links in these societies.<sup>102</sup> The preparation, support and peace that can be relied upon from other groups with which a man or a group has made a marriage alliance can dispose a man to form additional alliances through second and further marriages.

Another advantage of polygamy is the readier availability of sexual companionship. Some societies forbid spouses to have sexual intercourse during

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<sup>99</sup> PARRINDER, *The Bible and Polygamy*, p. 10.

<sup>100</sup> MBITI, *African Religions and Philosophy*, p. 142; E.C. ILOGHALU, *Polygamy: In Igboland, Nigeria and Salvation in the New Era of Evangelisation*, doct. diss., Rome, Pontificia Universitas Lateranensis, 1986, pp. 25-26.

<sup>101</sup> R.O. MOORE, “Toward an African Catholic Culture,” in *African Ecclesial Review*, 19 (1977), p. 234.

<sup>102</sup> BLUM, *Forms of Marriage: Monogamy Reconsidered*, p. 106.

menstruation, pregnancy, or before weaning a child. “The time of lactation in Africa has been two years or more, and during this time most tribes believe it to be undesirable for a husband to have intercourse with his wife.”<sup>103</sup> An additional wife permits a man to carry on normal conjugal relations while his other wife observes the requirements of those particular taboos.

Polygamy makes it possible for one wife to help as a substitute for another wife who may be ill or away and to carry on the necessary household duties. Additional wives are also considered as a way to increase the size of a man’s household, to attend to his essential domestic needs and those of his children, and consequently his standing in the local community.<sup>104</sup> The prospect of begetting additional children and heirs for a man’s family and group who will remember him after death is, moreover, one of the most important motivating reasons for taking on additional wives.

In African societies where there are not many opportunities for acquiring distinction in social rank or prestige through personal initiative, polygamous marriage is an important means for a man to gain prestige. In African societies, the ordinary polygamous marriage traditionally meant only two to ten wives, if only because of their cost. This is contrasted with the more extensive polygamy of chiefs, which was used mostly for political domination. For instance, the king of the Ganda, in Central Africa, is said to have possessed several hundreds or possibly even thousands of wives. Mutesa, in the nineteenth century, had three to four hundred wives. Any

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<sup>103</sup> PARRINDER, *The Bible and Polygamy*, p. 11.

<sup>104</sup> See ILOGHALU, *Polygamy*, p. 27.

lineage aspiring to political office, recognition or domination tried to do everything possible to give several of its daughters to the king.<sup>105</sup>

There are also “advantages” of polygamous marriage for women. For some girls, the prospect of marrying while still young is very appealing.<sup>106</sup> In some cases a polygamous husband may be in a better position to offer a girl much greater social and economic security, better lands and a better home, greater prestige within the community, and many other goods which are valued in her society.<sup>107</sup>

A woman who marries a prominent man enables her own descendant group to establish an alliance with another distinguished group. If she is able to secure a large bride-wealth, she will be recognized as having served her group well and will acquire added prestige within her own descendent group. She may even be able to help her brothers to acquire a substantial part of the bride-wealth when they need to marry.

Some sub-Saharan African societies do not consider it proper for a woman of marriageable age, or even of any age, to lack a male guardian. Polygamy is one of the means of ensuring that every woman would be provided with a guardian. In some cases, a wife of a polygamous husband has her own house and is able to engage in some economic activities such as petty trading.

Polygamy provides protection and security for an infertile wife and serves to prevent illicit sexual unions and prostitution. It creates social security for widows and orphans and ensures against divorce. Polygamous marriage in the African context is permanent. If the husband dies, the marriage is not dissolved because the wife's

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<sup>105</sup> C. COQUERY-VIDROVITCH, *African Women: A Modern History*, Boulder, Colorado, Westview Press, 1997, p. 10.

<sup>106</sup> BLUM, *Forms of Marriage: Monogamy Reconsidered*, p. 109.

<sup>107</sup> *Ibid.*

marriage is extended to the man's clan. Marriage is not a bilateral contract between a man and a woman but involves the extended family.<sup>108</sup> Nya Kwiawon Taryor, in her explanation on marriage and kinship, summarizes this particular positive effect of polygamy.

In a polygamous society, there are no orphans, no widow or widower. A child is born to the community. No one owns a child. A child may have ten or twenty mothers, and also ten or twenty fathers. When a child's mother dies, other women are there to provide care and support. Other women take the place of the diseased wife. In like manner, in a polygamous society, there are no fatherless children. The closest relative usually takes charge of the family at the death of the husband. Usually, it is the next of kin, or a brother, or the oldest son. He becomes the new father and is required to bear all the responsibilities there. The women, then, are not left to wonder for a new husband or boyfriends, but they become legal in marriage with the new head of the household. Polygamy discouraged many possibilities for prostitution and unfaithfulness.<sup>109</sup>

### 1.2.2 – Negative effects

From the perspective of the people in polygamous societies, the institution of polygamy has many advantages. In reality, however, the negative aspects of polygamy outweigh the positive aspects by far.

One common problem is the jealousy between the co-wives. Some earlier authors, especially those who discussed polygamy in a theological context, presumed that jealousy between co-wives was almost inevitable. The most frequent cause of it was the resentment the wives felt from sharing the right of sexual access to a husband. Additionally, the causes of such frictions can be unequal distribution of land or money or any other special favours given to one wife and not the other(s).<sup>110</sup>

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<sup>108</sup> KAHIGA, "Polygamy: A Pastoral Challenge to the Church in Africa," p. 124.

<sup>109</sup> TARYOR, *Impact of the African Tradition on African Christianity*, p. 118.

<sup>110</sup> S.J. KANNEH, *Evangelization of the Polygamous in Sierra Leone in the Light of the Local Customary family Life: A Pastoral Suggestion*, doct. diss., Rome, Pontificia Universitas Lateranensis, 1986, pp. 112-113.

Feelings of jealousy may lead to practising witchcraft.<sup>111</sup> If one of the co-wives feels slighted or mistreated, she may seek the services of the witchdoctor, who is believed to have the ability to cast a spell upon the co-wife, her children, or even upon the husband. An attempt may be made to poison the rival or husband. Hence, the existence of conflict, disharmony and perpetual strife within polygamous families is possible.

Polygamy is not always beneficial to the wife and children. Some men neglect one or more of their wives, particularly the older women, in favour of others, especially the newly married wives or younger wives. In the case of a man who faces financial constraints, the education of many children, their medical costs, clothing expenses, and so forth become burdensome to him, and the children's needs are not well met.<sup>112</sup>

Polygamy on a large scale is a bad form of capitalism, because women and children are seen as the chief source of wealth in the society. It suffers from the defects inherent in all unrestrained capitalism and inevitably tends to reduce the status of woman.<sup>113</sup> Marriageable girls are bought and sold or exchanged with cattle.<sup>114</sup> One

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<sup>111</sup> BLUM, *Forms of Marriage: Monogamy Reconsidered*, p. 113; KANNEH, *Evangelization of the Polygamous in Sierra Leone in the Light of the Local Customary family Life*, p. 111.

<sup>112</sup> TARYOR, *Impact of the African Tradition on African Christianity*, p. 121. In 2008, Alean Al-Krenawi of the Ben-Gurion University of the Negev in Israel did the largest study of children in polygamous families. The research showed that "children from polygamous families had higher levels of chronic and persistent pain with no identifiable physical origin, obsession compulsion, depression, interpersonal sensitivity, hostility, phobic anxiety, paranoid ideation (a milder form of paranoia) and psychosis. They also had significantly more problems in peer relationships, significantly poor relationships with their fathers and lower school achievement than did those from monogamous families." D. BRAMHAM, "Polygamy on Trial," in *The Ottawa Citizen*, 22 November 2009, p. A11.

<sup>113</sup> HASTINGS, *Christian Marriage in Africa*, p. 36.

<sup>114</sup> *Ibid.*, p. 9.

man with sixty wives said that he acquired them in different ways, including parents bringing their daughters to him. “These women have been brought by their parents especially when there is famine or when someone has a problem. The father brings the daughter and says the number of cows that he wants [...] He gives me the child and I give him the cows, and then I marry her.”<sup>115</sup> Such a system is not reconcilable with the Christian notion of marriage as a covenant of two equal parties to which they freely and mutually consent.

The girls in polygamous societies are engaged and marriage settlements decided while they are still in their mothers’ womb. Sometimes they find themselves saddled to a marriage they do not want with an old man for whom they feel only disgust. This situation may lead them to commit suicide out of frustration.<sup>116</sup>

Women are considered as instruments for the production of offspring and means for the gratification of the man’s lust. Female genital mutilation is accepted and practiced in many polygamous societies and is a deep-rooted cultural and traditional value. It serves in large part to control a woman’s sexual desire so that she remains faithful to her husband.<sup>117</sup>

Like marriage in general, the negative effects of polygamy can vary greatly from society to society.<sup>118</sup> Societies in Africa today differ widely as to their environment, economy, and social structure; values are changing and may be widely

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<sup>115</sup> M. MTANGO, “A Man with 60 Wives Builds His Own School,” in *Habari Leo*, 27 June 2009, p. 3.

<sup>116</sup> M. MAVUMILISA, *Can the Church Accept Polygamy?* Accra, Asempa Publishers, 1983, p. 21.

<sup>117</sup> A. KOMBA, “Female Genital Mutilation Is Illegal in Tanzania,” in *The Daily News*, 12 February 2009, p. 3.

<sup>118</sup> BLUM, *Forms of Marriage: Monogamy Reconsidered*, p. 111.

divergent. In some sub-Saharan Africa cultures where polygamy is traditionally rooted in the culture of the people and still practiced, not all people in the family today are in agreement with respects to its value, especially in matters regarding unity and peace in the larger family.<sup>119</sup>

### **1.2.3 – Obstacles to conversion to Christianity**

The Church has always maintained that polygamy is fundamentally incompatible with Christianity, and it has been highly resistant to any critique of its teaching and discipline requiring monogamy. As F.X. Urrutia observed, [to say that] “polygamy, wherever it is accepted, may be a great obstacle to conversion to Christianity, and therefore to a more swift propagation of our faith, is an understatement.”<sup>120</sup>

From a human, social, spiritual and canonical point of view, all the above-mentioned reasons why polygamous societies accept polygamy and recognize it as the “ideal” form of marriage with all its so-called “advantages” show instead how polygamy degrades woman unspeakably rather than treating her as man’s companion and equal with him in dignity. The polygamous man lives for himself, only meeting some of the needs of the wives who, whether willingly or reluctantly, are fully in his charge. In this lifestyle, a woman is not of equal worth because polygamy subordinates her to her husband, making her one among the many objects of his pleasure and a subject of his domination. In this perspective, polygamy, in spite of certain economic and social “advantages,” is erosive of the Christian way of life, harmful to the Christian members themselves who are obliged to live out the

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<sup>119</sup> KAHIGA, “Polygamy: A Pastoral Challenge to the Church in Africa,” p. 120.

<sup>120</sup> F.X. URRUTIA, “Can Polygamy be Compatible with Christianity?” in *African Ecclesial Review*, 23 (1981), p. 275.

sacramental life of the Church. Due to its negative effects, polygamous marriage is destructive to a healthy, Christian community life. It is a big, challenging, canonical and pastoral problem in sub-Saharan Africa and an obstacle to conversion to Christianity because it is against the Christian and divine law notion of marriage as established by Christ in the New Covenant.<sup>121</sup>

Christian families are the domestic churches (cf. *LG* 11) in which the Triune God is known, adored, loved and served. They are the domestic churches in which prayer is offered; the word of God is read, meditated on and put into practice; and in which sacraments are received regularly to give the family members spiritual nourishment and holiness. The family is the source of all other vocations in the Church, like the vocation to the priesthood or religious life.<sup>122</sup>

By the coming of our Lord Jesus Christ, marriage was restored to its original dignity and raised to the honour of a sacrament. Every Christian family which is truly Christian is a school in which Christian and human values and virtues are taught and cherished. Christian families are required to fulfil the mission of being apostolic missionaries of Christian faith and morals to each member of the family and to the community and larger society around them.

Polygamy erodes the Church's sacred mission because it makes Christian marriage lose its meaning. Moreover, the intimacy that should exist between husband and wife is reduced to nothing more than a kind of association organised mainly for procreation, pleasure and work. The Christian members of polygamous unions often

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<sup>121</sup> PIUS XII, Allocation to the Roman Rota, 6 October 1946, in *AAS*, 38 (1946), p. 395; English trans. in W. H. WOESTMAN (ed.), *Papal Allocutions to the Roman Rota, 1939-2002*, Ottawa, Saint Paul University, 2002, p. 42.

<sup>122</sup> FIRST SYNOD OF THE ARCHDIOCESE OF ARUSHA, "The Church Christ Wants Us to Be," Arusha Archdiocesan Communication Department, 1998-2000, p. 14.

want to be living out the sacramental life of the Church, but they cannot do so for their union lacks the essential property of unity (c. 1056). They can no longer participate in sacraments while they are still in that form of marriage. Children in such families are badly affected in their Christian way of upbringing. Polygamy is against the nature and the ends of sacramental marriage which requires the good of spouses and the procreation and education of offspring (c. 1055, §§ 1 and 2).<sup>123</sup> The Word of God is not fed to them from their own home.

In the life of the community, polygamous marriages are a bad example and negative influence, particularly to the other Christian families. Because of such surroundings and influences, Christian morals are threatened. Some negative consequences are disenchantment with vocations to holy orders and consecrated life and lack of support for the particular Church and its growth and development. As already seen, the worst effects are those on the wives, the marriage itself, and the children. Family life, which ought to be grounded in a marriage freely contracted, monogamous and indissoluble, often suffers more from polygamy than it gains.<sup>124</sup>

### **1.3 – Civil Law on Polygamy**

Law, like religion, is a fundamental cultural institution. Every society has its own laws, whether these be written and formally legislated or unwritten and customary. All cultures have laws regulating marriage, laws which either accept or reject polygamy. Some societies and religions tolerate or even condone polygamy. In the civil law of many countries, however, polygamy is a felony and subject to a jail

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<sup>123</sup> Cf. *CCEO* c. 776, §§ 1 and 2.

<sup>124</sup> JOHN XXIII, Encyclical Letter on Peace on Earth *Pacem in terris*, 11 April 1963, in *AAS*, 55 (1963), p. 261.

sentence. This raises the question whether the principle of religious freedom, which is cherished in these same legal systems, ought to admit adherents of Islam, Mormonism, and similar religions to practice polygamy as permitted by their religion.<sup>125</sup>

### 1.3.1 – Status of religious freedom

Religious freedom, or freedom of religion, is considered by many nations and people, including people in sub-Saharan African countries, to be a fundamental human right. Religious freedom is a principle that supports the right of an individual or community, in public or private, to manifest religion or belief in teaching, practice, worship, and observance. This concept includes also the freedom to change religion or not to follow any religion.<sup>126</sup>

The general principle of religious freedom has also been emphasised by the Second Vatican Council.

The Vatican Council declares that the human person has a right to religious freedom. Freedom of this kind means that all men [and women] should be immune from coercion on the part of individuals, social groups and every human power so that, within due limits, nobody is forced to act against his [or her] convictions nor is anyone to be restrained from acting in accordance with his [or her] convictions in religious matters in private or in public, alone or in associations with others. [...] This right of the human person to religious freedom must be given such recognition in the constitutional order of the society as will make it a civil right.<sup>127</sup>

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<sup>125</sup> Cf. S. ANDERSON, “The Polygamists: An Exclusive Look Inside the FLDS,” in *The National Geographic*, vol. 217, no. 2, February 2010, pp. 34-61.

<sup>126</sup> See [http://atheism.about.com/library/irf03/blirf\\_africa.htm](http://atheism.about.com/library/irf03/blirf_africa.htm) (20 August 2009).

<sup>127</sup> SECOND VATICAN COUNCIL, Declaration on Religious Liberty *Dignitatis humanae*, 7 December 1965, in AAS, 58 (1966), pp. 930-931; English trans. in FLANNERY1, p. 800. The original text reads as follows: “Haec Vaticana Synodus declarat personam humanam ius habere ad libertatem religiosam. Huiusmodi libertas in eo consistit, quod omnes homines debent immunes esse a coërcitione ex parte sive singulorum sive coetuum socialium et cuiusvis potestatis humanae, et ita quidem ut in re religiosa neque aliquis cogatur ad agendum contra suam conscientiam neque impediatur, quominus iuxta suam conscientiam agat privatim et publice, vel solus vel aliis consociatus, intra debitos limites. [...] Hoc ius personae humanae ad libertatem religiosam in iuridica societatis ordinationem ita est agnoscendum, ut ius civile evadat.”

The right to worship God according to one's conscience, as Pope John XXIII said, is one of the rights of a human being, that is, to honour God according to the sincere dictates of one's own conscience, and hence the right to practice one's religion privately and publicly.<sup>128</sup> It is therefore a fundamental human right and freedom, pertaining to every person, to worship God according to his or her own conscience and convictions. Consequently, matters of faith and religion should not be subject to control or coercion by the State.<sup>129</sup>

### 1.3.2 – Government policies on polygamy

To maintain harmony and peace in any country, there should be cooperation between the government and the Church on matters of mutual concern. The government should cooperate with the Church and vice versa. Pope Leo XIII, speaking on the necessity of concord between Church and State, said:

Yet no one doubts that Jesus Christ, the Founder of the Church, willed her sacred power to be distinct from the civil power, and each power to be free and unshackled in its own sphere: with this condition, however—a condition good for both, and of advantage to all men—that union and concord should be maintained between them; and that on those questions which are, though in different ways, of common right and authority, the power of which secular matters have been entrusted should happily and becomingly depend on the other power which has in its charge the interests of heaven.<sup>130</sup>

A good relationship between the State and the Church brings harmony and peace. It is also the most opportune and efficacious method of helping people in all that pertains to their life here on earth and their hope of salvation after death. Though

<sup>128</sup> JOHN XXIII, *Pacem in terris*, p. 260.

<sup>129</sup> C. KITIMA, *Church and State in Tanzania: A Juridical Survey*, doct. diss., Rome, Pontificia Univerisità Lateranense, 2000, p. 38.

<sup>130</sup> LEO XIII, Encyclical Letter on Christian Marriage *Arcanum divinae sapientiae*, 10 February 1880, in *AAS*, 12 (1994), p. 399; English trans. *Christian Marriage Encyclical Letter of Pope Leo XIII Arcanum Divinae Sapientiae: With Discussion Club Outline* by Rev. Gerald C. Treacy, S.J., New York, Paulist Press, 1942, p. 21.

there should be a good relationship between the government and the Church, this relationship pertains only to external matters. The State should not interfere with internal matters of faith or force citizens to follow a particular way of belief.<sup>131</sup>

In some countries, religious practices may conflict with secular law, which can lead to tensions and debates on religious freedom. For instance, polygamy, even though it is permitted in Islam, is prohibited in secular law in many western countries.<sup>132</sup> In sub-Saharan African countries, government policies permit the religious practices of both major world religions, Christianity and Islam, as well as smaller sects, and polygamy is not forbidden by the government policies.

Many of the constitutions of these countries provide for freedom of religion, and the government policies generally respect this right in practice, depending on the culture, religion and belief. Hence, polygamy as a practice is legally permitted. The government at all levels strives to protect this in full and does not tolerate its abuse, either by governmental or private actors. However, in some cases, for instance in Tanzania, there are some limits on freedom of religion and some measures necessary to ensure public order and safety.

In a country with a state religion, and in many Islamic societies, freedom of religion is generally considered to mean that the government permits religious practices of other sects besides the state religion and does not persecute believers in other faiths.<sup>133</sup> Generally, the constitutions in sub-Saharan African countries provide

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<sup>131</sup> KITIMA, *Church and State in Tanzania*, p. 38, says that religion “regards the relationship between God and man. The state, ordering the external relations of man with others, cannot tell its citizens who God is by using its laws. If it appeals to some revelations to get the notion of God, there will be disagreement among different faiths since the concept of God differs from one religion to another ....”

<sup>132</sup> See [http://atheism.about.com/library/irf03/blirf\\_africa.htm](http://atheism.about.com/library/irf03/blirf_africa.htm) (20 August 2009).

<sup>133</sup> See [http://atheism.about.com/library/irf03/blirf\\_africa.htm](http://atheism.about.com/library/irf03/blirf_africa.htm) (20 August 2009).

for freedom of religion, including freedom to change one's religion or belief, and freedom to manifest and propagate one's religion or belief in worship, teaching, practice, and observance.

Throughout the region of sub-Saharan Africa, laws provide for a variety of marriage regimes. The way in which individuals negotiate through these systems differs from country to country, but some of the societies are traditionally polygamous.<sup>134</sup> While, in the sub-Saharan context, the practice of polygamy is cultural in its origin and is permitted by government policies, in the western context the practice of polygamy is not rooted in the culture of her people and the civil law does not permit it. Section 293 of the Criminal Code of Canada, for example, explicitly bans polygamy and threatens offenders with a five-year prison term.<sup>135</sup> Polygamy in Canada is not rooted in the culture of the great majority of its people, but it exists even today, however minimally, as, for example among certain adherents of Mormonism (the Church of Jesus Christ of the Latter Day Saints). The first Mormons came to Canada in 1888 and their influence remains small but, today, immigrants from Islamic and African countries are coming to Canada in larger numbers from cultural backgrounds in which polygamy has flourished. Canadian law has so far shown no openness to or tolerance of polygamous immigrants. Emphasizing the strictness of the government in applying the law on polygamy issues, Daniel Lak states:

[...] but as religions and cultures where some degree of polygamy is tolerated come to Canada, the relevance of Section 293 is growing. [...] In parts of

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<sup>134</sup> See <http://www.law.emory.edu/ifl/religion/eastcentralafrica.html> (25 March 2009).

<sup>135</sup> D. LAK, "Polygamy in Canada: Can It Be Banned?" 25 April 2008, in <http://www.cbc.ca/new/background/polygamy> (25 March 2009).

Africa, men take multiple spouses as a cultural practice. Canadian immigration officials have turned down applications from men in legal polygamous unions abroad to bring more than one wife to the country under a family class visa.<sup>136</sup>

Does the principle of religious freedom imply that an exception to laws against polygamy be made in Canada and similar countries to allow adherents of certain religions to marry more than one spouse?<sup>137</sup> Surely, in societies that have deviated from traditional laws and mores on marriage, such as with the legalisation of marriage between homosexuals, this topic may be ripe for debate, especially if prompted by a court challenge. The position of the Church, nevertheless, remains firm. Religious freedom is a human right, but there is no right to a practice that is against the divine law, even if it is countenanced by certain other religions.

## **Conclusion**

It is hard to find a single explanation for polygamy and its persistence. Its function varies from one society to another or even within the same society. Some men are polygamous through the inheritance of a widow from a brother or from a close relative. Others are polygamous because they seek prestige or greater productivity for their households. Despite its being deeply rooted in the culture, people from societies that traditionally practice polygamy can change, and those who wish to embrace Christianity can find a way to do so, especially with the aid of sound canonical and proper pastoral approaches. Also, this happens as a result of cultural and societal change. People change as their culture changes, and culture itself is

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<sup>136</sup> Ibid.

<sup>137</sup> Cf. Constitutional case involving polygamy. BRAMHAM, "Polygamy on Trial," p. A11; idem, "Polygamy is Harmful to Society, Scholar Finds," in *Vancouver Sun*, 19 July 2010, pp. 4-6.

subject to constant change,<sup>138</sup> especially today with the growing availability of the media of social communication even in areas that until recently were very remote. “All cultures change over a period of time. This might be due to the intrusion of outsiders [contact with people of different cultures], or modification of behavior and values within the culture.”<sup>139</sup> Culture change has also resulted historically from any widespread acceptance of Christ.<sup>140</sup> Contact with other cultures can bring about change in one’s own. Therefore, the practice of polygamy, though it is deeply rooted in the culture of people, can eventually be supplanted by monogamy. But it is a process which needs a careful approach because culture change, if taken without due consideration, can bring unexpected and often disastrous results. The cultural backgrounds and the strongly rooted traditional norms, customs and traditions of these people should be taken into consideration very carefully in any canonical and pastoral approaches intended to promote the Church’s teaching on marriage.

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<sup>138</sup> D.W. KIETZMAN and W.A. SMALLEY, “The Missionary’s Role in Culture Change,” in W.A. SMALLEY (ed.), *Readings in Missionary Anthropology II*, South Pasadena, California, William Carey Library, 1978, pp. 524-529; D.W. KIETZMAN, “Conversion and Cultural Change,” in W.A. SMALLEY (ed.), *Readings in Missionary Anthropology*, Tarrytown, NY, Practical Anthropology, 1967, pp. 127-131.

<sup>139</sup> HAVILAND, *Cultural Anthropology*, p. 19.

<sup>140</sup> KIETZMAN and SMALLEY, “The Missionary’s Role in Culture Change,” p. 525.

## CHAPTER TWO

### CHURCH TEACHINGS ON MARRIAGE AND POLYGAMY

#### **Introduction**

Problems concerning marriage are among the most challenging and prevailing in any mission territory, including sub-Saharan Africa. This is because marriage is a natural and human reality<sup>1</sup> that has always existed<sup>2</sup> and has, as its basic concern, the propagation of life, that is, procreation. Naturally, marriage is looked upon as an important element in any culture, and it is surrounded with solemnities of custom and ritual reflecting the deepest convictions of that culture. In most cases, if not all, marriage problems are accelerated by the lack of marital unity. This is caused by different factors, such as jealousy, absence of true love,<sup>3</sup> lack of proper knowledge about the meaning of marriage, and the prevalence of polygamy. Some people believe that “one of the reasons why the Church has not been able to make a significant impact upon the African people is its uncompromising position against polygamy.”<sup>4</sup> The presence and practice of polygamy

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<sup>1</sup> See J.I. BAÑARES, “Marriage (cc. 1055-1062),” in *Exegetical Comm*, p. 1052; see also HASTINGS, *Christian Marriage in Africa*, p. 61.

<sup>2</sup> L. ÖRSY, *Marriage in Canon Law: Texts and Comments, Reflections and Questions*, Wilmington, Delaware, M. Glazier, 1986, p. 54.

<sup>3</sup> Despite cultural changes and differences, love has a key position in Christian marriage. For an account of the role and importance of love in Christian marriage, see J.R. CONNERY, “The Role of Love in Christian Marriage,” in T.P. DOYLE (ed.), *Marriage Studies III: Reflections in Canon Law and Theology*, Washington, DC, Canon Law Society of America, 1985, pp. 187-205.

<sup>4</sup> TARYOR, *Impact of the African Tradition on African Christianity*, p. 122.

have given rise to missionary and pastoral problems that churchmen and theologians cannot ignore with impunity.<sup>5</sup>

This chapter is about the Church's teachings on marriage and polygamy. Any canonical/pastoral approach to polygamy cannot overlook the theological foundations behind the issue, because the Church's law on marriage, like many other canonical institutes, is rooted in its doctrine. The chapter treats the nature and ends of marriage, sacramental marriage, the essential elements and properties of marriage, and the Church's teaching on the practice of polygamy. We will treat briefly the teachings of the Church on marriage, especially sacramental marriage. The subject matter will be drawn from a variety of pertinent sources, especially the Code of Canon Law, the contemporary Magisterium, selected older magisterial texts and papal teachings as well as noted authors, both theologians and canonists. We shall conclude the chapter with some critical reflections by theologians on the Church's position on polygamy and ask whether the Church's doctrine and canon law should be accommodated pastorally to benefit the mission of evangelization and the *salus animarum*.

## **2.1 – The Divine Origin and Nature of Marriage**

In his encyclical letter on marriage, *Arcanum divinae sapientiae*, Pope Leo XIII, referring to the biblical texts and their analysis made by different biblical scholars, affirmed that God himself established marriage when He gave Eve to Adam as his wife

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<sup>5</sup> E. HILLMAN, *Polygamy Reconsidered: An Evaluation of the Traditional Christian Position regarding Customary Plural Marriage in Africa South of the Sahara*, doct. diss., Ottawa, Saint Paul University, 1972, p. 20.

and decreed that from them the human race should be propagated.<sup>6</sup> God Himself is therefore the author of marriage (*Ipsa vero Deus est auctor matrimonii*).<sup>7</sup> After the creation of Adam, God formed Eve as a companion and helper and blessed their partnership. We see expressed in various biblical texts the doctrine that marriage was instituted by God in the creation of man and woman.<sup>8</sup> Pope Leo XIII wrote:

The true origin of marriage [...] is well known to all. Though revilers of the Christian faith refuse to acknowledge the never-interrupted doctrine of the Church on this subject, and have long striven to destroy the testimony of all nations and all the times, they have nevertheless failed not only to quench the powerful light of truth, but even to lessen it. We record what is to all known, and cannot be doubted by any, that God, on the sixth day of creation, having made man from the slime of the earth, and having breathed into his face the breath of life, gave him a companion, whom He miraculously took from the side of Adam when he was locked in sleep. God thus, in His most far-foresight, decreed that this husband and wife should be the natural beginning of the human race [...].<sup>9</sup>

Fifty years later, Pius XI in *Casti connubii* repeated the same teaching, though in different words.

And to begin with that same Encyclical [*Arcanum divinae sapientiae*] which is wholly concerned in vindicating the divine institution of matrimony, its sacramental dignity, and its perpetual stability, let it be repeated as an immutable and inviolable fundamental doctrine that matrimony was not instituted or restored by man but by God; not by man were the laws made to strengthen and confirm and elevate it but by God, the Author of nature, and by Christ Our Lord by Whom nature was redeemed, and hence these laws cannot be subject to any human decrees or to any contrary pact even of the spouses themselves. This is the doctrine of Holy Scripture; this is the constant tradition of the Universal Church; this is the solemn definition of the sacred Council of Trent, which declares and establishes from the words of Holy Writ itself that God is the Author of the perpetual stability of the marriage bond, its unity and its firmness.<sup>10</sup>

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<sup>6</sup> LEO XIII, *Arcanum divinae sapientiae*, p. 12. See also pp. 5 and 25.

<sup>7</sup> Cf. *GS*, no. 48.

<sup>8</sup> Gn 1:27; 2:18; Mt 19:2-6; Mk 10:2-9.

<sup>9</sup> LEO XIII, *Arcanum divinae sapientiae*, p. 5.

<sup>10</sup> PIUS XI, Encyclical Letter *Casti connubii*, 31 December 1930, in *AAS*, 22 (1930), p. 541; English trans. *Fourteen Encyclicals of His Holiness Pope Pius XI, 1929-1937*, Washington, DC, National Catholic Welfare Conference, 1938, p. 4.

Marriage is, therefore, a special design of God, and its essentials have been established by God himself and not by man. [It] “is of Divine Institution established by God with the Creation of Man.”<sup>11</sup> God the Creator of the universe established the conjugal partnership as the beginning and basis of human society, and by his grace he has made it a great sacrament in Christ and in the Church.

The nature of marriage was considered at the Second Vatican Council during the debate on the Pastoral Constitution on the Church in the Modern World *Gaudium et spes*. The council teaches that the marital state was established by the Creator and endowed by him with its own proper laws.

The intimate partnership of life and the love which constitutes the married state has been established by the creator and endowed by him with its own proper laws; it is rooted in the contract of its partners, that is, in their irrevocable personal consent. It is an institution confirmed by divine law and receiving its stability, in the eyes of society also, from the human act by which the partners mutually surrender themselves to each other; for the good of the partners, of the children, and of society this sacred bond no longer depends on human decision alone. For God himself is the author of marriage and has endowed it with various values and purposes: all of these have a very important bearing on the continuation of the human race, on the personal development and eternal destiny of every member of the family, on the dignity, stability, peace, and prosperity of the family and the whole human race. By its very nature the institution of marriage and married love are ordered to the procreation and education of the offspring and it is in them that it finds its crowing glory. [...]

[...] Authentic married love is caught up into divine love and is directed and enriched by the redemptive power of Christ and the salvific action of the church, with the result that the spouses are effectively led to God and are helped and strengthened in their lofty role as fathers and mothers. Spouses, therefore, are fortified and, as it were, consecrated for the duties and dignity of their state by a special sacrament; fulfilling their conjugal and family role by virtue of this sacrament, spouses are penetrated with the spirit of Christ and their whole life is suffused by faith, hope and charity; thus they increasingly further their own

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<sup>11</sup> According to Schleck, “to say that marriage is of divine institution is simply to state that it is a work of God Himself. Consequently, it is not something that was set up by man any more than the existence of the created universe. Rather, it is what theologians call an *officium naturae*, an office of nature itself given by its Author. All of its essentials were assigned to it by Him – its institution, its purposes, the laws which govern it, and the blessings which flow from it to human society.” C.A. SCHLECK, *The Sacrament of Matrimony: A Dogmatic Study*, Milwaukee, Bruce, 1964, p. 3.

perfection and their mutual sanctification, and together they render glory to God.<sup>12</sup>

This teaching of the Church is reflected in the 1983 code which summarizes the nature of marriage as established by the Creator.

The marriage covenant, by which a man and a woman establish between themselves a partnership of their whole life, and which of its own very nature is ordered to the well-being of the spouses and to the procreation and upbringing of children, has, between the baptized, been raised by Christ the Lord to the dignity of sacrament (c. 1055 §1).<sup>13</sup>

This marriage covenant as established by God has the specific sacramental dignity when it is celebrated between the baptised (c. 1055, §2). It is precisely the natural institution of marriage, that is, the partnership of the whole of life brought about by the spouses' consent, which Christ has raised to sacramental dignity of the baptised. Marriage as a natural reality created by God is a sign that leads a person to the divine realm. The reality of marriage is sacred by its very nature. It calls forth the mystery of God, and that is why

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<sup>12</sup> The Latin text reads as follows: "Intima communitatis vitae et amoris coniugalis, a Creatore condita suisque legibus instructa, foedere coniugii seu irrevocabili consensu personali instauratur. Ita actu humano, quo coniuges sese mutuo tradunt atque accipiunt, institutum ordinatione divina firmum oritur, etiam coram societate; hoc vinculum sacrum intuitu boni, tum coniugum et prolis tum societatis, non ex humano arbitrio pendet. Ipse vero Deus est auctor matrimonii, variis bonis ac finibus praedit; quae omnia pro generis humani continuatione, pro singulorum familiae membrorum profectu personali oc sorte aeterna, pro dignitate, stabilitate, pace et prosperitate ipsius familiae totiusque humanae societatis maximi sunt momenti. Indole autem sua naturali, ipsum institutum matrimonii amorque coniugalis ad procreationem et educationem prolis ordinantur iisque veluti suo fastigio coronantur. [...]"

[...] Germanus amor coniugalis in divinum amorem assumitur atque virtute redemptiva Christi et salvifica actione Ecclesiae regitur ac ditatur, ut coniuges efficaciter ad Deum ducantur atque in sublimi munere patris et matris adiuventur et confortentur. Quapropter coniuges christiani ad sui status officia et dignitatem peculiari sacramento roborantur et veluti consecrantur; cuius virtute munus suum coniugale et familiare explentes, Spiritu Christi imbuti, quo tota eorum vita, fide, spe et caritate pervaditur, magis ac magis ad propriam suam perfectionem mutuamque sanctificationem, ideoque communiter ad Dei glorificationem accedunt." SECOND VATICAN COUNCIL, Pastoral Constitution on the Church in the Modern World *Gaudium et spes*, 7 December 1965, in AAS, 58 (1966), pp. 1067-1069; English trans. in FLANNERY1, pp. 950-951.

<sup>13</sup> Cf. *CCEO* c. 776, §1.

the natural institution of marriage between two baptised persons is regarded as a sacrament.<sup>14</sup> By the sacrament of matrimony, spouses are actually strengthened spiritually and consecrated for the duties and dignity of their state; and by virtue of this sacrament, their whole life is based on the three theological virtues of faith, hope and charity which are the foundation of Christian moral activity.<sup>15</sup>

The conciliar teaching on the nature of marriage as “established by the creator” was developed further after the Second Vatican Council. This can be seen in *Humanae vitae*<sup>16</sup> and in *Familiaris consortio*.<sup>17</sup> “The love that exists between man and wife is an epiphany of the love and faithfulness of God that was given once and for all time in Jesus Christ and is made present in the Church.”<sup>18</sup> Christ our Lord has abundantly blessed this love. Authentic married love is caught up into divine love and is directed and enriched by the redemptive power of Christ and the salvific action of the Church (cf. *GS* 48).

By their efforts to live together, to love one another faithfully and perpetually, husband and wife participate in the Church’s own mission of being a sort of sacrament or sign of intimate union with God, and of the unity of all mankind and an instrument for the achievement of such union and unity (cf. *LG* 1). As a result, they live together and

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<sup>14</sup> See J.P. KALLIKATTUKUDY, *Fraud and Nullity of Marriage in Canon Law and Indian Civil Law: A Comparative Analysis*, doct. diss., Ottawa, Saint Paul University, 2004, p. 26.

<sup>15</sup> See *Catechism of the Catholic Church*, nn. 1812-1829.

<sup>16</sup> PAUL VI, Encyclical Letter on the Regulation of Birth *Humanae vitae*, 25 July 1968, nn. 8-18, in FLANNERY2, pp. 400-407.

<sup>17</sup> JOHN PAUL II, Post-Synodal Apostolic Exhortation *Familiaris consortio*, 22 November 1981, in FLANNERY2, pp. 822-827.

<sup>18</sup> W. KASPER, *Theology of Christian Marriage*, New York, Seabury Press, 1980, p. 30.

form a family which can be called “the domestic church” (cf. *LG 11*),<sup>19</sup> that is, the tiniest but most essential cell of the Body of Christ which is the Church.<sup>20</sup>

Marriage, though established by God himself, is part of human culture, or cultures. Indeed, there is no culture on earth that has no marriage. It is, therefore, a natural and cultural institution, common to all mankind, which entails a union between a man and a woman for the purpose of procreation<sup>21</sup> and mutual support, or love.<sup>22</sup> Any other union contrary to this, for instance, “gay marriage,”<sup>23</sup> is against the natural institution of

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<sup>19</sup> FLANNERY1, p. 362.

<sup>20</sup> J.P. BEAL, “Foundational Canons (cc. 1055-1065),” in *CLSA Comm2*, p. 1246.

According to the first synod of the Archdiocese of Arusha, this image of the Church as a family should be emphasized by small Christian communities. A small Christian community (SCC) is a domestic Church in which the family of God brings together as a community several Christian families who live near each other. Small Christian communities of the Arusha Archdiocese are to be examples of the family of God where the ministers meet the needs of the whole person, body and soul. See FIRST SYNOD OF THE ARCHDIOCESE OF ARUSHA, p. 4.

<sup>21</sup> Matrimony as a natural contract can be defined as “Unius viri et mulieris conjunctio legitima, individua (i.e., exclusiva), stabilis, ad propagationem generis humani et ad ceteros fines matrimonii.” A.H. VAN VLIET, *Marriage and Canon Law: A Concise and Complete Account*, London, Burns & Oates, 1964, p. 3; cf. HOLY SEE, Charter of the Rights of the Family: Presentation of the Holy See to All Persons, Institutions and Authorities Concerned with the Mission of the Family in Today’s World, 22 October 1983, in *The Pope Speaks*, 29 (1984), p. 80.

<sup>22</sup> The matrimonial contract, by which the contracting parties mutually offer and accept their bodies for the acts pertaining to married life, supposes at least an inchoate and imperfect love. Yet this love does not enter into the essential idea of matrimony, which can subsist without love. The juridical bond which constitutes the essence of matrimony exists independently of conjugal affection. (Cf. *Promptuarium*, July 1939, pp. 159 ff; Anciaux, pp. 68-73; *Summa Theol.* (S. Thomas), II, II, Q. 57, a. 1. Cf. footnote 5 to Q. 5.) as quoted in VAN VLIET, *Marriage and Canon Law*, p. 3.

<sup>23</sup> “Gay marriage” is also known as “gender-neutral marriage” or “same-sex marriage.” It is a term used to describe a legally or socially recognised marriage between two persons of the same sex. Cf. [http://en.wikipedia.org/wiki/Gay\\_marriage](http://en.wikipedia.org/wiki/Gay_marriage) (15 September 2009). However, “gay marriage” violates the sanctity of marriage as a sacred institution. “Attempts to justify same-sex unions or relationships or to give them matrimonial status also contradict God’s plan – as revealed from the beginning both in nature and in Revelation – for marriage to be a lifelong union of a man and a woman.” USCCB, *United States Catholic Catechism for Adults*, Washington, DC, USCCB Publishing, 2006, p. 411.

marriage. The natural institution of marriage has to be protected from contemporary social and legal challenges, as noted by the United States Conference of Catholic Bishops.

There are attempts by some in contemporary society to change the definition or understanding of what exactly constitutes marriage. Efforts to gain approval for and acceptance of same-sex unions as marriages are examples. While the Church clearly teaches that discrimination against any group of people is wrong, efforts to make cohabitation domestic partnerships, same-sex unions, and polygamous unions equal to marriage are misguided and also wrong. The Church and her members need to continue to be a strong and clear voice in protecting an understanding of marriage which is rooted in natural law and revealed in God's law.<sup>24</sup>

The Church's teaching on the nature of marriage must be protected and affirmed by both the Church's leaders and her members.

## **2.2 – The Ends of Marriage**

By its very nature, marriage is ordered to the well-being of the spouses (*bonum coniugum*) and the procreation and upbringing of children (*prolis generationem et educationem ordinatum*). This doctrine finds juridical expression in c. 1055, §1.<sup>25</sup> It means that, “as a natural institution, marriage has certain ends or finalities that are embedded in the nature of the institution itself (*finis operis*) and are independent of the will or intention of the spouses (*finis operantis*).”<sup>26</sup> Consequently, the achievement of the ends of marriage is beyond the power of the spouses. The failure to attain them does not in itself affect the validity of marriage. This means, for example, that even childless marriages are presumed to be valid. A marriage is invalid, however, if one or both parties, when consenting to marriage, exclude an essential property or end, that is, they

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<sup>24</sup> USCCB, *United States Catholic Catechism for Adults*, p. 280.

refuse to give and accept the right to one or more of the ends of marriage by a positive act of the will (cf. c. 1101, §2).<sup>27</sup>

Unlike the 1917 code, which distinguished between the primary and secondary ends of marriage, *Gaudium et spes* and the 1983 code do not make this distinction. Instead, both the good of the spouses and the procreation and upbringing of children are equally essential to and inseparable in marriage.<sup>28</sup> Both of them together make up the integral purpose of marriage.<sup>29</sup> This reality was noted by John Paul II in his Post-Synodal Apostolic Exhortation *Familiaris consortio*.

Conjugal love, while leading the spouses to the reciprocal “knowledge” which makes them “one flesh,” does not end with the couple, because it makes them capable of the greatest possible gift, the gift by which they become co-operators with God for giving life to a new human person. Thus the couple, while giving themselves to one another, give not just themselves but also the reality of children.<sup>30</sup>

In all valid marriages, a bond arises that is by its very nature perpetual and exclusive and, in Christian marriages, the spouses are by a special sacrament

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<sup>25</sup> *CCEO* c. 776, §1. St. Augustine defended the essential goodness of marriage. He identified the threefold goods of marriage as the good of fidelity (*bonum fidei*), the good of children (*bonum prolis*), and the good of the sacrament or permanence (*bonum sacramenti*). “Fidelity means that one avoids all sexual activity apart from one’s marriage. Offspring means that the child is accepted in love, is nurtured in affection, as is brought up in religion. The sacrament means that the marriage is not severed nor the spouses abandoned.” AUGUSTINE, *De Genesi ad litteram*, ix, 7, 12, *Corpus scriptorum ecclesiasticorum latinorum (CSEL)* 28; pp. 275-276, as quoted by BEAL, *CLSA Comm2*, pp. 1235-1236.

<sup>26</sup> BEAL, *CLSA Comm2*, p. 1243.

<sup>27</sup> *CCEO* cc. 818 and 824.

<sup>28</sup> BEAL, *CLSA Comm2*, p. 1243.

<sup>29</sup> ÖRSY, *Marriage in Canon Law*, p. 52.

<sup>30</sup> *FC* 14; FLANNERY2, p. 825.

strengthened and consecrated for the duties and the dignity of the state (cf. c. 1134).<sup>31</sup>

“Each spouse has an equal obligation and right to whatever pertains to the partnership of conjugal life” (c. 1135).<sup>32</sup> Marriage as a partnership (*consortium*)<sup>33</sup> of the whole life is for the good of the spouses and for the procreation and upbringing of children. The spouses have to love and help each other and fulfill their vocation with human and Christian responsibility (*GS* 50). This good of the spouses is of its nature perpetual (*GS* 48). It includes the physical, emotional, intellectual, and spiritual welfare of the couple. To enter marriage with the purpose of personal fulfillment only is to bring into it the seed of destruction because the person doing so would not be dedicated to the true values of the married state of life.<sup>34</sup> In speaking of conjugal love as one of the ends of marriage, *Gaudium et spes* teaches:

This love is an eminently human one since it is directed from one person to another through an affection of the will; it involves the good of the whole person [*totius personae bonum*], and therefore can enrich the expressions of body and mind with a unique dignity, ennobling these expressions as special ingredients and signs of the friendship distinctive of marriage. This love God has judged worthy of special gifts, healing, perfecting and exalting gifts of grace and charity.<sup>35</sup>

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<sup>31</sup> *CCEO* c. 776, §§ 2-3.

<sup>32</sup> *Ibid.*, c. 777.

<sup>33</sup> Literally it means a close association of persons sharing the same fortune, fate and destiny. It is impossible to translate it correctly, and it has no equivalent word in English. In choosing the word *consortium*, canon law tries to strike a middle course between the ideal of a perfect union of minds and hearts and the unsatisfactory state of a merely external association, so that the legitimate marital customs and traditions of various people could be accommodated. ÖRSY, *Marriage in Canon Law*, p. 51.

<sup>34</sup> *Ibid.*, p. 53.

<sup>35</sup> *GS* 49; FLANNERY1, p. 952.

A couple, being graced with the dignity and office of fatherhood and motherhood (*GS* 48), has both the serious obligation and the primary right “to ensure the children’s physical, social, cultural, moral and religious upbringing” (c. 1136).<sup>36</sup> This right and obligation was emphasised by the Second Vatican Council. The right and obligation of parents to bring up their children is reaffirmed as the “proper mission” of the spouses (*GS* 50). The parents must ensure that this upbringing enables their children, when they become adults, to follow their vocations, including religious vocations, and choose their state of life with full consciousness and responsibility, and this right must at the same time be safeguarded (*GS* 52).

The children’s education is to take place in a family atmosphere so animated with love and reverence for God and others that a well-rounded personal and social development will be fostered among the children (cf. *GE* 3; *FC* 36). For this reason, Christian parents’ effort to provide for the formation of their children is “truly a ‘ministry’ of the Church at the service of building up her members” (*FC* 38; cf. c. 835, §4). This has also been a great concern and one of the objectives of some particular Churches in sub-Saharan Africa. For instance, the first synod of the Archdiocese of Arusha, in realizing the importance of this essential end of marriage and also supporting the teaching of the Church, tried to emphasise the role of parents on the whole issue of evangelization: that God’s family, like any other family, needs to grow. Together with the sacramental life, the family will not grow if there is no evangelization. It is through proper and solid evangelization that faith is born and, thereupon, step by step, perfection

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<sup>36</sup> *CCEO* cc. 627, §1 and 783, §1, 1°. This obligation/role of the parents towards their children is founded in the nature of marriage. See H. DINWIDDY, “Christian Marriage,” in *African Ecclesial Review*, 3 (1961), p. 116; and M. SCHMAUS, *Theologia dogmatica: Los sacramentos*, Madrid, Ediciones RIALP, S.A., 1961, pp. 725-726.

is sought. Evangelization is the basic foundation for the family to grow and realize itself as a domestic church and to advance the preaching of the Gospel in order to change the whole universe and to direct it towards God the Father and Jesus Christ. Primary, secondary, and college education should be the basis for evangelization which should start in the family. Parents are highly encouraged to allow their children to offer themselves in the ministry of preaching the word of God in order to increase the number of preachers.<sup>37</sup>

The Second Vatican Council, in the Pastoral Constitution on the Church in the Modern World *Gaudium et spes*, explained:

Inspired by the example and family prayer of their parents, children, and in fact everyone living under the family roof, will more easily set out upon the path of a truly human training, of salvation, and of holiness. As for the spouses, when they are given the dignity and role of fatherhood and motherhood, they will eagerly carry out their duties of education, especially religious education, which primarily devolves on them (GS 48).<sup>38</sup>

Leo XIII taught that children contribute in their own way to the sanctification of their parents. They ought to submit to their parents, obey them, and give them honour.<sup>39</sup> Pope

Pius XI wrote:

[...] among the blessings of marriage, the child holds the first place and indeed the Creator of the human race Himself, who in His goodness wished to use men as His helpers in the propagation of life, taught this when, instituting marriage in Paradise, He said to our first parents and through them to all future spouses: "Increase and multiply, and fill the earth." As St. Augustine admirably deduces from the words of the holy Apostle St. Paul to Timothy when he says: "The Apostle himself is therefore a witness that marriage is for the sake of generation."<sup>40</sup>

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<sup>37</sup> FIRST SYNOD OF THE ARCHDIOCESE OF ARUSHA, "The Church Christ Wants Us to Be," p. 11; cf. HOLY SEE, Charter of the Rights of the Family, pp. 82-83.

<sup>38</sup> FLANNERY1, p. 951.

<sup>39</sup> LEO XIII, *Arcanum divinae sapientiae*, p. 9.

<sup>40</sup> PIUS XI, *Casti connubii*, p. 542.

The man and woman, who “are no longer two [...], but one flesh” (Mt. 19:6), help and serve each other by their marriage partnership; they become conscious of their unity and experience it more deeply in day to day life. Each spouse gives up some rights over his or her life in exchange for rights over the life of the other spouse. The intimate union of marriage as a mutual giving of two persons and the good of the children (*bonum prolis*) demands total fidelity<sup>41</sup> from the spouses and requires an unbreakable unity between them.<sup>42</sup> This can be compared with the love of Christ himself. As the love of Christ for man is unique, exclusive, and definitive, likewise the love by mutual donation between Christian married couples is also one, exclusive, definitive, and irrevocable.

Some authors explain the ends of marriage by making two distinctions of the *finis*, or purpose, of marriage. There are two Scholastic distinctions of the *fines* of marriage, namely, the *fines operis* (objective ends) which are intrinsic to the nature of marriage itself and an objective reality, willed by God; and the *fines operantis* (subjective ends) which are extrinsic to marriage itself and subjective, willed by the couple. The ends of marriage in our context here refer to its intrinsic finality or purposes. As a natural institution, marriage has certain ends or finalities that are embedded in the nature of the institution itself (*fines operis*) and are independent of the will or intention of the spouses

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<sup>41</sup> L. SABBARESE, *Il matrimonio canonico nell'ordine della natura e della grazia: Commento al Codice di diritto canonico Libro IV, Parte I, Titolo VII*, Rome, Urbaniana University Press, 2006, pp. 109-110.

<sup>42</sup> See PIUS XI, *Casti connubii*, pp. 546-547.

(*finis operantis*).<sup>43</sup> The objective is to establish a loving and permanent partnership between the spouses who become one and accept one another in entirety.<sup>44</sup>

Pope Leo XIII, in his encyclical letter on Christian marriage, *Arcanum divinae sapientiae*, summarizes God's twofold purpose in marriage.

If, then, we consider the end of the divine institution of marriage, we shall see very clearly that God intended it to be a most fruitful source of individual benefit and of public welfare. Not only, in strict truth, was marriage instituted for the propagation of the human race, but also that the lives of husbands and wives might be made better and happier. This comes about in many ways: by their lightening each other's burdens through mutual help; by constant and faithful love; by having all their possessions in common; and by the heavenly grace which flows from the sacrament. Marriage also can do much for the good of families, for so long as it is conformable to nature and in accordance with the counsels of God, it has power to strengthen the union of heart in the parents; to secure the holy education of children; to temper the authority of the father by the example of the divine authority; to render children obedient to their masters. From such marriages as these the State may rightly expect a race of citizens animated by a good spirit and filled with reverence and love for God, recognizing their duty to obey those who rule justly and lawfully, to love all, and to injure no one.<sup>45</sup>

The Church teaches that the ends of marriage can be achieved and fulfilled only through a monogamous union. The union between one husband and several wives, that is, polygamy, is completely contrary to the ends of marriage "because they [polygamous marriages] disturb the union of love between man and wife and render their necessary cooperation in the education of the child difficult or even impossible. Polygamy lowers the dignity of a woman."<sup>46</sup> Polygamy brings harm or damage to women and hurt to

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<sup>43</sup> See J.F. CASTAÑO, *Il sacramento del matrimonio*, Rome, Tipolitografia Pioda Gianfranco, 1991, p. 63; see also P.J. CONNOLLY, *The Nature of Marriage as Proposed in the Codex iuris canonici and in the Codex canonum Ecclesiarum orientalium*, doct. diss., Ottawa, Saint Paul University, 1995, p. 34.

<sup>44</sup> LEO XIII, *Arcanum divinae sapientiae*, p. 9.

<sup>45</sup> *Ibid.*, p. 16.

<sup>46</sup> KAHIGA, "Polygamy: A Pastoral Challenge to the Church in Africa," p. 130.

children.<sup>47</sup> This situation disturbs the union of love between the man and his wives and causes suffering among the children.

### 2.3 – Sacramental Marriage

In order to understand the full meaning of Christian marriage, there is a need to reflect on marriage as a sacrament.<sup>48</sup> The teaching of the Church on matrimony as a sacrament is maintained and supported by the Code of Canon Law and the contemporary Magisterium as well as older magisterial texts from the Council of Trent and papal teachings. Canon 1055 of the 1983 code states:

The marriage covenant [...] has, between the baptized, been raised by Christ the Lord to the dignity of a sacrament. [...] Consequently, a valid marriage contract cannot exist between baptised persons without its being by that very fact a sacrament (c. 1055, §§1 and 2).<sup>49</sup>

This part of the canon contains the doctrinal principles concerning marriage that are also found in the Pastoral Constitution on the Church in the Modern World *Gaudium et spes* no. 48 and confirmed by the *Catechism of Catholic the Church* nn. 1638-1640. These doctrinal principles call for the baptised spouses to have a relationship with the Church. Hence the faithful (baptised), both Catholic and non-Catholic, are subject to the Church's teaching on sacramental marriage because it is rooted in the divine law.

According to the Church's teaching, marriage between baptised persons is a sacrament, and the sign of the sacrament is a covenant. The canon uses the word

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<sup>47</sup> Cf. BRAMHAM, "Polygamy on Trial," p. A11.

<sup>48</sup> See KALLIKATTUKUDY, *Fraud and Nullity of Marriage in Canon Law and Indian Civil Law*, p. 26.

<sup>49</sup> Cf. *CCEO* c. 776 §2. This equivalent canon in the Eastern code states: "From the institution of Christ a valid marriage between baptised persons is by that very fact a sacrament [...]."

“covenant” to describe marriage and to make it easier to present the Church’s teaching on the sacramentality of marriage. Some scriptural passages show in detail the religious connotation of the word “covenant.” For instance, this image of marriage is used by the prophets, especially Hosea and Jeremiah, to convey the irrevocable nature of God’s relationship to the Chosen People and the ingratitude of Israel’s response (cf. Hos 2:2; Jer 3:1).<sup>50</sup> As the covenant relationship breaks down owing to the infidelity of Israel, the prophets begin to direct the hopes of the Israelites to a covenant (Jr 31:31-34).

In the Epistle to the Hebrews, Jesus is presented as the mediator of the new covenant (Heb 9:15). For Saint Paul, the great instrument of the establishment of the new covenant was the Lord’s Supper: “This cup is the new covenant in my blood. Whenever you drink it, do this as a memory of me” (1 Cor 11:25). The nuptial imagery used by the prophets is taken up in the New Testament in relation to Christ. He is the bridegroom (Mt 9:15; Mk 2:19-20) and, because they are “associated with Jesus by their faith in the Gospel, disciples have therefore entered into the nuptial mystery of the kingdom, inaugurated here on earth at his coming.”<sup>51</sup> In the scripture as well as in the tradition of the Church, the married love of a man and a woman becomes the image and symbol of the covenant that unites God and his people (*FC* 12). Hence, when Christians marry there is a covenant between God and the couple, much in the same way as there is a covenant between Yahweh and his people as well as between Christ and his Church.<sup>52</sup> Though the

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<sup>50</sup> KASPER, *Theology of Christian Marriage*, p. 27.

<sup>51</sup> P. GRELOT, *Man and Wife in Scripture*, London, Burns & Oates, 1964, p. 103.

<sup>52</sup> ÖRSY, *Marriage in Canon Law*, p. 51.

term “covenant” calls to mind the richness of the theological content, it does not depart from the juridical dimension that is the direct concern of the code.<sup>53</sup>

The sacramental nature of marriage, which confirms and strengthens the indissolubility of marriage,<sup>54</sup> is not established by any particular words of institution but by an external manifestation of consent lawfully made.<sup>55</sup> For a marriage to be sacramental, or ratified, both parties must be baptised, whether Catholics or non-Catholics.<sup>56</sup> In addition, they must give valid consent and have a sacramental intention;<sup>57</sup> neither party, in giving consent, may exclude the sacramentality of marriage.

Scripture, magisterial texts, and papal teachings witness to the Church’s solemn teaching that marriage is one of the seven sacraments instituted by Christ himself (*FC* 13).<sup>58</sup> It is a sacrament among sacraments.<sup>59</sup> This teaching of the Church is found in the Council of Trent and has been consistently echoed by the popes and embodied in the teachings of the Second Vatican Council. It is a teaching that was not perceived or

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<sup>53</sup> BAÑARES, *Exegetical Comm*, p. 1051.

<sup>54</sup> A. MENDONÇA, *Rotal Jurisprudence*, Ottawa, Saint Paul University, 1997, p. 52.

<sup>55</sup> J. MCAREAVEY, *The Canon Law of Marriage and the Family*, Dublin, Four Courts Press, 1997, p. 28.

<sup>56</sup> Canon 1055, §2; *Catechism of the Catholic Church*, no. 1641.

<sup>57</sup> See MCAREAVEY, *The Canon Law of Marriage and the Family*, p. 29.

<sup>58</sup> See T. NORRIS, “Why the Marriage of Christians is one of the Seven Sacraments,” in *Irish Theological Quarterly*, 51 (1985), pp. 37-51.

As Kasper points out, Christian marriage is sacramental because it is fundamentally related to the saving work of Jesus Christ. See *Theology of Christian Marriage*, p. 28.

<sup>59</sup> P.J. ELLIOTT, *What God Has Joined ... : The Sacramentality of Marriage*, New York, Alba House, 1990, p. xvii.

realised immediately or in one day but is the culmination of a long development.<sup>60</sup> The exact time of the discernment of matrimony as a sacrament is uncertain,<sup>61</sup> but it is certain dogma that Christ had raised marriage to the dignity of a sacrament.<sup>62</sup> Christ consecrated and sanctified marriage by his presence in Cana of Galilee (Jn 2:1-11) and had recalled marriage to its original perfection of unity and indissolubility. Christ instituted marriage as a sacrament by elevating the natural bond to the higher state of being a sign and cause of grace.<sup>63</sup> This elevation of a natural bond to become sacrament differentiates marriage

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<sup>60</sup> Cf. *ibid.*, pp. xv-xxxv.

<sup>61</sup> Though there is no exact time of the classification of matrimony as a sacrament, by the twelfth century marriage between the baptised was formally declared to be a sacrament. See MCAREAVEY, *The Canon Law of Marriage and the Family*, p. 28.

<sup>62</sup> See VAN VLIET, *Marriage and Canon Law*, p. 7. O. COHAUSZ, *The Pope and Christian Marriage*, New York, Benzinger, 1933, pp. 34-35, explains the meaning of marriage as a sacrament.

“By sacrament we understand in general a means of grace. Christ alone has merited for us the life of grace. [...] To say therefore that Christ made marriage a sacrament is to say that He made marriage a means of grace. He instituted seven of these sacraments, to each of which He gave a definite form. In a similar way the State requires that a will should have a definite form, if it is to be valid. Every sacrament by the ordinance of Christ has a definite outward sign, for example, in Baptism, the pouring of water, in Extreme Unction the anointing with oil. These signs were to have a meaning: in Baptism, for example, the cleansing of the soul is signified, in Extreme Unction the removal of the relics of sin and strength for the final conflict. But the sacraments were not only to signify the inner processes of the soul, they were also to cause them, they were to be channels bringing grace to the soul and effecting its sanctification. Sacraments, therefore, are outward signs instituted by Christ, which signify and effect an inner sanctification and inpouring of grace.

“And so to say that Christ made marriage a sacrament means that He made it an outward sign of inward grace. In other sacraments Christ chose something new as the outward sign: washing, anointing, the imposition of hands; in the sacrament of Matrimony he instituted as the outward sign something which was already there; the marriage contract itself. But He attached to it what was not there before: inward grace. And in this way He made marriage a sacrament.”

<sup>63</sup> Commenting on the clause that the marriage covenant between the baptised “has been raised by Christ the Lord to the dignity of a sacrament,” (c. 1055 §1), Örsy says: “This clause is an affirmation of the traditional Catholic belief that marriage is one of the seven sacraments. If taken literally, the statement is anachronistic; there is no evidence in early apostolic literature that Christ would have made such a declaration; in fact the Church did not become aware of the exact number and nature of the sacraments until the twelfth and thirteenth centuries, a typical example

from other sacraments because what is elevated is something that already existed, that is, a reality in the natural and social order itself.<sup>64</sup> “It was not ‘converted into a sacrament,’ but rather it was raised, and transcended, to the plane of the dignity of a sacrament.”<sup>65</sup> Hence it is to be held in honour by all (Heb 13:4).

In his encyclical letter, *Arcanum*, Pope Leo XIII taught that in Christian marriage the contract cannot be separated from the sacrament; thus there can be no true legitimate marriage contract between the baptised which is not also a sacrament.<sup>66</sup> This firm teaching of the Church on the sacramentality of marriage has been restated in all contemporary teachings of the Magisterium on marriage. The Second Vatican Council stated: “Just as of old God encountered his people with a covenant of love and fidelity, so our Saviour, the spouse of the Church, now encounters Christian spouses through the sacrament of marriage.”<sup>67</sup> Christian spouses are required by the Church’s teaching to love each other with perpetual fidelity, because marriage is a particular call for them to learn to love each other (with their defects), and to love the fruit of their mutual love and union, their children (also with their defects), and so to grow towards the infinitely perfect love of God.<sup>68</sup>

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of the development of a dogma. But marriage was recognized as a sacred and sanctifying reality long before it was classified as one of the sacraments.” ÓRSY, *Marriage in Canon Law*, p. 53.

<sup>64</sup> *Catechism of the Catholic Church*, nn. 1603-1605.

<sup>65</sup> BAÑARES, *Exegetical Comm*, p. 1052.

<sup>66</sup> LEO XIII, *Arcanum divinae sapientiae*, p. 14.

<sup>67</sup> GS 48; FLANNERY1, p. 951.

<sup>68</sup> C. BURKE, “Challenges to Matrimonial Jurisprudence Posed by the 1983 Code,” in *Studia canonica*, 41 (2007), p. 449.

The consent expressed and lived out by the spouses in their daily lives, as taught by the council, is the sign of the sacrament of matrimony.

Authentic married love is caught up into divine love and is governed and enriched by Christ's redeeming power and the saving activity of the Church, so that this love may aid and strengthen them in sublime office of being a father and a mother. For this reason Christian spouses have a special sacrament by which they are fortified and receive a kind of consecration in the duties and dignity of their state.<sup>69</sup>

By their efforts to love one another faithfully and perpetually, husband and wife participate in the Church's own mission of being a sort of sacrament or sign of intimate union with God, and of the unity of all mankind [and] an instrument for the achievement of such union and unity (*LG 1*).

According to the teaching of the Church, marriage between two validly baptised persons is a sacrament at the moment in which it is celebrated, that is, at the moment of consent, and continues to be a sacrament as long as the bond endures. "The sacramental dignity and the natural reality are so united in a marriage between two baptised persons that they are considered inseparable or identical, leading to the conclusion that in Christian marriage sacrament is contract [covenant] or contract [covenant] is sacrament, a conclusion we find in the writing of authors and in Rotal jurisprudence."<sup>70</sup>

The significance of baptism in sacramental marriage is explained and affirmed by Pope John Paul II in the Post-Synodal Apostolic Exhortation *Familiaris consortio*.

Indeed, by means of baptism, man and woman are definitively placed within the new and eternal covenant, in the spousal covenant of Christ with the Church. And it is because of this indestructible insertion that the intimate community of

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<sup>69</sup> *GS 48*; FLANNERY1, p. 951.

<sup>70</sup> A. MENDONÇA, "Exclusion of the Sacramentality of Marriage: Recent Trends in Rotal Jurisprudence," in *Studia canonica*, 31(1997), p. 47.

conjugal life and love, founded by the Creator, is elevated and assumed into the spousal charity of Christ, sustained and enriched by his redeeming power.<sup>71</sup>

As far as the sacramental nature of consent between the baptised is concerned, the pope, in the same Exhortation, states:

The communion of love between God and people [...] finds a meaningful expression in the marriage covenant which is established between a man and a woman.

For this reason the central word of Revelation, 'God loves his people', is likewise proclaimed through the living and concrete word whereby a man and a woman express their conjugal love. Their bond of love becomes the image and the symbol of the covenant which unites God and his people.<sup>72</sup>

The state of life that arises from that consent has a sacramental character because "the couple participate in and are called to live the very charity of Christ who gave himself on the Cross."<sup>73</sup> The couple, that is, the bride and groom, are considered by the Latin Church to be the ministers of the sacrament of matrimony.<sup>74</sup> The *Catechism of the Catholic Church* states: "According to the Latin tradition, the spouses as ministers of Christ's grace mutually confer upon each other the sacrament of matrimony by expressing their consent before the Church."<sup>75</sup> The minister (the parish priest, the local ordinary, or a delegated priest or deacon) who assists at the exchange of consent

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<sup>71</sup> FC 13; FLANNERY2, p. 824.

<sup>72</sup> FC 12; FLANNERY2, p. 823.

<sup>73</sup> FC 13; FLANNERY2, p. 824.

<sup>74</sup> See F.R. MCMANUS, "The Ministers of the Sacrament of Marriage in Western Tradition," in *Studia canonica*, 20 (1986), p. 85.

<sup>75</sup> The *Catechism of the Catholic Church*, no. 1623.

functions primarily as an official witness who asks for and receives the spouses' consent in the name of the Church (c. 1108, §2).<sup>76</sup>

One of the challenges and debates on this teaching of the Church is about the separability of the marital contract and the marital sacrament and whether the sacrament of matrimony presupposes and demands faith or not. Mendonça explains: "The inseparability or identification between the contract and sacrament in Christian marriage and the role of personal faith remain two intensely debated issues concerning the nature of marriage which are not without serious juridical and pastoral implications."<sup>77</sup> The Church always teaches that the sacraments "not only presuppose faith, but by words and objects they also nourish, strengthen, and express it" (SC 59; c. 836). One of the questions that arise from this teaching is: Can baptised persons who appear no longer to believe in or practice the Christian faith be allowed to contract marriage?<sup>78</sup>

D.F. O'Callaghan poses the theological question as follows: "If one declares that nothing other than baptism is required for sacramental marriage, has one elided the intention? If one stresses sacramental intention as essential, has one debarred baptised

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<sup>76</sup> *CCEO* c. 828. In the Eastern churches, both Catholic and non-Catholic, it is the assisting priest who is the minister of the sacrament. Therefore, it is hard to imagine how a marriage could be considered a sacrament without the priestly blessing. See BEAL, *CLSA Comm2*, p. 1246.

<sup>77</sup> MENDONÇA, "Exclusion of the Sacramentality of Marriage," p. 6.

<sup>78</sup> Pompedda describes the lack of faith among the baptised Catholic persons who want to contract Christian marriage as a contemporary problem. He says: "The concrete problem that confronts us today is the marriage of Christians, that is, baptised persons, who do not have faith: the problem refers specifically and predominantly to the baptised catholic." M.F. POMPEDDA, "Faith and the Sacrament of Marriage: Lack of Faith and Matrimonial Consent: Juridic Aspect," in J.A. ALESANDRO (ed.), *Marriage Studies IV: Reflections in Canon Law and Theology*, Washington, DC, CLSA, 1990, p. 36.

unbelievers from validly marrying when they decline the sacrament?”<sup>79</sup> After his survey on this question, he concludes that “whereas an intention is necessary for the valid reception of a sacrament, faith is not so required.”<sup>80</sup>

On the one hand, the International Theological Commission insisted that the question of the spouses’ intention with regard to marriage should not be confused with that of their personal faith but, on the other hand, the commission acknowledged that the two issues must not be totally separated.<sup>81</sup> “The recognition that a total absence of faith can vitiate the spouses’ sacramental intention and render their marital consent invalid has led some to ask a further question: how much faith is necessary for a genuinely sacramental intention?”<sup>82</sup> To respond to this question, John Paul II prudentially cautions:

In fact, the faith of the person asking the Church for marriage can exist in different degrees, and it is the primary duty of pastors to bring about a rediscovery of this faith and to nourish it and bring it to maturity. But pastors must also understand the reasons that lead the Church also to admit to the celebration of marriage those who are imperfectly disposed. [...]

As for wishing to lay down further criteria for admission to the ecclesial celebration of marriage, criteria that would concern the level of faith of those to be married, this would above all involve grave risks. In the first place, the risk of making unfounded and discriminatory judgments; secondly, the risk of causing doubts about the validity of marriages already celebrated, with grave harm to Christian communities and new and unjustified anxieties to the consciences of married couples; one would also fall into the danger of calling into question the sacramental nature of many marriages of brethren separated from full communion with the Catholic Church, thus contradicting ecclesial tradition.<sup>83</sup>

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<sup>79</sup> D.F. O’CALLAGHAN, “Faith and the Sacrament of Marriage,” in *Irish Theological Quarterly*, 52 (1986), p. 161.

<sup>80</sup> *Ibid.*, p. 172.

<sup>81</sup> See M. SHARKEY (ed.), “Propositions on the Doctrine of Christian Marriage,” in *International Theological Commission: Texts and Documents 1969-1985*, San Francisco, Ignatius Press, 1989, pp. 167-168.

<sup>82</sup> BEAL, *CLSA Comm2*, p. 1248.

<sup>83</sup> *FC 68*; FLANNERY2, pp. 872-873.

The reflections of the International Theological Commission and Pope John Paul II fail to resolve a problem resulting from the Church's teaching, as presented in canon 1055, §2, that the marital contract [covenant] and marital sacrament are inseparable in the marriages of the baptised. For instance, if the total absence of faith in one or both parties to marriage prevents them from entering a sacramental marriage, it also prevents them from entering a valid marriage. "Since they lack faith, baptised unbelievers cannot enter a sacramental marriage; but, since they are baptised, they cannot have a valid marriage that is not a sacrament."<sup>84</sup> Like any human being, the baptised unbelievers retain the capacity to marry. In their case, there is a contract but no sacrament.<sup>85</sup> According to the International Theological Commission, the question regarding the marital covenant and marital sacrament and the role of personal faith gives rise to new problems for which a satisfactory answer has yet to be found.<sup>86</sup>

Canonists distinguish *matrimonium in fieri*, that is, "marriage in the act of being constituted," and *matrimonium in facto esse*, that is, "marriage in the act of being lived out." This distinction, however, is not explicitly mentioned in either the 1917 or the 1983

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<sup>84</sup> BEAL, *CLSA Comm2*, pp. 1248-1249.

<sup>85</sup> ÖRSY, *Marriage in Canon Law*, p. 57. Unbelievers, as Örsy describes, are understood as "those who never came to any act of faith in spite of their baptism, or explicitly rejected all belief in the Christian mysteries; a category apart. The case of those who are weak or hesitant in their faith is a different one; they are able to receive the sacrament."

<sup>86</sup> SHARKEY, "Propositions on the Doctrine of Christian Marriage," p. 168.

The meaning and significance of marriage is explained in different ways by different disciplines (theologians, moralists, philosophers, anthropologists, etc.) But, in order to observe the Church's teaching effectively, one has to understand clearly the meaning and the importance of marriage as it has been taught by the Church itself. Apart from the debate and challenging marriage problems, the teaching of the Church on marital sacramentality and unity must always be respected and maintained.

codes.<sup>87</sup> Nevertheless, drawing on the teaching of the Second Vatican Council, canon 1055, §1 implicitly identifies both; *matrimonium in fieri* is “the matrimonial covenant” and *matrimonium in facto esse* is the “partnership of the whole of life [...] ordered by its nature to the good of spouses and the procreation and education of offspring.”<sup>88</sup> Canonically, the term “marriage” therefore has two meanings: first it means that act itself of celebrating marriage (*matrimonium in fieri*),<sup>89</sup> that is, when the contract is made at the time of consent;<sup>90</sup> and, second, it means a state<sup>91</sup> or a stable relationship between two

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<sup>87</sup> BEAL, *CLSA Comm2*, p. 1240.

<sup>88</sup> *Ibid.*, p. 1241.

<sup>89</sup> Cf. c. 1057, §2. This canon describes the object of marriage consent, that is, the man and the woman in their respective natural sexual capacity (conjugalità) as related to the ends of marriage. By means of the marriage covenant [consent], the woman gives herself as a wife to the man, and the man gives himself as a husband to the woman and they mutually accept each other. See J. HERVADA, commentary in *CCLA*, p. 808.

Van Vliet describes matrimony *in fieri* as the contract actually being entered into, according to the canonical norms. The essence of matrimony *in fieri* is the mutual marital consent, properly manifested, by which each party gives and accepts the perpetual and exclusive right to the body of the other for the performance of actions which of their nature pertain to the procreation of children. See VAN VLIET, *Marriage and Canon Law*, p. 3.

<sup>90</sup> Canonically, matrimonial consent is an act of the will by which a man and a woman mutually give and accept each other in an irrevocable covenant for the purpose of establishing marriage (cf. c. 1057). It is absolutely personal and it cannot be replaced. Therefore, only the parties themselves can consent to marry each other. See J.M. HUELS, *The Pastoral Companion: A Canon Law Handbook for Catholic Ministry*, 4<sup>th</sup> ed., Montréal, Wilson & Lafleur Ltée, 2009, p. 256; see also J.T. MARTÍN DE AGAR, *A Handbook on Canon Law*, Montréal, Wilson & Lafleur Ltée, 1999, p. 158.

Consent is a private juridical act, that is, a voluntary human act legitimately placed, intended to effect juridic consequences. It concerns the substance of the act and therefore it is intrinsic to the act itself. See A. MENDONÇA, “Selected Questions in Canonical Jurisprudence,” (Class notes), Ottawa, Saint Paul University, 2009, p. 20.

According to Van Vliet, the true matrimonial consent “must be a true (not fictitious) act of the will, made with full advertence. It must be a mutual act, at least virtually present and externally manifested, by two persons who by law are capable of making it.” VAN VLIET, *Marriage and Canon Law*, p. 172.

<sup>91</sup> DINWIDDY, “Christian Marriage,” p. 117. He explains the state of marriage as “a union of souls and bodies in justice and love which is directed towards common ends, and also to a final end in eternity.”

people (*matrimonium in facto esse*),<sup>92</sup> that is, the continuation of the sacramental nature of marriage throughout the years. According to Wernz-Vidal:

If marriage is considered *in fieri*, it can be defined: the lawful and undivided contract of man and wife for the generation and education of offspring. [...]

If on the other hand marriage is taken as the bond or permanent society, as in common speech and even that proper to theologians and canonists, it is defined: the lawful and undivided union of man and wife for the generation and education of offspring or more briefly: the undivided conjugal or marital society of man and wife.<sup>93</sup>

Marriage is a sacrament which confers grace for the sanctification of the lawful union of man and woman.<sup>94</sup> The sanctifying grace conferred by the sacrament of matrimony aids the spouses to help one another advance in holiness and to co-operate in God's plan of redemption by raising their children in the faith. Therefore, sacramental marriage is not only a union of a man and a woman but is a type and symbol of the divine union between Christ, the bridegroom, and His Church, the bride. Married Christians, open to the creation of new life and committed to mutual salvation, participate in God's creative act and in the redemptive act of Christ.

Sacramentality not only represents an addition that is given to the marriage

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<sup>92</sup> Matrimony *in facto esse* is the resultant state of being married. The essence of matrimony *in facto esse* is the bond which results from the consent and from which a permanent state endures. See VAN VLIET, *Marriage and Canon Law*, p. 3.

<sup>93</sup> F.X. WERNZ-VIDAL, *Ius canonicum matrimoniale*, vol. V, Rome, Pontificia Universitas Gregoriana, 1928, pp. 16-17. "Si matrimonium *in fieri* spectetur, definiri potest: *Contractus* legitimus et individuus maris atque feminae ad generandam prolem. [...]

"Vicissim matrimonium, si usu communi et etiam theologis et canonistis proprio sumatur pro *vinculo* vel societate permanente, definitur: *Coniunctio* legitima et individua maris atque feminae ad generandam et educandam prolem, vel breuius: Maris et feminae individua *societas coniugalis* sive maritalis."

<sup>94</sup> Cf. U. NAVARRETE, "Matrimonio, contratto e sacramento," in ASSOCIAZIONE CANONISTICA ITALIANA, *Il matrimonio sacramento nell'ordinamento canonico vigente*, Vatican City, Libreria editrice Vaticana, 1993, p. 101.

already constituted, but it also represents the strength that forms the marriage of the baptised. Therefore, according to Church teaching and canonical norms, it is not possible to speak of a merely natural bond or to have a valid marriage between baptised persons without its being by that very fact a sacrament. Any union of a man and woman among the faithful of Christ which is not a sacrament lacks the nature of a true marriage. Even if contracted validly in accordance with the laws of the state, it is no marriage, and no sacrament, if it is invalid in canon law.<sup>95</sup>

E. Schmiedeler explains the three Augustinian blessings of Christian marriage as discussed by Pius XI. The blessings are offspring, which includes the procreation and the education of children; conjugal faith, which includes unity, chastity, celibacy, charity, and obedience; and the sacrament, which includes the indissolubility of marriage and its being a means of grace.<sup>96</sup> Regarding the third blessing, the sacrament, he says:

This third blessing of Christian marriage is the sacrament. This according to the encyclical completes and crowns the benefits already enumerated [offspring, conjugal faith]. The ‘Sacrament’ is here taken to mean two distinct things: the indissolubility of the marriage bond and the elevation of the matrimonial contract by Christ to the dignity of a sacrament or of an efficacious means of grace. In the case of the baptized, marriage is both an indissoluble union and a grace-conferring institution, that, is a sacrament in the full and technical sense of the term.<sup>97</sup>

Sacramentality is the constitutive form of the marriage of the baptised by which the natural state of marriage is raised to a superior order, that instituted by Christ. In the sacrament of matrimony, the natural disposition of man to woman and vice versa is

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<sup>95</sup> LEO XIII, *Arcanum divinae sapientiae*, p. 23.

<sup>96</sup> E. SCHMIEDELER, *Christian Marriage: An Analysis of and Commentary on the Marriage Encyclical*, Huntington, Indiana, Our Sunday Visitor Press, n.d., pp. 15-34.

<sup>97</sup> *Ibid.*, p. 29.

infused by the glory of Christ. Through sacrament, God seals a natural union between man and woman with supernatural grace.<sup>98</sup> In virtue of its sacramentality, the marriage contract acquires a new salvific significance that concretely consists in the fact it represents the faithful love which exists between Christ and his Church in image and in reality. The sacramentality of marriage must include the whole community of life and love, not just the important moment of sacramental consent.<sup>99</sup> This is possible especially by receiving habitually other sacraments such as Eucharist because the success of sacramental marriage, as Elliot says, depends largely on people linking their consent and shared life to the other sacraments they have received or habitually receive.<sup>100</sup>

#### **2.4 – The Essential Elements and Properties of Marriage**

“If, however, either or both of the parties should by a positive act of will exclude marriage itself or any essential element of marriage or any essential property, such party contracts invalidly” (c. 1101, §2).<sup>101</sup> The exclusion of any essential element of marriage or any essential property from matrimonial consent is explained by the jurisprudence and canonical doctrine as partial simulation; total simulation is the exclusion of marriage itself.<sup>102</sup>

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<sup>98</sup> DINWIDDY, “Christian Marriage,” p. 118.

<sup>99</sup> ELLIOTT, *What God Has Joined*, p. xxi.

<sup>100</sup> *Ibid.*, p. xxii.

<sup>101</sup> *CCEO* c. 824, §2.

<sup>102</sup> See MCAREAVEY, *The Canon Law of Marriage and the Family*, p. 120; see also *CCLA*, pp. 852-853.

The essential elements of marriage are included in the objectives of marriage which, if excluded by the act of will, render the marriage invalid.<sup>103</sup> These objectives are to establish a loving and permanent partnership between the spouses (*bonum coniugum*),<sup>104</sup> to live a common life, and the generation and education of children within the context of the marriage. It is not required that children actually be born of the union, since creation of a human being is an act of God, but there must be openness to children on the part of both by not excluding from their marital consent the right to the conjugal act which is per se suitable for the generation of children (c. 1061, §1).

With respect to this relationship in its permanent state as already established by the mutual consent, that is, the matrimonial bond or permanent and indissoluble alliance of man and woman (*matrimonium in facto esse*), matrimony as the lawful marital union of man and a woman involves their living together in an undivided partnership. This union of the two spirits through mutual love is not precisely the object but rather the essential condition of happy married life. This is emphasised by the Magisterium in the Pastoral Constitution on the Church in the Modern World *Gaudium et spes* (cf. GS 49).

“The essential properties of marriage are unity and indissolubility; in Christian marriage they acquire a distinctive firmness by reason of the sacrament” (c. 1056).<sup>105</sup> Unity and indissolubility as essential properties of marriage “are not goals external to

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<sup>103</sup> Cf. *CCEO* c. 824, §2.

<sup>104</sup> See A. MENDONÇA, “Recent Trends in Rotal Jurisprudence,” (Class notes), Ottawa, Saint Paul University, 2009, pp. 194-198.

<sup>105</sup> Cf. *CCEO* c. 776, §3 and F.M. CAPPELLO, *Tractatus canonico-moralis de sacramentis*, vol. III, Rome, Bibliopalam Marietti, 1927, pp. 38-46.

marriage but qualities inherent in the institution of marriage itself.”<sup>106</sup> They are considered by the Church to be properties of marriage in virtue of the natural law. They are properties of all valid marriages, not just those of Christians but also of those contracted by non-Christians.<sup>107</sup>

These properties are required by the intimate union of marriage as a mutual giving of two persons and by the good of the children. This demands total fidelity on the part of spouses as well as an unbreakable oneness between them (cf. *GS* 48). The unity and indissolubility as essential properties of marriage pertain to the divine law that no human power may abrogate. In Christian marriages, these essential properties are strengthened by the grace of the sacrament<sup>108</sup> and, since they are considered common and essential to every valid marriage, the exclusion of these essential properties from the consent of the couple/parties, that is, when they [as individual or as couple] choose the object [marriage] minus these essential properties, their choice renders the marriage covenant invalid.<sup>109</sup>

#### **2.4.1 – Unity**

Unity refers to the fact that marriage is a monogamous relationship. This relationship is definite and exclusive between one man and one woman. In explaining

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<sup>106</sup> BEAL, *CLSA Comm2*, p. 1249.

<sup>107</sup> This reality was also pointed out by Pope Pius XI, who said that the attributes of unity and indissolubility exist in all true marriages; even those contracted and consummated in infidelity, but such unions lack that degree of stability characteristic of consummated marriages of Christians. See, PIUS XI, *Casti connubii*, pp. 539-551; see also BEAL, *CLSA Comm2*, p. 1249.

<sup>108</sup> BAÑARES, *Exegetical Comm*, pp. 1064-1065.

<sup>109</sup> I. GRAMUNT, J. HERVADA, and L.A. WAUCK, *Canons and Commentaries on Marriage*, Collegeville, Minnesota, Liturgical Press, 1987, p. 4.

unity as a property of marriage, Kasper says that “the act in which the bride and bridegroom give and receive each other has in itself an inner tendency towards definitiveness and exclusiveness.”<sup>110</sup> Hence, all forms of polygamy are excluded by this property because any form of polygamy is against the plan of God as far as 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 (*FC* 19). Polygamy implies a subjugation and unjust appropriation of one sex by the other.

It represents a cultural consecration of inequality between the sexes and of discrimination against their equal dignity and worth: one sex subjugates the other and the dominant one appropriates the one subjugated which, in the end, causes the depersonalization of the matrimonial relationship and the replacement of the interpersonal character of marriage with mere functional roles in which the discriminated sex suffers the greatest degree of being used and of becoming a thing. The man who takes several wives cannot give himself entirely, as a masculine person, to all his wives (polygamy) but uses them, and the woman who takes several men cannot give herself entirely, as a woman, to her husbands (polyandry) but uses them.<sup>111</sup>

According to the teaching of the Church, the unity of marriage should not be understood only negatively, that is, as excluding polygamy, but it also has a positive, dynamic meaning. By virtue of the covenant of married love, spouses “are called to grow continually in their communion through day-to-day fidelity to their marriage promise of total mutual self-giving” (*FC* 19).<sup>112</sup> In the case of baptised persons who celebrate the sacrament of matrimony, this unity is exalted in a special way because “the Holy Spirit who is poured out in the sacramental celebration offers Christian couples the gift of a

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<sup>110</sup> KASPER, *The Theology of Christian Marriage*, p. 45.

<sup>111</sup> P.J. VILADRICK, “Matrimonial Consent (cc. 1095-1107),” *Exegetical Comm*, pp. 1365-1366.

<sup>112</sup> FLANNERY2, p. 829.

new communion of love that is the living and real image of that unique unity which makes of the Church the indivisible Mystical Body of the Lord Jesus” (FC 19).<sup>113</sup>

Unity as a property of matrimony is witnessed in Scripture and the continuous Tradition from old magisterial texts, to Trent, to more recent pontifical and conciliar documents. It also has a basis in the natural law that can be known from reason.<sup>114</sup> Leo XIII affirmed:

And this union of man and woman, that might answer more fittingly to the infinite wise counsels of God, even from the beginning manifested chiefly two most excellent properties—deeply sealed, as it were, and signed upon it—namely, unity and perpetuity. From the Gospel we see clearly that this doctrine was declared and openly confirmed by the divine authority of Jesus Christ. He bore witness to the Jews and to His Apostles that marriage, from its institution, should exist between two only, that is, between one man and one woman; that of two they are made, so to say, one flesh; and that the marriage bond is by the will of God so closely and strongly made fast that no man may dissolve it or rend it asunder.<sup>115</sup>

Pius XI, in *Casti connubii*, sums up the official position of the Church.

The second blessing of matrimony [...] mentioned by Augustine is the blessing of conjugal honour which consists in the mutual fidelity of the spouses in fulfilling the marriage contract, so that what belongs to one of the parties by reason of this contract sanctioned by divine law, may not be denied to him or permitted to any third person; nor may there be conceded to one of the parties anything which, being contrary to the rights and laws of God and entirely opposed to matrimonial faith, can never be conceded.

[...] conjugal faith, or honour, demands in the first place the complete unity of matrimony which the Creator Himself laid down in the beginning when He wished it to be not otherwise than between one man and one woman. And although afterwards this primeval law was relaxed to some extent by God, the Supreme Legislator, there is no doubt that the law of the Gospel fully restored that original and perfect unity, and abrogated all dispensations as the words of Christ and the constant teaching and action of the Church show plainly.<sup>116</sup>

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<sup>113</sup> Ibid.

<sup>114</sup> See SCHLECK, *The Sacrament of Matrimony*, p. 56.

<sup>115</sup> LEO XIII, *Arcanum divinae sapientiae*, p. 5.

<sup>116</sup> PIUS XI, Encyclical Letter on Christian Marriage *Casti connubii*, 31 December 1930, in *Fourteen Encyclicals of His Holiness Pope Pius XI*, p. 9. See H. DENZINGER, *Enchiridion*

From the point view of reason, the Pope refers to the Council of Trent which solemnly declared:

Christ Our Lord very clearly taught that in this bond two persons only are to be united and joined together, when He said: 'Therefore they are no longer two but one flesh.' Nor did Christ Our Lord wish only to condemn any form of polygamy or polyandry as they are called, whether successive or simultaneous, and every other external dishonourable act, but, in order that the sacred bonds of marriage may be guarded absolutely inviolate, He forbade also even wilful thoughts and desires of such like things: 'But I say to you that whosoever shall look on a woman to lust after her hath already committed adultery with her in his heart' [Mt. 5:28]. Which words of Christ Our Lord cannot be annulled even by the consent of one of the partners of marriage for they express a law of God *and of nature* which no will of man can break or bend.<sup>117</sup>

According to the Church's teaching, marriage is an exclusive relationship between one man and one woman and a partnership of the whole life. In a marriage, a man and a woman mutually give and accept each other. This acceptance is not temporary but perpetual. This means that when spouses marry, they express a desire to belong to each other for life and not temporarily. The expression of their desire, love, and acceptance of each other should not be on the basis of trial, force, conditions, or any limitation of time but permanent and unconditional.

It is a union of a man and a woman, which involves an undivided way of living. "To include anyone else within this privileged sphere of marital intimacy violates the unity proper to marriage."<sup>118</sup> Polygamy also violates the understanding of the equal dignity that a man and a woman bring to marriage and contradicts the unitive purpose of

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*Symbolorum: Definitionum et declarationum de rebus fidei et morum*, Friburgi Brisgoviae, Herder & Co., 1947, pp. 647-648; see also SCHLECK, *The Sacrament of Matrimony*, pp. 60-61.

<sup>117</sup> Translation in *Encyclical Letter on Christian Marriage Casti connubii*, New York, The Barry Vail Corp, 1931, pp. 9-10. See SCHLECK, *The Sacrament of Matrimony*, p. 61.

<sup>118</sup> BEAL, *CLSA Comm2*, p. 1249.

marriage<sup>119</sup> insofar as it excludes unity as an essential property of marriage. Viladrick explains:

A polygamous will is understood as the actual will, or the non-revoked virtual will, on the part of one or both contracting parties to reserve the right to contract a new bond, equally matrimonial, with a third person while *replacing the first bond or coexisting with it*. The object intended, therefore, is not to contract a new matrimonial bond after cancelling the first, but to have two or more compatible and simultaneous bonds with the corresponding spouses entitled with certain spousal rights. The polygamous will is, therefore, directed against the exclusivity of the conjugal bond, which is the most radical and primary common good of the conjugal order to be shared by the spouses exclusively between themselves.<sup>120</sup>

The union of man and woman differs radically from any other association relating to man. It constitutes a truly singular reality, that is, the married couple, grounded on the mutual gift of self to one another. In virtue of the sacrament of matrimony, they signify and partake of the mystery of that unity and fruitful love which exists between Christ and his Church.

Traditionally, canonists have always supported the Church's teaching by considering simultaneous polygamy as a violation of the unity of marriage, because polygamous marriage is no longer a relationship between one man and one woman but a relationship that involves more than one wife. Polygamy, even though existing in sub-Saharan African countries as one of the region's cultural and/or religious aspects, radically contradicts the teaching of the Church regarding the unity of Christian marriage inasmuch as it negates directly the plan of God revealed from the beginning. It is contrary to the equality and personal dignity of men and women who in matrimony give themselves with love that is total and, therefore, unique and exclusive (cf. *GS* 49; *FC* 19).

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<sup>119</sup> USCCB, *United States Catholic Catechism for Adults*, p. 411.

<sup>120</sup> VILADRICK, *Exegetical Comm*, p. 1366.

Monogamy, which is the unity of matrimony (the union of one man with one woman or vice versa to the exclusion of all other persons), is the normal form of marriage, and it is compulsory for Christians as far as the doctrine and law of the Church is concerned.<sup>121</sup> This unity of marriage which has been confirmed by God himself (cf. *GS* 49) is an unbreakable one, and the two persons, man and wife, become one flesh, a single indivisible unit. “This one at last,” Adam said, contemplating his wife, “is bone of my bones and flesh of my flesh! [...] This is why a man leaves his father and mother and becomes attached to his wife, and they become one flesh” (Gn 2:23-24).

#### **2.4.2 – Indissolubility**

Christ in the New Testament Law called marriage to its original indissolubility so that no marriage can be dissolved henceforth by any human authority or power or for any cause but only in certain cases by the divine power itself. This is expressed in several biblical texts (Mt. 5:31-33; 19:3-12; Mk. 10:2-12; Lk. 16:18; 1 Co. 7:10-11, 39; Rm. 7:2-3). “What God has united, human beings must not divide” (Mt. 19:6; Mk. 10:9; *GS* 48).

The Council of Trent, during its twenty-fourth session on the doctrine of the sacrament of matrimony (cf. c. 7 of the Council of Trent), solemnly taught:

If anyone says that the Church errs in that she taught and teaches that in accordance with evangelical and apostolic doctrine the bond of matrimony cannot be dissolved by reason of adultery on the party of one of the parties, and that both, or even the innocent party who gave no occasion for adultery, cannot contract another marriage during the lifetime of the other, and that he is guilty of adultery who, having put away the adulteress, shall marry another, and she also who, having put away the adulterer, shall marry another (Mt. 5:32; 19:9;

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<sup>121</sup> Cf. SCHMAUS, *Theologia dogmatica*, pp. 750-752.

Mk.10:11ff; Lk. 16:18; 1Cor. 7:10ff; cc.5-8,10 of the Council of Trent), let him be anathema.<sup>122</sup>

This doctrine on the indissolubility of marriage was noted also by the Second Vatican Council in its Pastoral Constitution in the Modern World *Gaudium et spes*.

Marriage to be sure is not instituted solely for procreation; rather, its very nature as an unbreakable compact between persons, and the welfare of the children, both demand that the mutual love of the spouses be embodied in a rightly ordered manner, that it grow and ripen. Therefore, marriage persists as a whole manner and communion of life, and maintains its value and indissolubility, even when despite the often intense desire of the couple, offspring are lacking (*GS* 50).<sup>123</sup>

The contemporary Magisterium, moreover, has always affirmed the Church's teaching on indissolubility, as illustrated in the teachings of Pope John Paul II.

Being rooted in the personal and total self-giving of the couple, and being required by the good of the children, the indissolubility of marriage finds its ultimate truth in the plan that God has manifested in his revelation: he wills and he communicates the indissolubility of the absolutely faithful love that God has for man and that the Lord Jesus has for his Church (*FC* 20).<sup>124</sup>

“To say that marriage is *indissoluble* means that it is a perpetual relationship which not only *should not* be terminated but *cannot* be terminated, even if the couple's existential relationship is irretrievably broken.”<sup>125</sup> The indissolubility of marriage, like

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<sup>122</sup>See *Dogmatic Canons and Decrees of the Council of Trent, the Decree on the Immaculate Conception, the Syllabus of Pope Pius IX, and the Decrees of the Vatican Council*, Rockford, IL, Tan Books and Publishers, Inc., 1977, pp. 162-163.

The Latin original reads: “Si quis dixerit, Ecclesiam errare cum docuit et docet iuxta evangelicam et apostolicam doctrinam, propter adulterium alterius coniugum matrimonii vinculum non posse dissolve; et utrumque, vel etiam innocentem, qui causam adulterio non dedit, non posse, altero coniuge vivente, aliud matrimonium contrahere; moecharique eum qui, dismissa adultera, aliam duxerit, et eam quae, dismisso adultero, alii nupserit; anathema sit.” (CONCILII TRIDENTINI, Sessio Vigesima quarta, 11 november 1563, canon VII, Doctrina de Sacramento Matrimonii).

<sup>123</sup> SECOND VATICAN COUNCIL, Pastoral Constitution on the Church in the Modern World *Gaudium et spes*, p. 54; FLANNERY1, p. 954.

<sup>124</sup> JOHN PAUL II, Post-Synodal Apostolic Exhortation *Familiaris consortio*, p. 35; FLANNERY2, p. 830.

<sup>125</sup> BEAL, *CLSA Comm2*, p. 1249.

the unity of marriage, arises from the nature of marriage; it has its basis in the natural law. The spouses' personal decision is accepted, protected, and reinforced by society itself, especially by the ecclesiastical community. This is for the good of the spouses, the good of the children, and for the common good.<sup>126</sup>

The Church teaches that indissolubility as an essential property of marriage is by virtue of natural law.<sup>127</sup> Marriage is said to be *intrinsically* indissoluble because the parties themselves cannot mutually consent to dissolve it; they are bound by the marital bond and are not free, by themselves, to change or break it. This is true of both sacramental and non-sacramental marriages because marriage is indissoluble by divine law.<sup>128</sup> Moreover, sacramental marriages that have been consummated are both *intrinsically* and *extrinsically* indissoluble, the latter meaning that they cannot be dissolved by any human power or for any reason other than death (c. 1141).

It is by divine law that all marriages are intrinsically indissoluble. Neither the unbaptized nor the baptized can, of their own authority, withdraw their consent

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<sup>126</sup> See SHARKEY, "Propositions on the Doctrine of Christian Marriage," p. 172.

<sup>127</sup> MCAREAVEY, *The Canon Law of Marriage and the Family*, p. 45.

<sup>128</sup> SCHLECK, *The Sacrament of Matrimony*, p. 50, states: "A marriage would be said to be *intrinsically* soluble if the persons contracting it had the right to dissolve it themselves. If, however, it could be dissolved only by reason of some external intervention on the part of a superior power, then it would be said to be *extrinsically* soluble. Again this dissolution would be said to be a *per se* dissolution and of universal possibility if the persons contracting the marriage were in a position freely to determine whether or not they should separate. If the marriage could be dissolved only in certain cases, for a grave reason, and by a legitimate superior power, the solution would be said to be *per accidens* and of nonuniversal possibility.

"Finally, the separation of two parties to a marriage can be of different kinds. If it relates only to the necessity of living together but does not affect the marriage bond itself, the separation would be called *imperfect* (*separatio tori, mensae et habitationis*). If, however, it not only relates to the necessity of cohabitation, but affects the bond itself, breaking or dissolving it so that the two parties are capable of remarrying, the separation would be said to be *perfect* (*dissolutio vinculi*).

"From these notions of solubility, it follows that indissolubility does away with the possibility of intrinsic and *per se* solubility."

and so end their marriage. Yet, as is evident, not all marriages are extrinsically indissoluble, for under certain conditions the Church may dissolve the bond of marriage. The indissolubility even of infidel marriages has its foundation in the precepts of the natural law.<sup>129</sup>

All valid marriages, whether of Christians or non-Christians, are intrinsically indissoluble and cannot be dissolved by the contracting parties. But, infidel (non-Christian) marriages, once they come under the jurisdiction of the Church (for instance, through the baptism of one of the parties), are no longer absolutely indissoluble because they may be dissolved by the Roman Pontiff in certain circumstances<sup>130</sup> and according to the norms of the law in certain situations.<sup>131</sup>

The exclusion of indissolubility from matrimonial consent renders the consent null and void. Conjugal love demands this property of indissolubility whereby faithfulness is definitively and mutually expressed. Because of its intrinsic and inviolable firmness, the conjugal bond should be lasting and, when ratified and consummated, it cannot be dissolved.<sup>132</sup> No human cause or urgency can divide or break the conjugal bond.

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<sup>129</sup> F. KEARNEY, *The Principles of Canon 1127*, Canon Law Studies, 163, Washington, DC, Catholic University of America, 1942, p. 62. The text has been taken from the original text written by P. GASPARRI, *Tractatus canonicus de matrimonio*, Vatican City, Typis polyglottis Vaticanis, 1932, pp. 201-202.

<sup>130</sup> CAPPELLO, *Tractatus canonico-moralis de sacramentis*, p. 44.

<sup>131</sup> See cc. 1142-1149; and CONGREGATION FOR THE DOCTRINE OF THE FAITH, Norms for Completing the Process for the Dissolution of the Matrimonial Bond in Favour of the Faith *Potestas Ecclesiae*, 30 April 2001, Vatican City, 2001; translation and commentary in W. KOWAL and W.H. WOESTMAN, *Special Marriage Cases and Procedures: Ratified and Non-Consummated Marriage, Pauline Privilege, Favour of the Faith, Separation of Spouses, Validation, Presumed Death*, 4<sup>th</sup> ed., Ottawa, Faculty of Canon Law, Saint Paul University, 2008, pp. 90-130.

<sup>132</sup> Cf. *CIC/17* c. 1118 and *CCEO* c. 853.

Indissolubility is a property of the marriage covenant itself. Because it is an attribute of the conjugal covenant itself, marriage remains unbreakable even in the absence of offspring. The defence of absolute indissolubility relies not only upon the words of Jesus but also upon the nature of Christian marriage as a sacrament. The International Theological Commission drew attention to the link between the indissolubility of marriage and its sacramentality.

A unique bond exists between the indissolubility of marriage and its sacramentality, that is, a reciprocal, constitutive relationship. Indissolubility makes one's grasp of the sacramental nature of Christian marriage easier, and from the theological point of view; its sacramental nature constitutes the final grounds, although not the only grounds, for its indissolubility.<sup>133</sup>

Marriage as a sacrament is indissoluble because of its inherent symbolism. It signifies an indissoluble reality—the union of Christ and his Church.<sup>134</sup> The sacrament consists formally in the giving of consent, not in the physical consummation. Absolute indissolubility is held canonically to come from the moment when intercourse (consummation) first takes place after the sacrament has been celebrated (c. 1061, §1).

Since the twelfth century, the Church has tied the absolute indissolubility of a Christian marriage to the first act of sexual intercourse after consent had been given.<sup>135</sup> Many Christian marriages do become absolutely indissoluble and thus fully reflective sacraments of the indissoluble union and love of Christ and his Church. This comes about as a moral fact through the unbreakable loving fidelity that, with the grace of God,

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<sup>133</sup> SHARKEY, “Propositions on the Doctrine of Christian Marriage,” p. 167.

<sup>134</sup> Cf. SCHMAUS, *Theologia dogmatica*, pp.752-759.

<sup>135</sup> HASTINGS, *Christian Marriage in Africa*, p. 86.

steadily binds together a husband and wife who have truly accepted and lived their marital vocation in the Spirit of Christ.

The exclusion of the two essential properties of marriage of unity and indissolubility leads to the exclusion of the *bonum coniugum* which, according to c. 1055, §1, is the essential end of the partnership of the whole life (*totius vitae consortium*).<sup>136</sup> Therefore, unity and indissolubility may not be excluded from marriage. If they are excluded, the marriage is invalid. The parties must know that matrimony is not a temporary but a permanent partnership of life between a man and a woman ordered towards procreation by means of sexual co-operation (c. 1096).<sup>137</sup>

Error concerning these essential properties (unity, indissolubility or sacramental dignity of marriage) does not vitiate matrimonial consent as long as it does not determine the will (c. 1099). A *simple error*, that is, an error that does not exclude the will to adhere to the essential elements of marriage, does not invalidate consent, but *practical error*, that is, error about unity, indissolubility, and sacramentality which positively determines the will to a marriage deprived of these properties, invalidates true matrimonial consent because the person intends purposely something other than marriage.<sup>138</sup> Couples therefore should be educated about the importance of these essential properties during preparation before contracting marriage and, after contracting marriage, should be

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<sup>136</sup> SABBARESE, *Il matrimonio canonico nell'ordine della natura e della grazia*, pp. 107 and 109.

<sup>137</sup> GRAMUNT, HERVADA, and WAUCK, *Canons and Commentaries on Marriage*, p. 43.

<sup>138</sup> *Ibid.*, p. 44.

reminded about this importance. This can be done during catechetical and spiritual preparation<sup>139</sup> and also through marriage seminars and ongoing formation.<sup>140</sup>

## 2.5 – Church Teaching on Polygamy

In this section we will treat briefly the teaching of the Church that is directly concerned with polygamy. The principal focus will be Scripture, the Second Council of Lyons and the Council of Trent, and more recent Church teachings expounded by the Second Vatican Council, Pope John Paul II, and the *Catechism of the Catholic Church*.

### 2.5.1 – Scripture

The Church has always maintained that polygamy is fundamentally incompatible with Christianity, yet this teaching did not come easily since polygamy existed in the Old Testament. In the Old Testament we read of the polygamous marriages of a number of notable people, but nowhere do we read that polygamy was the rule and monogamy the exception.<sup>141</sup> Nowhere in the Bible do we find a verse that positively permits polygamy, but there are some verses in the Old Testament which show that it existed. The Old Testament recognizes polygamy as a lawful form of marriage along with monogamy (cf. Ex. 21:10; Lv. 18:18; Dt. 21: 15-17; 25: 5-10).<sup>142</sup> Polygamy in the Old Testament was

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<sup>139</sup> HUELS, *The Pastoral Companion*, pp. 206-211.

<sup>140</sup> This will be elaborated in chapter four which will focus on canonical and pastoral approaches to evangelization in a polygamous society today.

<sup>141</sup> PARRINDER, *The Bible and Polygamy; A Study of Hebrew and Christian Teaching*, pp. 12 and 28.

<sup>142</sup> OMOREGBE, “Is Polygamy Incompatible with Christianity?” p. 364.

practiced by wealthy and powerful people, although gradually there was a trend towards monogamous unions that was implicitly sealed and acknowledged in the New Testament on the basis of the equality of men and women.<sup>143</sup>

“Although God permitted polygamy in former times, a careful reading of the Old Testament reveals a gradual evolution away from this ancient Jewish custom toward monogamy. Because of this progressive development in the history of salvation, monogamy emerges as the properly human and divinely willed form of marriage.”<sup>144</sup> The Old Testament is full of God’s total and unconditional love for his chosen people of Israel. He loved them despite their repeated disobedience and unfaithfulness. He did not encourage polygamy, but he tolerated it out of leniency from the beginning of his relationship with Israel because he knew the weakness of his people and their lack of spiritual maturity. From the time of the prophets forward, the Bible makes no further references to polygamy.<sup>145</sup>

In his book, *Polygamy Reconsidered*, Hillman maintains that the doctrine on polygamy cannot be validly deduced from any passage of the Scriptures.<sup>146</sup> Apart from these arguments, some theologians, who agree that the Bible nowhere forbids polygamy or commands monogamy as the only lawful form of marriage in the sight of God, still hold to another argument against polygamy. The basis of this argument is the

<sup>143</sup> J.L., MCKENZIE, *Dictionary of the Bible*, Milwaukee, The Bruce Publishing Company, 1965, pp. 548-551; KAHIGA, “Polygamy: A Pastoral Challenge to the Church in Africa,” p. 121.

<sup>144</sup> HILLMAN, *Polygamy Reconsidered: An Evaluation of the Traditional Christian Position*, pp. 240 – 241.

<sup>145</sup> See MAVUMILISA, *Can the Church Accept Polygamy?* p. 60; see also JOHN PAUL II, Homily, 17 August 1985, in *L’Osservatore romano*, 34 (1985), p. 5.

<sup>146</sup> HILLMAN, *Polygamy Reconsidered*, pp. 139-169.

sacramentality of Christian marriage, described by Saint Paul in his letter to the Ephesians (Ep. 5:25-33), which militates against polygamy and demands monogamy.<sup>147</sup> “Although Christ was never confronted with the question of polygamy, his answer to a question about divorce is interpreted to mean an answer condemning polygamy as wrong and exhorting monogamy as the only form of marriage intended by God [...] for the whole world, for all cultures” (including a polygamous culture).<sup>148</sup>

The New Testament writers assume that marriage should be monogamous, and the Christian tradition has come to accept that as divinely willed: “But in the New Covenant our Saviour restored marriage to its original state as a communion between one man and one woman.”<sup>149</sup> Therefore, monogamy is compulsory to all who wish to embrace Christianity. The Church’s teaching on monogamy finds concrete foundation in the teaching of Christ who alluded to the divine institution of monogamous marriage: “This is why a man leaves his father and mother and becomes attached to his wife, and the two become one flesh [Gen. 2:24]. They are no longer two, therefore, but one flesh. So then, what God has united, human beings must not divide” (Mt. 19: 5-6).<sup>150</sup>

Polygamy did not exist during the time of Jesus, and that is why it is not even mentioned in the Gospels. When Christ our Lord came upon earth, he restored marriage to its original dignity and raised it to the honour of a sacrament. God’s purpose for marriage is a total and complete union of two beings, the man and the woman, in which

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<sup>147</sup> See OMOREGBE, “Is Polygamy Incompatible with Christianity?” p. 367.

<sup>148</sup> Ibid., p. 364.

<sup>149</sup> JOHN PAUL II, Homily, 3 May 1980, in *L’Osservatore romano*, 19 (1980), p. 5.

<sup>150</sup> Cf. LEO XIII, *Arcanum divinae sapientiae*, p. 5.

there is no room at all for another spouse. In the Christian tradition, polygamy is therefore thought to be at least implicitly condemned in the New Testament.

### 2.5.2 – Lyons II and Trent

The question of polygamy was not a subject that Christian authors typically raised in the first millennium, since it was not practiced in Christian countries. In 534, the Roman Emperor Justinian criminalized all but monogamous man/woman sex within the confines of marriage. The Justinian Code was the basis of European law for 1,000 years.

As for theologians, the dominant view held that marriage must be monogamous. St. Augustine, after considering the fact that polygamy existed in the Old Testament, emphasised that, “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.”<sup>151</sup> Thomas Aquinas said that polygamy limits the sexual freedom of the woman. According to him, the animal world shows monogamy to be the rule wherever the male needs to exercise a continued care over offspring, and polygamy only where the male has no such care. Friendship involves a certain equality but, with polygamy, the “liberating friendship” proper to marriage is replaced by a “servile friendship” in which both equality and intensity of love are lacking. Experience, according to Thomas, shows that the presence of several wives in the home tends to produce discord.<sup>152</sup> Such views were to influence

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<sup>151</sup> Cf. St. Augustine, *The Good of Marriage*, Chapter 15, §17; <http://en.wikipedia.org/wiki/polygamy> (20 August 2009).

<sup>152</sup> *Summa contra Gentiles* III, cap. 124, as quoted by HASTINGS, *Christian Marriage in Africa*, p. 9.

official Church teaching on polygamy proclaimed at the Second Council of Lyons and the Council of Trent.

### 2.5.2.1 – Lyons II

The Second Council of Lyons was the fourteenth ecumenical council of the Roman Catholic Church and the first to proclaim Church doctrine on polygamy. It was convoked by Pope Gregory X on 31 March 1272 and convened in Lyons, France, on 7 May 1274.<sup>153</sup> Unlike most of its immediate predecessors, it was truly an ecumenical council.<sup>154</sup> It was summoned to discuss various problems in the Holy Land, to remove the schism of East and West, and to reform the Church.<sup>155</sup> It also affirmed that the holy Roman Church holds and teaches that the ecclesiastical sacraments are seven and that matrimony is one of them.<sup>156</sup> In reference to polygamy, the Council of Lyons declared:

But, concerning matrimony, it [the holy Roman Church] holds that neither one man is permitted to have many wives nor one woman many husbands at the same time. But she [the Church] says that second and third marriages successively are permissible for one freed from a legitimate marriage through the death of the other party, if another canonical impediment for some reason is not an obstacle.<sup>157</sup>

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<sup>153</sup> O. MCKENNA, “Lyons, Council of,” in B.L. MARTHALER et al. (eds.), *New Catholic Encyclopedia*, vol. VIII, 2<sup>nd</sup> ed., Detroit, Gale/Thomson, 2003, p. 907. It was one of the best attended conciliar assemblies, there being present some 300-500 bishops, sixty abbots and more than a thousand prelates or their proxies, among whom were representatives of the universities. See [http://en.wikipedia.org/wiki/second\\_Council\\_of\\_Lyon](http://en.wikipedia.org/wiki/second_Council_of_Lyon) (1 March 2010).

<sup>154</sup> C.M. BELLITTO, *The General Councils: A History of the Twenty-One Church Councils from Nicaea to Vatican II*, New York, Paulist Press, 2002, p. 59.

<sup>155</sup> MCKENNA, “Lyons, Council of,” p. 907. See <http://www.answer.com/topic/second-council-of-lyon> (1 March 2010).

<sup>156</sup> H. DENZINGER and C. RAHNER, *Enchiridion symbolorum: Definitionum et declarationum de rebus fidei et morum*, Barcinone, Herder, 1957, no. 465, pp. 216-217; English trans. in H. DENZINGER (ed.), *The Sources of Catholic Dogma*, translated by R.J. DEFERRARI from the thirtieth edition of H. DENZINGER’s *Enchiridion symbolorum*, Saint Louis, Herder Book Co., 1957, no. 465, pp. 184-185.

<sup>157</sup> “De matrimonio vero tenet, quod nec unus vir plures uxores simul, nec una mulier permittitur habere plures viros. Soluto vero legitimo matrimonio per mortem coniugum alterius,

This conciliar text was originally drafted outside the council in 1267 under the authority of Pope Clement IV and the Emperor Michael VIII Palaeologus. It was motivated not so much out of actual theological and pastoral concerns but rather was intended and used mainly for political reasons. The intent of the pope and the emperor was to reconcile the Eastern and Western Churches, and the point of particular interest that needed to be addressed was not simultaneous polygamy but rather the widespread belief among Eastern Christians that successive plural marriage was somehow wrong even for widows and widowers. This belief was based on their own theological tradition, which included several prominent Greek Fathers.<sup>158</sup>

It is clear that the Church had definitively excluded polygamy as a marital structure for Christians.<sup>159</sup> This exclusion could not be applied in the disciplinary realm to infidels who were polygamists because they are not members of the Church and therefore not subject to Church law. But, when they embrace (Catholic) Christianity, they become subject to ecclesiastical law and, therefore, this teaching can be applied to them.<sup>160</sup>

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secundas et tertias deinde nuptias successive licitas esse dicit, si impedimentum canonicum aliud ex causa aliqua non obsistat.” DENZINGER and RAHNER, *Enchiridion symbolorum*, no. 465, p. 217; English trans. in DENZINGER, *The Sources of Catholic Dogma*, no. 465, p. 185.

<sup>158</sup> N.P. TANNER (ed.), *Decrees of the Ecumenical Councils*, vol. I, London, Sheed & Ward, Georgetown University Press, 1990, p. 305. See A.J. MALONE, *The Canonical and Pastoral Implications of Canon 1148*, doct. diss., Ottawa, Saint Paul University, 1992, p. 73; see also H.J. SCHROEDER (ed.), *Disciplinary Decrees of the General Council*, Saint Louis, B. Herder, 1937, no. 78, p. 35; H. BECK et al., *From the High Middle Ages to the Eve of the Reformation*, Freiburg, Herder, 1970, pp. 124-125, 203-206; HILLMAN, *Polygamy Reconsidered*, pp. 232-233, appendix, “Polygamy and the Council of Trent.”

<sup>159</sup> Cf. MALONE, *The Canonical and Pastoral Implications of Canon 1148*, p. 74.

<sup>160</sup> Infidels (non-Christians) are indirectly subject to canon law when they live in Christian societies whose civil law and culture have adopted norms based on Church teaching and canon law. See J. MULDOON, “Missionaries and the Marriages of Infidels: The Case of the

### 2.5.2.2 – Trent

The Council of Trent was the nineteenth ecumenical council. It opened at Trent in Italy on 13 December 1545 and closed there on 4 December 1563 after having held twenty-five sessions. The main objective of the council was the ecclesiastical order and discipline and the clarification of Catholic doctrine for a thorough reform of the Church.<sup>161</sup>

Historically, the Council of Trent is acknowledged to be one of the greatest reforming councils of the Church. Apart from the task of being a reforming council, it also dealt with the problems raised by the doctrines of the sixteenth century Reformers. “The pope wanted attention to be centered on the clarification of dogmatic questions; it was necessary to clarify matters of faith as it was becoming apparent only now how devastating the Protestant attack on Catholic theology had been.”<sup>162</sup>

The twenty-fourth session on 11 November 1563 treated the doctrine of the sacrament of matrimony. The records of the Council show that this session proved to be the most discordant of all.<sup>163</sup>

Objections were alleged against almost every canon and decree proposed, even the legates themselves expressing dissent from some clauses. However, after the longest sitting known so far, Cardinal Morone declared all the propositions

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Mongol Mission,” in *The Jurist*, 35 (1975), pp. 126-133. Moldoon makes several references to the two decretals of Innocent III, *Quanto te* (X.4.19.7) and *Gaudemus* (X.4.19.8 and 4.17.15), which speak about a marriage between two infidels, and he points out this Church teaching. See also MALONE, *The Canonical and Pastoral Implications of Canon 1148*, p. 7.

<sup>161</sup> H. JEDIN, “Trent, Council of,” in B.L. MARTHALER et al. (eds.), *New Catholic Encyclopedia*, vol. XIV, 2<sup>nd</sup> ed., Detroit, Gale/Thomson, 2003, p. 168.

<sup>162</sup> A. FRANZEN, *A Concise History of the Church*, London, Burns & Oates, 1969, pp. 315-316.

<sup>163</sup> R.F. LITTLEDALE, *A Short History of the Council of Trent*, London, Society of Promoting Christian Knowledge, 1888, p. 108.

carried with some dissentients, and gave it to be understood that some modification of the disputed clauses should be made, and duly authorised in accordance with the wishes of the majority. One doctrinal decree, affirming the sacramental character and indissolubility of marriage, followed by twelve canons, was enacted.<sup>164</sup>

Regarding the question of polygamy, which was discussed during this session, the council Fathers unanimously agreed on the wording of a canon which emphasized the teaching of the Church.<sup>165</sup> That canon, which anathematizes those who maintain the lawfulness of polygamy, reads as follows: “If anyone says that it is lawful for Christians to have several wives at the same time, and that it is not forbidden by any divine law [Mt. 19:4-6, 9]: let him be anathema.”<sup>166</sup> The canon does not directly say that polygamy is forbidden by the divine law, but it condemns anyone who would deny it.<sup>167</sup> The council condemned the views of the Reformers who had the opinion that polygamy is to be seen as a solution to marital problems in rare and exceptional cases and as a dispensation from the general law of monogamy. Some Catholic scholars had the same views as those of the Reformers. For example, in 1328 Gerard Odonis proposed that simultaneous polygamy might be an acceptable solution for a husband who wished to divorce his adulterous wife and to marry another woman. According to him, polygamy is something

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<sup>164</sup> Ibid.

<sup>165</sup> Before a final vote was taken, the Council of Trent officially took up the question of simultaneous polygamy on four occasions. Twice it was discussed by a group of the Council’s theologians and twice by the Council Fathers themselves. See HILLMAN, *Polygamy Reconsidered*, appendix, “Polygamy and the Council of Trent,” pp. 217-218.

<sup>166</sup> “Canon 2 : Si quis dixerit, licere Christianis plures simul habere uxores, et hoc nulla lege divina esse prohibitum [Mt. 19, 4 sqq 9]: A. S.” DENZINGER and RAHNER, *Enchiridion symbolorum*, no. 972, p. 340; English trans. in DENZINGER, *The Sources of Catholic Dogma*, no. 972, p. 296.

<sup>167</sup> W.P. ROBERTS, “Christian Marriage,” in R.F. BULMAN and F.J. PARRELLA (eds.), *From Trent to Vatican II: Historical and Theological Investigations*, New York, Oxford University Press, 2006, p. 210.

arising from nature itself in man's present fallen condition and, since it is a matter of man-made law, the pope can give a dispensation for the practice of polygamy.<sup>168</sup> Cardinal Cajetan (1469-1534) also had the view that the practice of polygamy is neither contrary to natural law nor forbidden in scripture. Though he was the most eminent of the pope's theological advisors, his view on simultaneous polygamy was not followed by Church authorities but rather remained a minority opinion among the Catholic theologians.<sup>169</sup>

At the Council of Trent, the Church condemned the views of the reformers concerning polygamy. "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."<sup>170</sup> It "is the one authoritative source most frequently cited by Roman Catholic theologians and canonists whenever any question arises concerning polygamy."<sup>171</sup> Pope Pius XI is one of those who cited this council to show that, in Christian matrimony, two persons only are to be united and joined together.<sup>172</sup>

Though this canon is dogmatic, it has disciplinary implications on marriage. The Greek term "anathema," routinely used by the Fathers of Trent, means

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<sup>168</sup> See HILLMAN, *Polygamy Reconsidered*, appendix, "Polygamy and the Council of Trent," pp. 222-223.

<sup>169</sup> See *ibid*; see also MALONE, *The Canonical and Pastoral Implications of Canon 1148*, p. 78.

<sup>170</sup> MALONE, *The Canonical and Pastoral Implications of Canon 1148*, p. 81.

<sup>171</sup> See HILLMAN, *Polygamy Reconsidered*, appendix, "Polygamy and the Council of Trent," p. 217.

<sup>172</sup> PIUS XI, *Casti connubii*, p. 547.

excommunication.<sup>173</sup> It is a formal declaration of the Christian Church, excommunicating someone or condemning something as evil.<sup>174</sup> The canon means that those who go against this teaching of the Church on polygamy are excommunicated. However, only those who are in communion with the Church can be excommunicated, so it follows that, from the disciplinary perspective, the canon is inapplicable to non-Christians, although non-Christian polygamists would be prohibited from baptism due to this doctrine. Trent had in mind, however, not pagans seeking baptism but the Christian Reformers who rejected Catholic teaching on monogamous marriage. Accordingly, Christians are not allowed to have several spouses at the same time. Martin Chemnitz (a Lutheran)

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<sup>173</sup> L.F. STELTEN, *Dictionary of Ecclesiastical Latin: With an Appendix of Latin Expressions Defined and Clarified*, Peabody, Massachusetts, Hendrickson Publishers, Inc., 1995, p. 16.

“Excommunication is a censure by means of which a person is excluded from the communion of the faithful” (c. 2257 of the *CIC/17*). “The concept of ‘excommunication’ expressed in the law refers only to the loss of ‘juridical communion,’ independently of the situation of ‘mystic communion,’ since ‘mystic communion’ goes beyond the scope of its competence and of its proper forum. However, considering that excommunication is a penalty that is applied to a particularly grave offence, it presupposes the existence of a mortal sin that breaks, at least partially, the mystical communion.” J. ARIAS, “Sanctions in the Church (cc.1311-1339),” in *CCLA*, p. 1039. The purpose of excommunication is not to punish a delinquent Catholic, but rather to encourage his/her speedy repentance. It is applied only to a baptized Christian who is subject to the laws of the Church and for a morally serious, actual violation of that law, and only when he/she contumaciously refuses correction. See R.A. ARONSTAM, “Excommunication,” in P.K. MEAGHER, T.C. O’BRIEN and C.M. AHERNE, *Encyclopedic Dictionary of Religion*, vol. A-E, Washington, DC, The Sisters of St. Joseph of Philadelphia: The Corpus Publications, 1979, p. 1282.

More detailed information and a list of cases in which excommunication can be applied are found in Book VI of the *CIC*. Cf. ARIAS, *CCLA*, pp. 1017-1086.

<sup>174</sup> A.P. COWIE (ed.), *Oxford Advanced Learner’s Dictionary of Current English*, 4<sup>th</sup> ed., Oxford, Oxford University Press, 1989, p. 37.

According to Foscolos, anathema means “the cursing or expelling of a serious offender from the Church, synonymous with excommunication. The word is used in the canons of a council to indicate that the doctrine described in the canon is erroneous and is condemned, and that the proposition contrary to it is to be held as true. P. FOSCOLOS, “Anathema,” in MEAGHER, O’BRIEN and AHERNE, *Encyclopedic Dictionary of Religion*, p. 158.

comments on this teaching of Trent and finds its divine law basis in the original institution of marriage that was reinforced by Christ.

Whatever the case may be with respect to the dispensation and permission or the toleration by God of the polygamy of the ancients, so much is certain, that wedlock from its first institution was the union of one husband and one wife. For Christ did not lay down some new law, but recalls to the first institution the matrimonial cases among the Jews which had departed from the earliest rule. [...] And He learnedly shows from that first institution that marriage is a divine union between two, namely, one husband and one wife. For God did not in the beginning create one male and a number of females, but one husband and one wife. Between these two He instituted marriage.<sup>175</sup>

The Council of Trent in its decree on marriage defended the sacramental character of marriage, from which derives the Church's right to establish impediments. It also proclaimed the unity and indissolubility of marriage.<sup>176</sup> This Church teaching implies that polygamy is absolutely forbidden because it is contrary to the first institution of marriage as established by God himself. Polygamy is abrogated in the time of the New Testament in order that marriage may be brought back to the original institution: "[...] every man should have his own wife and every woman her own husband. [...] The wife does not have authority over her own body, but the husband does, and in the same way, the husband does not have authority over his own body, but the wife does" (I Co. 7: 2, 4).<sup>177</sup>

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<sup>175</sup> M. CHEMNITZ, *Examination of the Council of Trent*, St. Louis, Concordia Publishing House, 1971, p. 730.

<sup>176</sup> JEDIN, "Trent, Council of," p. 173.

<sup>177</sup> Chemnitz supports the teaching of the Church by concluding: "Therefore Christians are not permitted to have a number of wives at one and the same time, and that not as though Christ had instituted a new and special sacrament of matrimony in the New Testament, but because God established it thus at the beginning of the creation, when He first instituted marriage. And Christ recalls and restores matrimonial matters in the New Testament to this rule of the original institution, thus abrogating the exceptions which Moses had permitted. Therefore the Anabaptists and all others who, contrary to the norms of this institution, taught by God in the beginning of the creation and afterward repeated and confirmed by Christ, attempt either to

### 2.5.3 – Recent conciliar and papal teachings

Throughout the centuries, the official theology of the Church has always declared and emphasised that polygamy is contrary to Christian teaching. This was the position of different Roman Pontiffs from the eighth century down to this twenty-first century. Examples can be drawn from the teachings of the Roman pontiffs such as Gregory II, Nicholas I, Innocent III, and Pius XI who invoked their apostolic authority on the question of polygamy.<sup>178</sup> This consistent papal teaching was reinforced repeatedly during the pontificate of John Paul II.

Pope John Paul II, while speaking to Christian spouses in Zaire, reaffirmed the doctrinal position of the Church by insisting on monogamy.

Mankind, to resemble God, must be a couple, two persons. Moving one towards the other, two persons whom perfect love will gather into unity. This movement and this love make them resemble God, who is Love itself, the absolute Unity of the three persons. [...] ‘This at last, Adam says contemplating his wife, is bone of my bones and flesh of my flesh. Therefore a man leaves his father and his mother and cleaves to his wife, and they become one flesh’ (Gen. 2:23-24).

This pilgrimage to the sources also reveals to us that the initial couple, in God’s plan, is monogamous. This is again surprising for civilization – at the same time when the Bible narratives take shape – is generally far from this cultural model. This monogamy, which is not of Western but of Semitic origin, appears as the expression of the interpersonal relationship, the one in which each of the partners is recognised by the other in an equal value and in the totality of his person. This monogamous and personalistic conception of the human couple is an absolutely original revelation, which bears the mark of God, and which deserves to be studied more and more deeply.<sup>179</sup>

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introduce or to defend polygamy in the New Testament are rightly condemned.” CHEMNITZ, *Examination of the Council of Trent*, p. 731.

Hillman laments the fact that there has been no critical study of Trent’s teaching on simultaneous polygamy. See HILLMAN, *Polygamy Reconsidered*, appendix, “Polygamy and the Council of Trent,” pp. 218-219.

<sup>178</sup> Cf. URRUTIA, “Can Polygamy Be Compatible with Christianity?” p. 278.

<sup>179</sup> JOHN PAUL II, Homily, 3 May 1980, in *L’Osservatore romano*, 19 (1980), p. 4.

About five years later, the Pope insisted on the teaching of the Church against polygamy. During his Mass for youth at Nairobi on 17 August 1985, he said, “In the Old Testament, polygamy was sometimes tolerated. But in the New Covenant our Saviour restored marriage to its original state as a communion between one man and one woman.”<sup>180</sup>

Speaking about the indivisible unity of conjugal communion as the Church’s teaching, Pope John Paul II, in the Post-Synodal Apostolic Exhortation *Familiaris consortio*, states:

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 called to grow continually in their communion through day-to-day fidelity to their marriage promise of total mutual self-giving.

This conjugal communion sinks its roots in the natural complementarity that exists between man and woman, and is nurtured through the personal willingness of the spouses to share their entire life-project, [...]

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 (*FC* 19).<sup>181</sup>

According to the Church’s teaching, polygamy contradicts the conjugal communion. It directly negates the plan of God. Vatican II, in the Pastoral Constitution on the Church in the Modern World *Gaudium et spes*, teaches that the dignity of the marital partnership “is overshadowed by polygamy” as well as by divorce, free love, and “similar blemishes” (no. 47, §2). The *Catechism of the Catholic Church* states: “The predicament of a man who, desiring to convert to the Gospel, is obliged to repudiate one or more wives with whom he has shared years of conjugal life (cf. c. 1148), is understandable. However, polygamy is not in accord with the moral law” (no. 2087). In

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<sup>180</sup> JOHN PAUL II, Homily, 17 August 1985, in *L’Osservatore romano*, 34 (1985), p. 5.

<sup>181</sup> FLANNERY2, p.829; JOHN PAUL II, Post-Synodal Apostolic Exhortation *Familiaris consortio*, pp. 33-34; Cf. *Catechism of the Catholic Church*, no. 1645.

support of this statement, the *Catechism* then cites *Familiaris consortio*: “[Conjugal] 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” (*FC* 19).<sup>182</sup>

Polygamy is fundamentally incompatible with the sacramentality of marriage. Sacramental marriage, which is a type and symbol of the divine union between Christ, the Bridegroom, and His Church, the Bride, is a union of one man and one woman. A marriage contract between baptised persons cannot be valid without its being by that very fact a sacrament (c. 1055, §2). Hence, the sacramentality of marriage is constitutive of the marriage of the baptised. Through the sacrament of marriage, the Christian spouses encounter the Lord, just as God in the past made Himself present to His people through a covenant of love and fidelity, and they are strengthened and consecrated by a special sacrament for the duties and dignity of their state (cf. *GS* 48, §2). Unfortunately, because of the perversity of human nature, the divine institution of marriage is abused by polygamy.<sup>183</sup>

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<sup>182</sup> FLANNERY2, p.829; Cf. *Catechism of the Catholic Church*, no. 2387; cf. *GS*. no. 47 §2; English trans. in FLANNERY1, p. 949.

<sup>183</sup> Cf. M. COLACCI, *Christian Marriage Today: A Comparison of Roman Catholic and Protestant Views: With Special Reference to Mixed Marriages*, Minneapolis, Augsburg Publishing House, 1965, p. 67.

## 2.6 – Can Church Teaching on Polygamy be Pastorally Accommodated?

The Church's teaching and canon law (c. 1148, §1) require a polygamist who wishes to be baptised to dismiss other wives and remain with one. Such a demand is obviously difficult in a polygamous culture. Many polygamists refuse to comply with such a demand which they consider "evil and fraught with disastrous consequences."<sup>184</sup> They regard dismissing their wives to be an act of injustice to women who without fault were married in keeping with cultural norms.<sup>185</sup>

The Congregation for the Doctrine of the Faith recognized that the traditional solution for the Church with regard to polygamists entails grave social consequences, but it nevertheless concluded that polygamists who could not separate from their wives could only become catechumens and should be denied baptism until they undertake the obligations of the Christian life.<sup>186</sup> While this doctrine is firm, the question still arises whether certain pastoral accommodations are possible.

At the 1980 Synod of Bishops on the family, bishops were divided on the pastoral approach to adopt towards evangelizing polygamists. While some called for a complete and outright condemnation of polygamy, others asked whether the Church's traditional law and practice concerning polygamy should not be revised or accommodated. There are two main pastoral challenges on this issue. The first concerns the baptism of polygamists who find it difficult to separate from other wives; the second concern is the

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<sup>184</sup> OMOREGBE, "Is Polygamy Incompatible with Christianity?" pp. 363-364.

<sup>185</sup> Ibid., p. 364.

<sup>186</sup> Cf. SACRED CONGREGATION FOR THE DOCTRINE OF THE FAITH, *Divorced and Remarried Persons: Catechumenate and Sacraments*, 11 July 1983 (private), in *CLD*, vol. X, p. 139.

injustice that may be caused by a polygamist's abandonment of his other wives and children.<sup>187</sup>

Authors have divergent viewpoints on the baptism of polygamists, as exemplified by Blum and Hillman. Blum recommends that polygamists be taught the Christian religion but remain unbaptized.<sup>188</sup> On the other hand, Hillman suggests that polygamists who married several wives in good faith should not be prevented from participating in the sacramental life of the Church, but no additional marriages would be permissible once they have entered the Christian community.<sup>189</sup> Hastings also advocates this view, with reservations, and believes it to be a widely held and practical position.<sup>190</sup> Another recommendation is to admit the *wives* of polygamists to baptism on the basis of the fact that they are usually the involuntary victims of the custom.<sup>191</sup>

J. Downey argues that the Church is the instrument of the grace of Christ, and she channels that grace especially through the sacraments.<sup>192</sup> All those who want to embrace

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<sup>187</sup> P.M. KANYADAGO, *Evangelizing Polygamous Families: Canonical and African Approaches*, Eldoret, Kenya, Gaba Publications, 1991, p. 156.

<sup>188</sup> BLUM, *Forms of Marriage: Monogamy Reconsidered*, pp. 304-305. This would not exclude the baptism of a polygamous man who is in danger of death and has the proper dispositions.

<sup>189</sup> HILLMAN, *Polygamy Reconsidered*, p. 206; idem, "On Polygamy: A Response," in *African Ecclesial Review*, 23 (1981), pp. 292-307; idem, "The Polygamy Debate: A Progress Report," in *Missiology* 10 (1982), pp. 164-165. He says that the Lutherans in Liberia found it possible to safeguard and promote the ideal of monogamy as normative while allowing people of good will to remain in the polygamous conditions in which they were at the time of their calling to the new life of explicit Christian faith.

<sup>190</sup> HASTINGS, *Christian Marriage in Africa*, p. 15.

<sup>191</sup> For a fuller discussion of these positions, see *ibid.*, pp. 12-26.

<sup>192</sup> J. DOWNEY, "Polygamy: The Wrong Reasons," in *African Ecclesial Review*, 17 (1975), p. 148.

Christianity have need of these means of grace. It is therefore the duty of the Church to ensure that it fulfils her obligation as an instrument of the grace of Christ. The Church's teaching, canonical equity and the spirit of the Gospel in dealing with particular subjective situations should be applied in harmony with the supreme law of the Church, which is the salvation of souls (cf. c. 1752). The Church has also been commissioned to proclaim the Gospel message to all peoples of the world (Mt. 28:18-20; Mk. 16:15-16), despite their differences in culture and other factors. The Church should remain faithful to this mission of bringing the Good News of Jesus to all people, including polygamists. All this suggests accommodating Church teaching in some fashion to the realities of the polygamous peoples.

Some try to defend their support of polygamous cultures from the biblical point of view by saying that God was gracious and merciful to men and women of the scripture who were polygamists. He blessed the polygamous Old Testament saints and he ordained their institution of marriage; therefore, by our forbidding polygamy, we are standing in contradiction to God and his purpose for the salvation of the humanity.<sup>193</sup> They further argue that polygamy was not forbidden by Christ because there is no biblical evidence that he frowned on the Old Testament saints who had practiced it.<sup>194</sup> Some find incongruous the fact that polygamy, not expressly condemned by Christ, is opposed as a great evil, but divorce and remarriage, which Christ explicitly forbids, is tolerated (the dissolution of non-sacramental marriages). Some go even further and find polygamy to reflect the Church's own theology of marriage, as witnessed by Omoregbe:

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<sup>193</sup> TORYOR, *Impact of the African Tradition on African Christianity*, p. 115.

<sup>194</sup> Ibid.

In fact it can be argued that the sacramentality of Christian marriage is more aptly expressed and reflected in a polygamous marriage than in a monogamous marriage, since the church itself is a plurality of many local churches all of which are the brides of Christ and united by Christ. Just as the local churches are united by Christ their bride, so are the wives in a polygamous marriage united by the husband. The church's unity in plurality therefore becomes the model for the unity in plurality of the wives in a polygamous marriage.<sup>195</sup>

Regarding the critique that polygamy disrespects the dignity of women and denies their equality with men, proponents of polygamy counter that even in monogamous societies there is no guarantee of respect for the dignity of women and their fundamental equality with men. According to this view, women may be dominated, marginalized, and oppressed as much or more in a monogamous as in a polygamous society.<sup>196</sup>

The pastoral and practical experience drawn from the apostolate in polygamous societies shows that the dismissal of wives in compliance with canonical norms brings about some negative consequences and perceptions. The families of the dismissed women and the broader community often regard it as an act of injustice against those wives who, without having committed any offence, without quarrel, without any fault on their part are simply sent away by their husbands and forced to leave their children. In some cases, dismissed women, having lost their only means of support, become prostitutes,<sup>197</sup> which causes public scandal, psychological problems, abortions, spread of diseases such as HIV/AIDS, and moral disorder in the African society.<sup>198</sup>

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<sup>195</sup> Ibid.

<sup>196</sup> Ibid., p. 371. On the subjection of women in history, see S. BEAUVOIR, *The Second Sex*, translated and edited by H.M. Parshley, New York, Alfred A. Knopf, 1993, p. 96.

<sup>197</sup> Daily pastoral experience shows that polygamy does not really limit prostitution and adultery. It is not uncommon for wives of polygamists who are not satisfied with their sex life to subject themselves to prostitution. There are also a number of professional prostitutes who have no wish whatsoever to be married. Some polygamists also are not satisfied even with their

Positively, proponents of the polygamous way of life believe that it offers refuge to all the underprivileged people of the clan by providing them a secure status in the social-economic structure that they would lack without marriage to a polygamous man. Therefore, to eradicate polygamy in the traditional community is to threaten the very survival of orphans, widows, spinsters, and old people.<sup>199</sup>

These difficulties pose many challenges which are not only canonical and pastoral but also moral and social. Consequently, there is a great need for a serious dialogue between Christian ethics on marriage and African cultural ethics on marriage. Such a dialogue is greatly needed for the work of evangelization and pastoral ministry. Church leaders and ministers are still in a dilemma as to the degree of acceptance of polygamists into the Church. In some places, polygamists are not allowed entrance to the Christian community much less allowed baptism. Other particular Churches permit polygamists to be active in the Church on the condition that they do not take another wife,<sup>200</sup> but they are prohibited from sacramental initiation.

Despite the reply given by the Sacred Congregation for the Doctrine of the Faith that divorced and remarried persons may be admitted into the order of catechumens but not to the sacraments of initiation, the pastoral issues surrounding this doctrinal issue have not yet been resolved. It is therefore incumbent on the Church to continue to re-

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numerous wives; therefore they take other women outside the home. Legalization of polygamy will not eliminate prostitution or cause these problems to disappear or dissipate. Cf. MAVUMILISA, *Can the Church Accept Polygamy?* p. 47.

<sup>198</sup> OMOREGBE, "Is Polygamy Incompatible with Christianity?" p. 364.

<sup>199</sup> MAVUMILISA, *Can the Church Accept Polygamy?* pp. 15-16.

<sup>200</sup> See HILLMAN, *Polygamy Reconsidered*, p. 206.

think and re-examine this pastoral and canonical challenge and to seek a meaningful pastoral and canonical strategy for polygamous people. This challenge will be addressed in detail in the final chapter of our study.

## **Conclusion**

Although polygamy existed in the Old Testament, the teaching of the Church holds that, in the plan of God and the original order of things, marriage is by nature monogamous. Monogamy fosters the well-being of the spouses (*bonum coniugum*) and the procreation and education of the children, to which marriage is ordered by its very nature (c. 1055, §1). The good of the spouses and the procreation and education of the children constitute the “ends” of marriage, its fundamental purposes as willed by the Creator. Polygamy disturbs the good of the spouses and renders more difficult their cooperation in the education of children. The union of one husband and several wives is therefore contrary to the ends of marriage.

Christ raised the natural institution of marriage to a sacrament between two baptised persons. Indeed, no valid marriage among the baptised can exist without it being a sacrament (cf. c. 1055, §2). Through the sacrament, God seals the natural union between one man and one woman with supernatural grace. Sacramental marriage, moreover, is a sign of the love of Christ for his Church. The bond of love between the baptised couple is the image and symbol of the covenant which unites God and his people, a sign which is more clearly expressed by the union of one man and one woman.

The essential properties of marriage are unity and indissolubility. Unity means that marriage must be monogamous and that fidelity is required within this monogamous

union. Indissolubility means that marriage is permanent; valid marital consent creates a bond which, when the marriage is ratified and consummated, cannot be broken by any power or for any reason other than death. If, by a positive act of the will, either party consents to marriage and excludes either property, the marriage is invalid. Since the Church considers these properties to be of the divine law, a man, whether Christian or not, who does not intend to enter a monogamous union, does not marry validly.

The monogamous quality of marriage and exclusion of polygamous unions is a teaching and demand of the Catholic faith.<sup>201</sup> The Second Council of Lyons and the Council of Trent each solemnly upheld the normativity of monogamy in Christian marriage, although each for different reasons, the former to promote Church reunion between Eastern and Western Christendom and the latter to condemn the view of Protestant Reformers.

The Church's teaching on monogamy and marital fidelity have always posed a serious challenge to the efforts of missionaries and local churches to evangelize in a polygamous society due to the strongly held contrary beliefs rooted in the traditions of the culture. The Church's canon law, however, is not without solutions that can facilitate the regularisation of the marital situations of persons in polygamous unions before their baptism or reception into the Catholic Church as well as in the case of a Catholic who wishes to marry someone who had been in a polygamous union. These canonical solutions are the subject of the next chapter.

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<sup>201</sup> Cf. URRUTIA, "Can Polygamy Be Compatible with Christianity?" p. 276.

## CHAPTER THREE

### MARITAL UNITY AND POLYGAMY IN CANON LAW

#### Introduction

Church discipline with respect to polygamy has been directed to two different classes of cases. The first class consists of persons who are already, at the time of conversion, a part of a polygamous union; and the second is that of persons who, already professing the Christian faith, commit the offence of contracting a polygamous union. The focus of this chapter is on the first situation. In respect to this class of persons, the main problem has been whether they may be admitted to baptism or received into the full communion of the Catholic Church and, if so, what conditions, if any, should be imposed. The general practice has been to withhold baptism altogether pending dissolution of the polygamous union or unions, except when the person concerned is in danger of death (*periculum mortis*) or at the point of death (*articulum mortis*) and they promise to accept the obligations of the Catholic faith.<sup>1</sup> Apart from danger of death, a polygamist man is typically required to put away all his wives except one, and a woman in such a marriage must leave her husband or at least cease to engage in marital relations with him.

This has always been a pastoral challenge for the Church in sub-Saharan Africa, but it is a challenge that must be faced. As seen in the previous chapter, the Church's teachings on marriage, which give rise to its laws and practice, is of the divine law, rooted in both Scripture and the great Tradition as consistently taught by councils, popes,

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<sup>1</sup> SACRED CONGREGATION FOR THE DOCTRINE OF THE FAITH, *Divorced and Remarried Persons*, p. 139.

and most Catholic theologians and canonists. The severity of this challenge is, nevertheless, mitigated to a certain extent through various canonical means. The Church's canon law has solutions with respect to various cases that can facilitate the efforts of evangelization by enabling a resolution of the canonical irregularities resulting from polygamous unions. These canonical solutions are the subject of this chapter.

The chapter is divided into five sections. The first section is on the Pauline privilege and its applicability (as well as inapplicability in many cases) to polygamous marriages. In section two, we shall treat cc. 1148 and 1149 of the 1983 Code, both of which have particular relevance to the Church in territories where polygamy is practiced. This will involve an investigation of the juridical history of these canons as found in the *Decretals of Gregory IX* (X 4, 19, c. 8), three sixteenth century papal constitutions, and c. 1125 of the 1917 Code. Because c. 1148 of the 1983 Code is directly concerned with polygamy, we shall study this canon carefully and consider its pastoral impact. For completeness, c. 1149 will be treated briefly, since it also may be applied in a situation where a spouse had previously been part of a polygamous marriage. The third section will focus on the dissolution of the marriage bond in favour of the faith, which has pertinence in the case of a non-sacramental marriage involving one baptized party. In the fourth section, we shall treat briefly the presumption of the law in favour of the faith in doubtful matters pertaining to dissolution cases and related matters (c. 1050). The final section is on the nullity of marriage on the ground of an exclusion of marital unity or fidelity due to simulation or determining error; this is pertinent to numerous marriages in a society where monogamy and fidelity on the part of the male spouse is not valued. The discipline on these matters is the same in the Eastern Catholic Churches as it is in the

Latin Code, so we need only make note of the parallel canons of the *Code of Canons of the Eastern Churches* except when there is a notable difference.

### 3.1 – The Pauline Privilege

The Pauline privilege is the dissolution of a non-sacramental marriage under specific conditions. We shall first consider the essential elements of the privilege as they have been interpreted in the Christian tradition. We shall then provide a brief overview of the use of the privilege in the current canon law and its applicability (as well as inapplicability) to polygamous marriages. Canons 1143-1147 of the 1983 *Code of Canon Law* and cc. 854-858 of the *Code of Canons of the Eastern Churches* regulate the use of the Pauline Privilege.<sup>2</sup> Since there are no major differences between the two codes on this privilege,<sup>3</sup> our comments will be limited to the Latin Code.

#### 3.1.1 – Essential elements of the privilege

The Pauline privilege has its origins in the first letter of St. Paul to the Corinthians, chapter 7, verses 12-15.

For other cases these instructions are my own, not the Lord's. If one of the brothers has a wife who is not a believer, and she is willing to stay with him, he should not divorce her; and if a woman has a husband who is not a believer and he is willing to stay with her, she should not divorce her husband. You see, the unbelieving husband is sanctified through his wife and the unbelieving wife is sanctified through the brother. If this were not so, your children would be unclean, whereas in fact they are holy. But if the unbeliever chooses to leave,

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<sup>2</sup> “In *Codice Iuris Canonici* (cann. 1143-1147) atque in *Codice Canonum Ecclesiarum Orientalium* (cann. 854-858) usus ordinatur «privilegii paulini», qui dicitur, id est casus dissolutionis matrimonii qui in prima epistola S. Pauli ad Corinthios (7,12-17) innuitur.” KOWAL and WOESTMAN, *Special Marriage Cases and Procedures*, Appendix I, document II, p. 210.

<sup>3</sup> It must be noted that the Pauline privilege is not the privilege of cc. 76-84. Unlike the latter, which is granted by the rescript of the competent legislator or his delegate, the Pauline privilege operates *ex iure*.

then let the separation take place: in these circumstances, the brother or sister is no longer tied. But God has called you to live in peace.

These words of St. Paul are the basis of 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.<sup>4</sup> This passage has been interpreted and understood in various ways by scholars. Several questions have been raised regarding this passage, among them: Does it prohibit the Christian from divorcing the unbelieving partner? Is it merely a recommendation? Is the Christian free to contract a new marriage?<sup>5</sup> The particular interpretation of the phrase, "the brother or sister is no longer tied," is the basis of the canonical understanding of the privilege, and it is understood to mean that the convert is not obliged to remain living with the non-believer but is free to marry another.<sup>6</sup>

Paul teaches here that the Christian convert from paganism should not use baptism as a pretext for divorcing an unbelieving spouse (μή ἀφιέτω); 'but if the unbeliever departs, let him depart (χωριζέσθω).' The latter Greek verb refers merely to the desertion of the marital bed. When the Apostle adds in 1 Cor 7.15 that 'a brother or sister [i.e., a Christian man or woman] is not under bondage in such cases,' he means that the convert need not oppose the desertion of the unbelieving spouse. But he nowhere expressly states that the marriage bond is dissolved by such desertion or that the convert is free to contract another marriage. However, since the 4<sup>th</sup> century the majority of Catholic commentators have interpreted 1 Cor. 7.15 to mean that the marriage bond between two

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<sup>4</sup> The Pauline privilege is the term used "to express the right to dissolve the marriage bond, contracted between two unbaptized persons, after the baptism of one of the spouses and the refusal of the other spouse to cohabit peacefully. The term is based on the supposition that St. Paul grants this privilege in 1 Cor 7.12-15, but it is rather a privilege granted by the Church through a broader interpretation of the Pauline text than this in itself allows." R. KUGELMAN, "Pauline Privilege," in B.L. MARTHALER et al. (eds.), *New Catholic Encyclopedia*, vol. XI, 2<sup>nd</sup> ed., Detroit, Thomson/Gale, 2003, p. 38. See J. FORNÉS, "The Dissolution of the Bond (cc. 1141-1150)," in *Exegetical Comm*, pp. 1549-1550; T.P. DOYLE, "The Separation of the Spouses (cc. 1141-1155)," in *CLSA Comm1*, p. 814; and F.J. WINSLOW, *The Pauline Privilege and the Constitution of Canon 1125*, New York, Field Afar Press, 1948, p. 1.

<sup>5</sup> KOWAL and WOESTMAN, *Special Marriage Cases and Procedures*, p. 55.

<sup>6</sup> DOYLE, *CLSA Comm1*, p. 814.

unbaptized persons is dissolvable when the unbaptized spouse refuses peaceful cohabitation with the baptized spouse, and that it is actually dissolved when the baptized spouse contracts a sacramental marriage.<sup>7</sup>

The first clear application of the Pauline privilege can be traced back to the fourth century. In that century we find an unknown author who, since the sixteenth century, was called Ambrosiaster because during the Middle Ages his writings were attributed to Saint Ambrose. According to Ambrosiaster, this passage of St. Paul to the Corinthians affirms that a Christian woman dismissed by her unbaptized husband because of her faith could remarry.<sup>8</sup>

[...] if the unbeliever separates because of hatred of God, the believer will not be guilty of terminating the marriage, for God's interest is greater than that of the marriage. [...] The reverence due to marriage is not owed to him who hates the author of marriage. The marriage not honoured in God is not indissoluble (*ratum*). And for that reason one dismissed for God's sake does not sin by forming another union. Contempt of the Creator (*contumelia Creatoris*) dissolves the obligations of marriage for the one who is dismissed, and another marriage should not be condemned. The departing unbeliever sins against both God and the marriage. [...] If they both believe, they confirm their marriage through the knowledge of God.<sup>9</sup>

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<sup>7</sup> KUGELMAN, "Pauline Privilege," p. 38. For more detailed interpretation of and commentaries on the text of 1 Cor 7:12-15, see J. MURPHY-O'CONNOR, "The First Letter to the Corinthians," in R.E. BROWN, J.A. FITZMYER and R.E. MURPHY, *The New Jerome Biblical Commentary*, New Jersey, Prentice Hall, 1990, pp. 804-805; see also P.B. PAYNE, *Man and Woman: One in Christ: An Exegetical and Theological Study of Paul's Letters*, Grand Rapids, MI, Zondervan, 2009, pp. 105-107; R. TREMBLAY, *The Privilege of Faith, The Pauline Privilege, Dispensation from the Interpellations, Privilege of the Faith of Can. 1127, Dissolution of Marriage Contracted between a Baptized Person and an Infidel*, Tabora, T.M.P. Printing Department, 1959, pp. 19-21; J.H. JOYCE, *Christian Marriage: An Historical and Doctrinal Study*, London, Sheed and Ward, 1933, pp. 469-491.

<sup>8</sup> See KOWAL and WOESTMAN, *Special Marriage Cases and Procedures*, p. 56.

<sup>9</sup> "[...] sed si infidelis odio Dei discedit, fidelis non erit reus dissoluti matrimonii; major enim causa Dei est quam matrimonii. [...] Hoc est, non debetur reverentia conjugii ei qui horret auctorem conjugii non enim ratum est matrimonium, quod sine devotione Dei est, ac per hoc non est peccatum ei, qui dimittitur propter Deum, si alii se junxerit. Contumelia enim creatoris solvit ius matrimonii circa eum qui relinquitur, ne accusetur alii copulatus. Infidelis autem discedens, et in Deum et in matrimonium peccare dignocitur; [...] si autem ambo crediderint, per cognitionem Dei confirmant conjugium." H.I. VOGEL (ed.), "Ambrosiastri qui dicitur commentarius in epistolas paulinas," pars secunda; in *idem, Corpus scriptorum ecclesiasticorum latinorum*, vol.

Though some references to the Pauline saying can be found in the patristic writings in conjunction with the dissolution of marriage, there is no conclusive evidence that the Pauline privilege was understood then as it is now. In the high Middle Ages, Gratian<sup>10</sup> and Peter Lombard spoke of the right of remarriage of the convert if the non-baptized party remarried after separation.<sup>11</sup> Pope Innocent III, in the decretal *Quanto*, stated: “If one of the unfaithful spouses converts to the Catholic faith and the other does not want in any way to cohabit, or at least not without blasphemy of the divine name, or to lead him or her to mortal sin, the one who is abandoned may, if he or she wishes, remarry.”<sup>12</sup> In 1199 the Pauline privilege became part of the Church’s canonical legislation.<sup>13</sup> However, the way in which and the time when the first marriage was dissolved were only clarified in the 1917 Code, specifically in c. 1126.<sup>14</sup> This legislation was taken up anew in the 1983 Code with some revisions, none of which, however, affected the essential elements of the privilege. These are: first, the marriage in question must have been celebrated between two unbaptized persons, of which only one was subsequently baptized while the other remained unbaptized; and second, the unbaptized

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LXXXI, Vienna, Hoelder-Pichler-Tempsky, 1968, pp. 76-77; English trans. in KOWAL and WOESTMAN, *Special Marriage Cases and Procedures*, p. 56.

<sup>10</sup> See C. 28, q. 2, c. 2.

<sup>11</sup> DOYLE, *CLSA Comm1*, p. 814.

<sup>12</sup> “Si enim alter infidelium coniugum ad fidem Catholicam convertatur, altero vel nullo modo vel sine blasphemia divini nominis, vel ut eum pertrahat ad mortale peccatum, ei cohabitare volente: qui relinquitur ad secunda, si voluerit, vota transibit.” X 4, 19, c. 7, in A. FRIEDBERG (ed.), *Corpus Iuris Canonici*, vol. II, 2<sup>nd</sup> ed., Lipsiae, Ex Officina Bernhardi Tauchnitz, 1881, col. 722; English trans. in *Exegetical Comm*, p. 1550.

<sup>13</sup> *Ibid.*, cols. 722-723; JOYCE, *Christian Marriage*, pp. 467-475.

<sup>14</sup> DOYLE, *CLSA Comm1*, p. 814.

party refuses to live with the baptized party or, while wishing to live with the other party, is unwilling to do so without “offence to the Creator.”<sup>15</sup>

### 3.1.2 – The Pauline privilege in the current law

Canon 1143 deals with the application of the Pauline privilege as follows:

§1. In virtue of the Pauline privilege, a marriage entered into by two unbaptized persons is dissolved in favour of the faith of the party who received baptism, by the very fact that a new marriage is contracted by that same party, provided the unbaptized party departs.

§2. The unbaptized party is considered to depart if he or she is unwilling to live with the baptized party, or to live peacefully without offence to the Creator, unless the baptized party has, after the reception of baptism, given the other just cause to depart.

Paragraph one concerns the use of the Pauline privilege to dissolve a marriage entered into by two persons who are not baptized.<sup>16</sup> Paragraph two explains the departure of the unbaptized party.<sup>17</sup> It must be noted that the Pauline privilege is not applicable to every

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<sup>15</sup> According to J. HERVADA, “The Separation of the Spouses (cc. 1141-1165),” in *CCLA*, p. 889, *contumelia Creatoris* refers to the danger of sin for the baptized party or for the offspring and situations or actions contrary to the sanctity of marriage. For example, not allowing the baptized party freedom to practice his or her religion, an unchaste married life, preventing the children from receiving a Christian education, polygamy and other similar things. See *ibid.*, p. 890; see also BEAL, “The Separation of Spouses (cc. 1141-1155),” pp. 1365-1366; and FORNÉS, *Exegetical Comm*, pp. 1550-1551.

<sup>16</sup> “A marriage contracted before the baptism of either party is dissolved in favour of the faith (*in favorem fidei*) by the Pauline privilege. This is the first form or mode of dissolution of a marriage in favour of the faith. However, today Pauline privilege cases are not called favour of the faith cases. This expression is now used for the dissolution of other non-ratified or non-sacramental marriages.” KOWAL and WOESTMAN, *Special Marriage Cases and Procedures*, p. 58.

<sup>17</sup> The departure can be physical or moral. Physical departure is the unwillingness of the unbaptized party to live at all with the baptized spouse. For example, when he/she unjustly deserts the baptized spouse, contracts marriage or lives with a third party and is unwilling to return to the baptized party. In moral departure the unbaptized person is willing to continue with conjugal life but is not willing to do so without offence to Creator, for example, refusing to permit the children from receiving a Catholic education or causing harm to the faith of the Catholic spouse. Cf. *ibid.*, pp. 62-63; and FORNÉS, *Exegetical Comm*, pp. 1550-1551.

marriage involving two unbaptized parties. It is inapplicable when both parties convert, although a dissolution may be granted if there is no consummation after the baptism of both (c. 1142). Moreover, the baptized party may not be the one responsible for the separation.

The initiative of the separation—not wishing to cohabit or not wishing to do so without “offence to the Creator”—must be taken by the unbaptized party. Consequently, if the person who wishes to depart is the baptized spouse, or if the unbaptized party departs after baptism from the other for a just reason—a reason which has not been corrected by baptism—then the Pauline privilege may not be applied.<sup>18</sup>

In these situations, the Pauline privilege also cannot be applied to polygamous marriages.

To ensure that all the required conditions for the application of the privilege are fulfilled, particularly the departure of the unbaptized person, and to allow the baptized person to contract a new marriage legitimately, the interpellation must be done according to norms of cc. 1144-1146. The term “interpellation” denotes the act by which the convert seeks a declaration from the unbeliever on two vital questions: first, whether he/she wishes to be converted and to receive baptism; and second, in case the unbeliever is unwilling to become a Christian, whether he/she will continue conjugal life in peace without offence to Almighty God.<sup>19</sup> If the response is negative to either, the party may contract a new marriage; the bond of the former marriage is dissolved in virtue of the law itself when the converted party contracts the new marriage (c. 1143, §1).

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<sup>18</sup> HERVADA, *CCLA*, pp. 889-890.

<sup>19</sup> See E.M. WOEBER, *The Interpellations*, Canon Law Studies, 172, Washington, DC, Catholic University of America, 1942, p. 7. They constitute the official method that the Church customarily employs to determine whether or not there is a departure for which the infidel spouse is responsible. See WINSLOW, *The Pauline Privilege and the Constitutions of Canon 1125*, p. 16.

To sum up, we see that four conditions are required for the use of the Pauline privilege. First, there is a presumptively valid marriage of two unbaptized persons. Second, one spouse converts to Christianity and is baptized. Third, the physical or moral departure of the unbaptized spouse occurs because of the hatred of the faith or for any of the other recognized causes.<sup>20</sup> Fourth, the interpellation of the unbaptized spouse is legitimately made to establish the fact of departure.<sup>21</sup> However, the Pauline privilege cannot be invoked if the baptized party is the cause of the departure of the unbaptized party because in such a case it would reward the breakup of the marriage.<sup>22</sup> The baptized party has the right to contract a new marriage with a Catholic or non-Catholic party (cf. cc. 1146-1147). The application of the Pauline privilege gives the faithful spouse the right to contract a new marriage. The first marriage is dissolved *ipso iure* when the new marriage is celebrated.<sup>23</sup>

The Pauline privilege is applicable in polygamous marriages only to the first presumably valid marriage. Thus, for example, if the first wife of an unbaptized polygamist is baptized but, thereafter, the man refuses to maintain a monogamous relationship with her, she would have cause to invoke the Pauline privilege because polygamy in such a case may be considered an offense to the Creator. The Pauline

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<sup>20</sup> For a listing of the physical and moral causes for departure, see W.J. DOHENY, *Canonical Procedures in Matrimonial Cases: Informal Procedures*, vol. II, Milwaukee, Bruce Publishing Co., 1944, pp. 512-513.

<sup>21</sup> Cf. H.A. AYRINHAC, *Marriage Legislation in the New Code of Canon Law*, New York, Benzinger Brothers, Inc., 1939, no. 288, pp. 309-310; FORNÉS, *Exegetical Comm*, pp. 1550-1551. For the baptized party to contract a new marriage validly, the non-baptized party must always be interrogated whether he or she also wishes to receive baptism or whether he or she at least wishes to cohabit peacefully with the baptized party without affront the Creator (c. 1144, §1, nos. 1-2).

<sup>22</sup> See KOWAL and WOESTMAN, *Special Marriage Cases and Procedures*, p. 63.

<sup>23</sup> HERVADA, *CCLA*, p. 890.

privilege could then be applied to dissolve the marriage in favour of the faith of the newly baptized person. Similarly, if the polygamous man converts and the first wife departs, he could use the privilege validly to marry another.

The privilege is not applicable to subsequent traditional marriages that are invalid in canon law unless the prior ones are also dissolved. Since a second, third, or subsequent wife is not validly married due to the prior bond of the polygamist's first marriage, if a latter wife converts and is baptized, she does not need the Pauline privilege because she already is canonically free to leave the polygamist and marry validly. If the union involving the first wife is dissolved or declared invalid, however, the second wife is then recognized canonically as the sole wife to the husband; and if this second wife then converts, she too could invoke the privilege (and the same for subsequent wives under the same conditions) when the applicable conditions are met.

### **3.2 – Dissolution of Marriage in Special Cases**

The Pauline privilege may be used in some polygamous marriage situations but not in all. It does not apply when a polygamous man converts and the first wife does not depart but wishes to continue the marriage without offense to the Creator. It does not apply when an unbaptized spouse receives baptism in the Catholic Church and wishes to marry but cannot restore cohabitation with his or her previous non-baptized spouse who cannot be located due to captivity or persecution. Solutions to these cases are found in cc. 1148 (*CCEO* c. 859) and 1149 (*CCEO* c. 860) of the Code, which effectively are extensions of the Pauline privilege. Before examining the two canons in subsequent sections, we shall first examine their historical antecedents. This will involve an

investigation of the *Decretals of Gregory IX*, three sixteenth century papal constitutions, and finally c. 1125 of the 1917 Code.

### 3.2.1 – The *Decretals of Gregory IX*

The *Decretals of Gregory IX* (1234) contains a papal text that presents Church teaching on polygamy in the Middle Ages (X 4, 19, c. 8).<sup>24</sup> It is a summation of key points made in the letter *Gaudemus in Domino* written by Pope Innocent III in 1201 to the bishop of Tiberias in the territories conquered during the Crusades.<sup>25</sup> With the inclusion of this excerpt in the *Decretals*, Innocent's reply to the bishop became formally promulgated law.

§1. Pagans, who are married in a degree [of relationship] that is prohibited only in ecclesiastical law, should not be separated upon their conversion to the faith.

§2. If a pagan has more than one wife, however, he shall remain with the first after conversion to the faith.

§3. And, if he has repudiated his wife and married another, he shall dismiss the second and return to the first even after baptism and even if the one who was repudiated shall have married another, unless she would have committed fornication.<sup>26</sup>

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<sup>24</sup> B. PARMENSIS (ed.), *Decretales d. Gregorii Papae IX: Suae integritati una cum glossis restitutae cum privilegio Gregorii XIII Pont. Max. et aliorum principum*, Venice, Apud Magnam Societatem, una cum Georgio Ferrario & Hieronymo Franzino, 1584, col. 1558, in *Corpus iuris canonici*, vol. II.

The “Decretals” (*Epistolae decretales*) are letters of popes which formulate decisions, generally given in answer to questions but sometimes due to the initiative of the popes. Together with the canons of the councils, they were the chief source of Church legislation and formed the greater part of the *Corpus iuris canonici* before they were formally replaced by the *Codex iuris canonici* of 1917. From the time of their publication, the Decretals remained the most important collection of canon law until the 1917 code. The Decretals were compiled by Raymond of Peñafort, a Spanish Dominican, who was canonized a saint. See C. VAN DE WIEL, *History of Canon Law*, Louvain, Peters Press, 1991, pp. 105-106; see also M. THÉRIAULT, “History of Canon Law,” Ottawa, Faculty of Canon Law, Saint Paul University, 1998, p. 21.

<sup>25</sup> R. JACQUES, *Des nations à évangéliser: genèse de la mission catholique pour l'Extrême-Orient*, Paris, Les éditions du cerf, 2003, p. 113.

<sup>26</sup> “Pagani, iuncti in gradu prohibito lege canonica tantum, conversi ad fidem non separantur. Hoc primo. Si paganus prius plures uxores habeat, post fidem susceptam adhaerebit primae. Hoc secundo. Et, si repudiata uxore cum secunda contraxerit, etiam post baptismum

Up to this point, the question of polygamy in the Middle Ages was mainly a theoretical subject for discussion among theologians, but with the Church now present in territories with many Moslems, some of whom were polygamous, it became a practical missionary problem when they wanted to convert to Christianity.<sup>27</sup>

The bishop of Tiberias had worked hard to convert the local Moslem population, but in the end he found his efforts stymied by the marriage practices customary among Moslems, including prohibited degrees of consanguinity and affinity, which is the subject of the first paragraph. He asked the pope to be shown through apostolic writings whether pagans<sup>28</sup> who had married someone in prohibited degrees of relationship should, after their baptism, remain together or separate. Pope Innocent replied that they should remain united. The real concern of this thesis, however, is found in the second and third paragraphs.

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dimittet secundam, et adhaerebit primae repudiatae, etiamsi repudiata cum alio contraxisset; secus si fornicata fuisset. Hoc tertio.” (The English translation is divided into three distinct paragraphs for ease of discussion.)

<sup>27</sup> “*Gaudemus* was a response to a question from the bishop of Tiberias in Palestine. He 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 the second or third degrees would have to separate from their spouses as a condition of baptism.” MULDOON, “Missionaries and the Marriages of Infidels: The Case of the Mongol Mission,” pp. 127-128.

<sup>28</sup> The term “pagan” comes from the Latin word *paganus* meaning a civilian, or a resident of a rural area, and it came to mean a person who is not a Jew or a Christian (or in some usages a Muslim). Some scholars assert that because Christianity spread first in the cities, with rural areas the last to be converted, rural residents came to be equated with adherents of the old Roman religions. Others believe that the term was derived from the Christian’s understanding of himself/herself as a soldier of Christ, with others being civilians. See T. EARLY, “Pagan,” in P.K. MEAGHER, T.C. O’BRIEN, and C.M. AHERNE (eds.), *Encyclopedic Dictionary of Religion*, vol. O-Z, Washington, DC, The Sisters of St. Joseph of Philadelphia, Corpus Publications, 1979, p. 2643; and H. BOWDEN, “Paganism,” in J. BOWDEN et al. (eds.), *Christianity: The Complete Guide*, Toronto, Novalis, 2005, pp. 877-878.

The second paragraph concerns a pagan who has several wives. If such a pagan is converted to the faith, he is obliged to remain with his first wife. Nothing is said about what happens to the other wives, whether he must actually dismiss them from his household or just refrain from sexual relations with them. We only see in this brief statement of the law the concrete affirmation of the norm based on the divine law. The first marriage, presumably valid, is the only marriage, so the convert may only remain with the first wife.

Paragraph three deals with the situation of a man who repudiates a first wife and marries another. If he wants to convert to Christianity, he will have to dismiss the second wife and return to the first. This is consistent with Catholic teaching: no one is permitted to divorce his lawful wife and marry another (cf. Mt 19:9; Mk 10:11). The law here presents the ideal situation: the man should return to the first wife, and she should take him back. In the real world, this is not usually possible after both parties have divorced and remarried. The Christian ideal is here legislated in its stern essentials, but it is mitigated in the final clause of the third paragraph which appears to be a reference to the Pauline privilege. If the first wife committed fornication (i.e. adultery) through a second, invalid marriage, there would be little likelihood that she would want to abandon the second husband and return to the first. Thus, the privilege could have been employed since the first wife had “departed” from the union, that is, she did not want to be baptised or at least did not want to cohabit in peace with the baptised party without insult to the Creator (cf. I Cor 7:12-15). This interpretation is consistent with the tradition going back

to Saint Paul that non-sacramental marriages in certain situations are dissoluble in favour of the faith, a tradition explicitly seen elsewhere in the *Decretals*.<sup>29</sup>

### 3.2.2 – Three sixteenth-century papal constitutions

The period of the sixteenth century was characterized by world exploration, early colonisation, and missionary activities. Many areas were opened up to missionary activities during this century, and a great number of people, who had had no contact whatsoever with Christianity or the Church, learned of Christ for the first time.<sup>30</sup> Yet, the missionaries were faced with new situations unparalleled in earlier centuries, one of them being polygamy which was relatively prevalent.

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 peoples 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.<sup>31</sup>

The Church could not tolerate polygamy by Christians because this cultural practice is against her teaching. In order to solve the pastoral problems encountered, the missionaries appealed to the Holy See for guidance. Three of the popes of the sixteenth century, namely Paul III, Pius V, and Gregory XIII, responded positively to the appeal of the missionaries by respectively publishing three constitutions, *Altitudo, Romani Pontificis* and *Populis ac nationibus*, concerning the conversion of polygamists and the application of the Pauline privilege.

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<sup>29</sup> The *Decretals* acknowledged that a convert could remarry if the unbelieving spouse departed. See cc. 7-9, X, *de devortis*, iv, 19.

<sup>30</sup> BLUM, *Forms of Marriage: Monogamy Reconsidered*, p. 8.

<sup>31</sup> BURTON, *A Commentary on Canon 1125*, p. 25.

These documents were issued as constitutions as indications of their importance.<sup>32</sup> In the strict sense, the term “constitution” denotes a law given by the Supreme Pontiff.<sup>33</sup> Constitutions are given in the form of bulls and briefs. The constitution *Altitudo* is in the form of a bull while the constitutions *Romani Pontificis* and *Populis* are in the form of a brief.<sup>34</sup> They are laws and are applicable not only to simultaneous polygamy but also to successive polygamy.<sup>35</sup> Through these papal constitutions, the popes “gave broad faculties to the missions for dissolution of marriages in which one of the parties was not baptized or at least the parties had not lived together after both of them were baptized.”<sup>36</sup> These constitutions were not promulgated but were originally given as special faculties to certain missionaries and as privileges for the peoples of certain regions.<sup>37</sup>

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<sup>32</sup> “Apostolic Constitutions may be considered the most solemn form of legal document issued by the Pope in his own name. They deal with doctrinal or disciplinary matters, but are issued only in relation to very weighty questions. They are now generally reserved for acts of the Pope related to important matters regarding the Church universal or a particular Church, such as the erection of dioceses.” F.G. MORRISEY, *Papal and Curial Pronouncements: Their Canonical Significance in Light of the Code of Canon Law*, 2<sup>nd</sup> ed., Ottawa, Faculty of Canon Law, Saint Paul University, 2001, pp. 14-15.

<sup>33</sup> F.X. WERNZ-VIDAL, *Ius Canonicum: Normae Generales*, vol. I, Rome, Pontificia Universitas Gregoriana, 1938, no. 203, pp. 273-276.

<sup>34</sup> The bull is the more solemn form; it opens with the name of the pope, omitting the numeral, followed by *Episcopus Servorum Dei*. The brief is a less solemn form; it opens with the name of the pope and the numeral and closes with *Datum [...] sub annulo Piscatoris* together with the date. See BURTON, *A Commentary on Canon 1125*, pp. 129-130.

<sup>35</sup> VAN VLIET, *Marriage and Canon Law*, p. 190.

<sup>36</sup> KOWAL and WOESTMAN, *Special Marriage Cases and Procedures*, p. 73.

<sup>37</sup> BEAL, *CLSA Comm*, p. 1370.

### 3.2.2.1 – The constitution *Altitudo*

The constitution *Altitudo* was issued by Paul III on 1 June 1537.<sup>38</sup> It was the first constitution to address the matrimonial problems encountered by the missionaries in the mission lands. Its primary aim was to allow polygamists converted to Christianity and baptized to choose one of their wives and marry her when they could not recall whom they had married first.<sup>39</sup> The problem addressed was that of polygamous Indians of the New World who wanted to be baptized but were hesitant to decide which of their wives was the first and the only legitimate one.<sup>40</sup> By this constitution, the pope permitted the polygamist who wanted to convert to Christianity to choose whichever wife he preferred. The privilege was very broad because it allowed the convert to choose any woman to whom he had ever been legitimately married, in accordance with the local customs, and with no reference as to whether they were still living together at the time of his conversion or whether there were children by the other marriages. For the use of the favour, the pope laid down one essential condition, that is, that the man be unable to recall the first wife.<sup>41</sup>

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<sup>38</sup> PAUL III, Apostolic Constitution *Altitudo*, 1 June 1537, in *Codex iuris canonici, Pii X Pontificis Maximi iussu digestus, Benedicti Papae XV auctoritate promulgatus*, Rome, Typis Polyglottis Vaticanis, 1933, appendix, document IV.

<sup>39</sup> This means that he may choose from among those with whom he lived in a marital relationship, that is, after exchange of matrimonial consent but before his conversion; he may even take one of those he dismissed, provided the dismissed wife has not meanwhile entered upon a valid marriage with a third person. See VAN VLIET, *Marriage and Canon Law*, p. 162.

<sup>40</sup> Legitimate wife refers to the first wife a man has married, following the legal requirements of his society. BLUM, *Forms of Marriage: Monogamy Reconsidered*, p. 3, footnote 2.

<sup>41</sup> BURTON, *A Commentary on Canon 1125*, p. 143. The first wife referred to in this constitution means the woman with whom the convert first exchanged true matrimonial consent, not the one with whom he first had a relationship of a marital nature. See also G. PAYEN, *De*

However, we judge that this should be observed in their marriages: that those who according to their custom had several wives before their conversion and who do not recall the one they took first, upon their conversion to the faith, may choose one of these, whom they wish, and with her they are to contract marriage, according to custom, *per verba de presenti*. Those, however, who recall the one they married at first are to retain her, after the others have been dismissed. And to them we grant that those related even in the third degree whether of consanguinity or affinity are not excluded from contracting marriage.<sup>42</sup>

If the convert was not able to remember who the first wife was, then he was allowed to choose any among his other wives, but if he remembered who the first wife was, he had to choose her, unless it was otherwise certain that the first marriage was invalid.<sup>43</sup>

### 3.2.2.2 – The constitution *Romani Pontificis*

The second constitution dealing with polygamous converts was *Romani Pontificis* issued by Pius V on 2 August 1571,<sup>44</sup> thirty-four years after *Altitudo*. The context for this constitution is summed up as follows.

During the pontificate of Pope St. Pius V it was discovered that the infidel Indians had many wives whom they repudiated for the slightest reason. Upon their conversion they were permitted to remain with the wife who received baptism with them. Frequently it happened that this baptized wife was really not the first wife and hence many missionary Bishops and priests were dubious about the validity of the marriages.<sup>45</sup>

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*Matrimonio in missionibus ac potissimum in Sinis tractatus practicus et casus*, vol. II, Zi-ka-wei, in Typographia T'ou-sè-wè, 1929, no. 2405, pp. 720.

<sup>42</sup> Super eorum vero matrimoniis hoc observandum decernimus, ut qui ante conversionem plures iuxta eorum mores habebant uxores, et non recordantur quam primo acceperint, conversi ad fidem, unam ex aliis accipiant, quam voluerint, ut cum ea matrimonium contrahant per verba de praesenti, ut moris est; qui vero recordantur quam primo acceperint, aliis dimissis, eam retineant. Ac eis concedimus, ut coniuncti etiam in tertio gradu tam consanguineitatis, quam affinitatis, non excludantur a matrimoniis contrahendis donec huic S. Sedi super hoc aliud visum fuerit statuendum. English trans. in DOHENY, *Canonical Procedure in Matrimonial Cases*, p. 551.

<sup>43</sup> F.F. WOODS, *The Constitutions of Canon 1125 and Their Application in the United States*, Milwaukee, Wisconsin, The Bruce Publishing Company, 1935, pp. 50-51.

<sup>44</sup> PIUS V, Apostolic Constitution *Romani Pontificis*, 2 August 1571, appendix to *Codex iuris canonici*, document V.

<sup>45</sup> See DOHENY, *Canonical Procedure in Matrimonial Cases*, p. 553.

Some missionaries were permitting a polygamist to marry one of his wives who wished to receive the sacrament of baptism along with him. They did this without previously interpellating his first wife.<sup>46</sup> Often the wife who wished to be baptized with the convert was not the first wife. This situation created a problem which brought forth worries among the missionaries about the validity of the marriages of many of their converts.<sup>47</sup> Pope Pius V recognized the difficulty that would arise if such couples were forced to separate; to solve the problem, he issued the constitution *Romani Pontificis* to allow the converted and baptized polygamist to keep the wife baptized with him and to remain living together as husband and wife,<sup>48</sup> even if she was not the first wife.

We, therefore, benignly wishing in Our paternal affection to show consideration for the situation of these Indians and to free the Bishops and sacred ministers from anxiety, of Our own initiative and from certain knowledge and with the fullness of Our Apostolic Power, do hereby declare on Apostolic Authority that the Indians already baptised and those to be baptised in the future may remain with that wife who has been or will be baptised with them, as with their lawful wife, the other wives having been dismissed, and We affirm that such a marriage between them is legitimately established.<sup>49</sup>

The constitution says nothing about the necessity of taking the first wife or about interpellations, and it declares that the marriage with the wife so chosen is licit and

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<sup>46</sup> BURTON, *A Commentary on Canon 1125*, pp. 56-155.

<sup>47</sup> See KOWAL and WOESTMAN, *Special Marriage Cases and Procedures*, pp. 73-74.

<sup>48</sup> See BURTON, *A Commentary on Canon 1125*, pp. 56-155; see also KOWAL and WOESTMAN, *Special Marriage Cases and Procedures*, p. 74.

<sup>49</sup> Ideo Nos, statui dictorum Indorum paterno affectu benigne consulere, atque ipsos Episcopos et ministros ab huiusmodi scrupulis eximere volentes, motu proprio et ex certa scientia Nostra, ac apostolicae potestatis plenitudine, ut Indi, sic ut praemittitur baptizati, et in futurum baptizandi, cum uxore, quae cum ipsis fuerit baptizata et baptizabitur, remanere valeant, tanquam cum uxore legitima, aliis dimissis, apostolica auctoritate, tenore praesentium, declaramus, matrimoniumque huiusmodi inter eos legitime consistere. English trans. in DOHENY, *Canonical Procedure in Matrimonial Cases*, p. 553.

valid.<sup>50</sup> Although renewal of consent is not explicitly mentioned in the constitution, this renewal must be made.<sup>51</sup>

While Pope Paul III laid down one condition in the constitution *Altitudo*, Pope Pius V in the constitution *Romani Pontificis* laid down three conditions to be observed for the use of the constitution. First, the first wife or husband to be converted is certainly known and their marriage must have taken place when both were unbaptized. If the polygamist does not remember who the first wife is, *Altitudo* can be used. Second, it would be very hard to separate the convert polygamist from the partner who will be baptized with him before the marriage.<sup>52</sup> Reasons why it would be very hard to separate include the existence of children from this union, love for the partner, abhorrence for the first wife, and doubt concerning the validity of the consent given at the time the marriage was contracted.<sup>53</sup> Third, the first legitimate wife has not yet been baptized or expressed her desire to be baptized with him.<sup>54</sup> “Even when the first legitimate wife can easily be found, the privilege can be used so long as the wife chosen by the convert will be baptized with him and his certainly legitimate wife does not offer herself for baptism.”<sup>55</sup> Regarding this condition, others are of the opinion that the convert can use the

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<sup>50</sup> T.L. BOUSCAREN, A.C. ELLIS and F.N. KORTH, *Canon Law: A Text and Commentary*, 4<sup>th</sup> rev. ed., Milwaukee, The Bruce Publishing Company, 1966, p. 623.

<sup>51</sup> See BURTON, *A Commentary on Canon 1125*, p. 163.

<sup>52</sup> Cf. *ibid.*, p. 162; WOODS, *The Constitutions of Canon 1125*, pp. 52-53.

<sup>53</sup> WOODS, *The Constitutions of Canon 1125*, pp. 52-54; P. RAYANNA, “De Constitutione S. Pii Papae V *Romani Pontificis* (3 Augusti 1571),” in *Periodica de re morali, canonica, liturgica*, 28 (1939), pp. 199-202.

<sup>54</sup> Cf. BURTON, *A Commentary on Canon 1125*, p. 160; WOODS, *The Constitutions of Canon 1125*, p. 54.

<sup>55</sup> WOODS, *The Constitutions of Canon 1125*, p. 54.

constitution even if the first wife has been baptized or expressed her desire to be baptized with him. The latter of these two views is logically and juridically tenable.<sup>56</sup> However, when using the constitution, the moral, social, and economic condition of the first wife should be kept in mind and scandal avoided.

*Altitudo* is applicable to polygamists, simultaneous or successive, when the first spouse is unknown. *Romani Pontificis* is applicable to the same, even if the first wife is known and could be interpellated, provided it is very hard for him to be separated from the woman who wants to be with him. Although both constitutions directly granted to the polygamist convert the favour of the dissolution, Ordinaries are advised, if possible, to establish rules to assure their prudent and licit use.<sup>57</sup>

### 3.2.2.3 – The constitution *Populis ac nationibus*

The constitution *Populis ac nationibus* was issued by Gregory XIII on 25 January 1585.<sup>58</sup> This was the third and final constitution published in the sixteenth century which tried to solve the problems encountered by missionaries concerning the conversion of polygamists. It was issued approximately forty-eight years after *Altitudo* and fourteen years after *Romani Pontificis*. The motive behind the publication of this constitution was the pastoral problem caused by Africans who were taken as slaves and separated from their husbands or wives.

Sometimes the slave traders paid no attention to whether or not a captured slave was married. Indentured spouses were often separated by their masters, and later at the time of the conversion of one spouse, it was impossible to know if the

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<sup>56</sup> DOHENY, *Canonical Procedure in Matrimonial Cases*, p. 556.

<sup>57</sup> BURTON, *A Commentary on Canon 1125*, p. 163.

<sup>58</sup> GREGORY XIII, “Apostolic Constitution *Populis*, 25 January 1585,” appendix to *Codex iuris canonici*, document VI.

other spouses had been converted as well in the meantime. If the other spouse was already a Christian and not remarried, then it was impossible to apply the Pauline privilege and permit the second spouse to marry someone else. Their original customary marriage had become *ratum* at the time of the second spouse.<sup>59</sup>

In this case, the Pope used a power to dissolve consummated marriages between infidels<sup>60</sup> who had later become Christians, but this was not an application of the Pauline privilege. The dissolution is allowed in a marriage that is *consummatum et ratum*, which is quite different from a *ratum et consummatum* marriage.<sup>61</sup> Through this constitution, local ordinaries, pastors, and confessors of the Society of Jesus were granted special faculties to dispense African Christians, who before their conversion and baptism had contracted marriage, now to marry another Catholic.<sup>62</sup> They were granted the power to dispense from the interpellations on condition that, after a summary and extrajudicial investigation, it was clear that the interpellations required by law are impossible, or the spouse to be interpellated failed to reply within the stated or fixed time. This is summarized in the following text of the constitution *Populis*:

Therefore, realizing that such marriages contracted among infidels, even though they are true marriages, are still not considered so firmly ratified that they cannot be dissolved in case of necessity, We, compassionating with paternal solicitude the weakness of these peoples, do hereby in virtue of our Apostolic authority, grant to all and each of the local Ordinaries and pastors of the afore-named places, and to the priests of the Society of Jesus who are approved for hearing

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<sup>59</sup> BLUM, *Forms of Marriage: Monogamy Reconsidered*, p. 11; cf. BURTON, *A Commentary on Canon 1125*, p. 65.

<sup>60</sup> In contemporary missiology, the phrase “infidel” is offensive. Therefore, the word “non-Christian” can be used instead of “infidel.” See P. MANNA, *The Conversion of the Pagan World: A Treatise upon Catholic Foreign Missions*, Boston, Society for the Propagation of the Faith, 1921, p. 26.

<sup>61</sup> See BURTON, *A Commentary on Canon 1125*, p. 72; see also KEARNEY, *The Principles of Canon 1127*, p. 131.

<sup>62</sup> See KOWAL and WOESTMAN, *Special Marriage Cases and Procedures*, p. 74; see also BOUSCAREN, ELLIS and KORTH, *Canon Law: A Text and Commentary*, p. 624.

confessions by the Superiors of that same Society who for the time being are being sent or admitted to the afore-named countries, full power to dispense any of the Christians of either sex, natives of the afore-mentioned countries, who contracted marriage before receiving baptism but who afterwards were converted to the faith, so that any of them, despite the survival of and even without the consent of or even without awaiting the reply of the infidel consort, may contract marriage with any Catholic, even of another rite,<sup>63</sup> and solemnize it before the Church, consummate the same by conjugal intercourse and remain lawfully in such wedlock for life: provided that it be established, even from a summary and extrajudicial investigation that the afore-mentioned absent spouse cannot be lawfully apprised, or having been duly apprised, failed to signify his (or her) intention within the time stipulated in the notification. And We decree that these same marriages are never to be rescinded, but shall remain valid and firm and the offspring therefrom shall be legitimate, even though it afterward be ascertained that the former infidel consorts were prevented by some just cause from signifying their intention, and even that, at the time of the second marriage, they had already been converted to the faith.<sup>64</sup>

According to this constitution, the convert may marry a Catholic. This marriage is valid, even if it appears later that the infidel party was justly prevented from answering or was

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<sup>63</sup> Woods uses the phrase *alias tamen rite contrahere* as the preferable Latin text. This would necessitate a corresponding change in the translation. Therefore, the Latin words: *cum quovis fidei, alias tamen rite contrahere*, have the sense that outside of the privilege granted, all other matters in regard to the new marriage should be observed correctly; that is, according to the general laws of the Church. WOODS, *The Constitutions of Canon 1125*, p. 70.

<sup>64</sup> Idcirco Nos, attendentes huiusmodi connubia inter infideles contracta, vera quidem, non tamem adeo rata censeri, ut necessitate suadente dissolvi non possint, talium gentium infirmitatem paterna pietate miserati, universis et singulis dictorum locorum Ordinariis et parochis, et presbyteris Societatis Iesu ad confessiones audiendas ab eiusdem Societatis Superioribus approbatis et ad dictas regiones pro tempore missis vel in allis admissis, plenam auctoritate Apostolica, tenore praesentium, concedimus facultatem dispensandi cum quibuscumque utriusque sexus Christifidelibus incolis dictarum regionum et serius ad fidem conversis qui ante baptismum susceptum matrimonium contraxerunt, ut eorum quilibet, superstite coniuge infideli, et eius consensu minime requisito, aut responso non expectato, matrimonia cum quovis fidei alterius etiam ritus contrahere et in facie Ecclesiae solemnizare, et in eis postea carnali copula consummatis quoad vixerint remanere licite valeant: dummodo constet etiam summarie et extrajudicialiter, coniugem, ut praefertur, absentem moneri legitime non posse, aut monitum intra tempus in eadem monitione praefixum suam voluntatem non significasse; quae quidem matrimonia, etiamsi postea innotuerit coniuges priores infideles suam voluntatem, iuste impeditos declarare non potuisse, et ad fidem etiam tempore transacti secundi matrimonii conversos fuisse, nihilominus rescindi nunquam debere, sed valida et firma, prolemque inde suscipiendam legitimam fore decernimus. Non obstantibus. English trans. in DOHENY, *Canonical Procedure in Matrimonial Cases*, p. 557.

baptized at the time of the new marriage. The favour can be granted also to non-polygamous parties.

Like Pope Pius V in *Romani Pontificis*, Pope Gregory XIII in *Populis ac nationibus* laid down three conditions which are necessary for the use of the constitution. First, the interpellations are impossible if the whereabouts of the former spouse is unknown. This applies if the length of the journey causes difficulty or if one has to go through hostile territory.

The impossibility may arise from the nature of the territory to which the infidel has been taken—a hostile one—so that not even an envoy will be admitted to carry the interpellation. Or it may arise from the fact that the place of residence of the infidel is entirely unknown, and the convert has no possible way of making the interpellations.<sup>65</sup>

Not only a physical but also a moral impossibility of making the interpellations is sufficient.<sup>66</sup> Second, the absent spouse fails to answer within the prescribed time after having been interpellated. A period of one month is suggested.<sup>67</sup> Third, either of the two

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<sup>65</sup> WOODS, *The Constitutions of Canon 1125*, p. 66. “The question of the distance necessary, before the privileges of the constitution can be used, has created much doubt in the minds of missionaries, but the Holy Office has always avoided giving a definitive answer. In its response, it simply states that, considering the person, the circumstances, and the cost, the distance must be sufficient to cause a grave inconvenience. This should be weighed in relation to the resources of the convert in question, and not of the ordinary or of the missionaries.” *Ibid.*, pp. 66-67. “*Illam longitudinem sufficere, quae perpensis omnibus locorum et rerum adiunctis, magnam affert difficultatem.*” SACRA CONGREGATIO SANCTUM OFFICIUM, 29 November 1882, in CONGREGATION FOR THE PROPAGATION OF THE FAITH, *Collectanea S. Congregationis de Propaganda Fide: seu decreta instructiones rescripta pro apostolicis missionibus*, vol. II, Rome, Ex Typographia Polyglotta, 1907, no. 1581, p. 168.

<sup>66</sup> BURTON, *A Commentary on Canon 1125*, p. 169. The Holy See was requested to give an authentic interpretation of the words *monere nequeat* used in the constitution of Gregory XIII and also to state whether a physical impossibility had to be present or whether moral impossibility was sufficient for the application of the constitution. Though the Holy Office did not reply, it appears from the wording of the constitution that moral impossibility is not sufficient. See WOODS, *The Constitutions of Canon 1125*, p. 66; see also PAYEN, *De Matrimonio in missionibus ac potissimum in Sinis tractatus practatus et casus*, no. 2409, pp. 726-728.

<sup>67</sup> See D.J. GREGORY, *The Pauline Privilege: An Historical Synopsis and Commentary*, Canon Law Studies, 68, Washington, DC, Catholic University of America, 1931, p. 92.

foregoing conditions should be clear from a summary and extrajudicial investigation. A written statement should be made for the ecclesiastical records. However, this statement is not required for the validity of the dispensation when the impossibility of making the interpellations is evident or when it is certain that no answer was received.<sup>68</sup>

There are several differences between *Populis ac nationibus* and the other two preceding constitutions, *Altitudo* and *Romani Pontificis*. First, *Populis ac nationibus* is applicable both to polygamists and to non-polygamous parties. Second, it can be used for the convert to marry a Catholic, not necessarily one of his former consorts. (In *Romani Pontificis* the choice is restricted to one of his former wives to be baptized with him; in *Altitudo* the choice is restricted to one of his consorts even if not baptized). Third, it is expressly stated (unlike *Romani Pontificis*) that the new marriage is valid even if it appears later that the former spouse was baptized at the time of the new marriage or was justly prevented from answering the interpellations. Fourth, a summary and extrajudicial process is required, although not for the validity of the dispensation, to prove that the conditions are fulfilled. Fifth, the power to dispense from the interpellations is granted to certain persons, and not *ipso iure* to the party concerned as in the two preceding constitutions.<sup>69</sup>

All three constitutions were issued for different purposes related to the conversion of polygamists. Although they differ from one another in one way or another, all of them were favourable laws. They were issued for situations where the Pauline privilege could

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<sup>68</sup> BURTON, *A Commentary on Canon 1125*, p. 171. Cf. WOODS, *The Constitutions of Canon 1125*, pp. 53-54.

<sup>69</sup> VAN VLIET, *Marriage and Canon Law*, pp. 196-197.

not be used and were granted for converts who before their baptism were married to non-baptized persons. In these, the Church was responding to the spiritual needs of the converts in mission countries. Through these constitutions, the supreme legislator granted the favour of dissolving the original customary marriages in order to permit the newly baptized to enter into a Christian marriage with another spouse.<sup>70</sup>

These constitutions represent a major attempt to solve matrimonial problems presented by polygamous societies. They reveal the efforts made by the three popes in adapting the good news of the Gospel to the situations, traditions, and requirements of the local cultures. For example, in the constitution *Altitudo*, Pope Paul III spoke of his great paternal affection for the new members of the flock of Christ. Like Saint Peter, whose successor he was, he compared the new converts to newborn children who are fed with milk because they are not yet ready for solid food.<sup>71</sup>

Pope Pius V noted the custom of the Roman Pontiffs to provide instruction and guidance in matters such as the conversion of pagans, lest scruples prevent them from profiting from those opportunities which would be helpful for their conversion. He did not want the doubts, which some raised about the interpretation of Paul III's constitution, to lead to a situation in which some converts were denied the use of the favourable laws, which the popes had provided.<sup>72</sup> Likewise, in his constitution, *Populis ac nationibus*,

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<sup>70</sup> BLUM, *Forms of Marriage: Monogamy Reconsidered*, p. 11.

<sup>71</sup> The Pope notes: "ut non omnia, quae per orbem Ecclesia iam firmata custodit, illis custodienda mandemus, sed tamquam parvulis in Christo, aliqua paterno affectu indulgeamus confovere." See P. GASPARRI (ed.), *Codicis iuris canonici fontes*, vol. I, Rome, Typis polyglottis Vaticanis, 1926, p. 141; see also BURTON, *A Commentary on Canon 1125*, p. 183.

<sup>72</sup> BLUM, *Forms of Marriage: Monogamy Reconsidered*, p. 12.

Gregory XIII spoke of the great difficulties faced by slaves on account of which he had been moved to grant special legislation in their favour.

The objectives of these three constitutions can be summarized as follows. The constitution *Altitudo* allowed the polygamists, converted to Christianity and baptized, to choose one of his wives if he could not remember who his first wife was. The constitution *Romani Pontificis* permitted the baptized polygamist convert to keep the wife baptized with him, even if she was not the first wife. The constitution *Populis ac nationibus* gave missionaries the faculty to dispense baptized slaves or captives from the obligation of conducting the interpellation of their former spouse before entering a second marriage with another Christian and said that this second sacramental marriage, once consummated, remained binding even if later it was discovered that the original valid marriage had been made sacramental by the baptism of both spouses.<sup>73</sup>

All three documents, considered together, show that there are several constants or guiding principles that the three popes seemed to be following. First, they recognized the validity of the customary marriages as traditionally contracted in the various cultures. Second, they accepted and applied the practice of their predecessors in permitting the application of the Pauline privilege. They had a tradition to follow in this regard, but when they were faced with a new situation not encountered before, they did not hesitate

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<sup>73</sup> For detailed information regarding the historical, pastoral and theological context of these constitutions, see J.J. KOURY, *Three Sixteenth Century Constitutions on the Dissolution of Marriage: A Study in Lawmaking and the Uses of Law*, Canon Law Studies, 517, Washington, DC, The Catholic University of America, 1985, pp. 28-202.

to act. Lastly, they exercised what later came to be recognized as the “papal authority” to dissolve marriages *in favorem fidei*.<sup>74</sup>

### 3.2.3 – Canon 1125 of the 1917 Code

Canon 1125 of the 1917 Code states:

Those provisions which concern marriage in the Constitutions, *Altitudo*, of Paul III, 1 June, 1537; *Romani Pontificis*, of St. Pius V, 2 Aug., 1571; and *Populis*, of Gregory XIII, 25 Jan., 1585; and which were written for particular places, are extended to other regions also in the same circumstances.<sup>75</sup>

The 1917 Code codified these three constitutions (as well as traditional Church legislation on the Pauline privilege). In other words, the three sixteenth papal constitutions were incorporated into the *CIC/1917* by this canon.<sup>76</sup> The canon extended the privileges granted in the papal constitutions enacted in the sixteenth century that formerly had only applied to missionary countries.

Though these three constitutions had been written for particular places, they were extended by the 1917 Code beyond their original territorial limitations to other territories in the same circumstances (*in eisdem adiunctis*).<sup>77</sup> There are two possible interpretations

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<sup>74</sup> BURTON, *A Commentary on Canon 1125*, p. 75. The concessions of the popes in the three constitutions are laws which contain favours to converts in the form of exceptions from a provision of the natural law. A law that establishes an exception to the ordinary rule is a *ius singulare*. When the exception is favourable it is a *ius favorabile*. The constitutions are *iura singularia favorabilia*. A *ius singulare* constitutes something favourable for the benefit of a class of persons, things, or affairs. *Ibid.*, pp. 130-131.

<sup>75</sup> “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 quaque pro peculiaribus locis scripta sunt, ad alias quoque regiones in eisdem adiunctis extenduntur.” *CIC/17*, p. 429; English trans. in E.N. PETERS (ed.), *The 1917 Pio-Benedictine Code of Canon Law*, San Francisco, Ignatius Press, 2001, p. 387.

<sup>76</sup> Cf. FORNÉS, *Exegetical Comm*, p. 1560.

<sup>77</sup> DOYLE, *CLSA Comm1*, p. 817.

of these words. First, the constitutions were extended only to other regions where the same circumstances now exist, for example, the forcible separation of husband and wife by slave raiders. However, this interpretation would deprive the canon of any wide application in other countries. Second, the words “in the same circumstances” refer to individual cases. This interpretation, which we believe to be correct, would make the constitutions applicable anywhere in the world in any case where the required circumstances are realized.<sup>78</sup> Therefore, the extension made by this canon was not for any particular Church but rather for the universal Church. The constitutions mentioned in the canon could be used anywhere in the world if the circumstances in individual cases are the same as those required for use in the countries of the original concession. The concessions granted by the constitutions are applicable in any country or territory for cases in which the circumstances are the same as those for which the legislation was originally given.<sup>79</sup>

The provisions of the constitutions are neither restricted nor reserved to those countries alone where polygamist marriages widely exist. The extension is rather to

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<sup>78</sup> Cf. WERNZ, *Ius canonicum: Ius Matrimoniale*, p. 766; WOODS, *The Constitution of Canon 1125*, pp. 73-82; BOUSCAREN, ELLIS and KORTH, *Canon Law: Text and Commentary*, p. 624.

<sup>79</sup> See WINSLOW, *The Pauline Privilege and the Constitutions of Canon 1125*, p. 53; see also BURTON, *A Commentary on Canon 1125*, pp. 113-116; WOODS, *The Constitution of Canon 1125*, pp. 74-77.

For instance, in 1777, the Constitution, *Populis*, was extended to the mission in China and afterwards to all the missions of Asia. DOHENY, *Canonical Procedure in Matrimonial Cases*, p. 550, footnote 2.

Regarding the extension of the constitutions to other countries, Burton states: “When issued, the constitutions were particular legislations for determined districts: now by virtue of canon 1125 the legislator has extended to the whole world their provisions regarding marriage and consequently they are now three universal laws. Moreover, they are special laws as opposed to general laws, since they are made for a class of the faithful, namely, for converts who before baptism had married an unbaptized person; they are singular laws as opposed to common, since they contain exceptions to the ordinary rule.” BURTON, *A Commentary on Canon 1125*, p. 130.

every country, provided the necessary conditions are found in individual cases. Hence, according to the canon, the three constitutions may be applied anywhere or in any country throughout the world, whenever occasion demands, for the spreading of the Catholic faith, provided that there are cases in such circumstances.<sup>80</sup> However, there are many countries in which the application would be rare because there are no practical cases.

These privileges could be applied either to simultaneous or successive polygamy,<sup>81</sup> depending on whether the infidel had lived with all of his wives at the same time or with only one at a time, that is, several wives successively.<sup>82</sup> Therefore, any divorced man or woman, who found the necessary conditions fulfilled in his or her case, could have made use of the concessions after conversion and baptism.<sup>83</sup>

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<sup>80</sup> See WOODS, *The Constitution of Canon 1125*, p. 85.

<sup>81</sup> G. VROMANT, "De Dispensatione ab interpellationibus in ordine ad privilegium fidei: Applicationes practicae canonis 1125," in *Periodica de re morali, canonica, liturgica*, 20 (1931), p. 109.

<sup>82</sup> See WOODS, *The Constitution of Canon 1125*, p. 87. In the Encyclical *Casti connubii*, Pius XI made the distinction between successive and simultaneous polygamy: "Nor did Christ our Lord wish only to condemn any form of polygamy or polyandry, as they are called, whether successive or simultaneous," PIUS XI, Encyclical Letter on Christian Marriage *Casti Connubii*, p. 21.

<sup>83</sup> WOODS, *The Constitution of Canon 1125*, p. 88. He concludes by stating:

"The privileges of these constitutions [*Altitudo, Romani Pontificis and Populis ac nationibus*] should be used with great discretion and prudence so that the purpose for which they were given and extended; namely, the spreading of the Catholic religion and the salvation of souls, may be accomplished in an edifying and dignified manner. [...]

"When, however, the Catholic Faith will be benefited by their use, when conversions will be increased, and when no scandal will be given, the privileges should be used freely. By the extension of Canon 1125 to the Universal Church, it is evident that it is the desire of the Holy See that these privileges be used freely and without scruple, to spread the faith of Christ and the Catholic religion over the face of the earth." *Ibid.*, pp. 98-99.

### 3.2.4 – Canon 1148

Canon 1148 of the 1983 Code states:

§1. When an unbaptized man who simultaneously has a number of unbaptized wives has received baptism in the Catholic Church, if it would be a hardship for him to remain with the first of the wives, he may retain one of them, having dismissed the others. The same applies to an unbaptized woman who simultaneously has a number of husbands.

§2. In the cases mentioned in §1, when baptism has been received, the marriage is to be contracted in the legal form, with due observance, if need be, of the provisions concerning mixed marriages and of other provisions of law.

§3. In the light of the moral, social and economic circumstances of place and person, the local Ordinary is to ensure that adequate provision is made, in accordance with the norms of justice, Christian charity and natural equity for the needs of the first wife and of the others who have been dismissed.<sup>84</sup>

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<sup>84</sup> The Latin text of c. 1148 of the 1983 Code reads as follow: §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, quae plures maritos non baptizatos simul habeat.

§2. In casibus de quibus in §1, matrimonium, recepto baptismo, forma legitima contrahendum est, servatis etiam, si opus sit, praescriptis de matrimoniis mixtis et aliis de iure servandis.

§3. Ordinarius loci, praë oculis habita condicione morali, sociali, œconomica locorum et personarum, curet ut primæ uxoris ceterarumque dimissarum necessitatibus satis provisum sit, iuxta normas iustitiæ, christianæ caritatis et naturalis æquitatis.

*CCEO* c. 859, the parallel canon in the Eastern Code, states:

§1. A non-baptized man who at the same time has several non-baptized wives, after having received baptism in the Catholic Church, if it is difficult to remain with the first, can keep one of them while dismissing the others; the same is true for a non-baptized woman, who at the same time has several non-baptized husbands.

§2. In this case the marriage is to be celebrated according to the form prescribed by law while observing the other requirements of law.

§3. After considering the moral, social, and economic conditions of the place and of the persons, the local hierarch is to take care that sufficient provision is made in accordance with the norms of justice, charity, and equity for the needs of those who are dismissed. *CCEO*, pp. 310-311; English trans. in *Code of Canons of the Eastern Churches, Latin-English Edition*, New English trans., Prepared under the auspices of the Canon Law Society of America, Washington, DC, Canon Law Society of America, 2001, p. 419.

The chief difference between the two Codes is that, in the *CCEO*, it speaks not only of the dismissed wives but the spouses in general, that is, “those who are dismissed.” This means that even the dismissed husbands are included in the dismissal case while the same paragraph of the Latin Code speaks specifically of the dismissed wives, that is, “the first wife and of the others who have been dismissed.”

This canon concerns the case of the convert who has several unbaptized husbands or wives and provides for the dissolution *a lege* of their non-sacramental marriage in the situation indicated.<sup>85</sup> Unlike c. 1125 of the 1917 Code, it does not retain intact the three sixteenth-century papal constitutions (*Altitudo*, *Romani Pontificis*, and *Populis ac nationibus*). Rather, these constitutions are abrogated due to their integral reordering (c. 6, §1, 4<sup>o</sup>) by c. 1148 (and c. 1149) of the 1983 Code. Nevertheless, c. 1148 of the 1983 code repeats the essential part of c. 1125 of the 1917 code. It is a practical refinement of the provision of the constitutions *Altitudo* and *Romani Pontificis*, and it incorporates some of their principles as well as the principle of the Pauline privilege.<sup>86</sup> The canon focuses only on the phenomenon of an unbaptized person who simultaneously has more than one unbaptized spouse.<sup>87</sup> The aim of c. 1148, as was that of *Romani Pontificis*, is to allow an unbaptized person, who has several spouses and finds it difficult to remain with the first, to contract a valid marriage with any one of the other spouses if this would facilitate the reception of baptism. However, there is a difference between the concession granted by *Romani Pontificis* and that of c. 1148. Whereas the concession of *Romani Pontificis* was used also in cases of successive polygamy, that is, a person had several spouses but not at the same time—had married, divorced, remarried, divorced, etc—the

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<sup>85</sup> “According to common doctrine, the dissolution of the natural bond of marriage contemplated in this canon entails an exercise of the special ministerial power of the Roman Pontiff in *favour of the faith* of the party subsequently baptized. The Roman Pontiff exercises this power by means of general law applicable to all those cases that meet the requirements of the canon. The dissolution *in favour of the faith* contemplated in this canon applies only when a person was living in polygamy or polyandry and is subsequently baptized, and when the other spouses are also unbaptized.” GRAMUNT, HERVADA and WAUCK, *Canons and Commentaries on Marriage*, p. 89.

<sup>86</sup> DOYLE, *CLSA Comm1*, p. 817.

<sup>87</sup> FORNÉS, *Exegetical Comm*, p. 1562.

concession of c. 1148 can only be used in cases of simultaneous polygamy, that is, the person is living with several spouses at the same time.<sup>88</sup>

There are four conditions for the use of this favour. The first is that there be a polygamous marriage contracted by the convert partner with a number of unbaptized spouses before his or her baptism. This first requirement means that the convert partner must have exchanged matrimonial consent with each one of the spouses, that is, he or she is married to each of the spouses even though invalidly, except for the first and true spouse. If one of the several spouses has received baptism, but the person who has these spouses wants to contract marriage with one of the others who is not baptized, the concession of c. 1148 cannot operate. The case could be sent to Rome for dissolution in favour of the faith by special concession.<sup>89</sup> Second, the polygamy must be simultaneous, that is, the consent once given still persists with each of the spouses. Third, it must be a hardship for the convert partner to remain with the true spouse. This means that there must be a significant reason why the convert partner would find it difficult to remain with the true spouse, for example, the latter has no children while one of the others has children who are still young. If there is insoluble doubt regarding the fulfilment of any of these requirements, c. 1150 in its second application can be used to consider it as fulfilled and thus open the way to the use of the concession. Fourth, there must be the baptism of the convert partner in the Catholic Church or reception into the full communion of the

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<sup>88</sup> G. TAYLOR and E. DE BEKKER, *Parish Priests and Marriage Cases*, rev. ed. according to the new Code, Bangalore, Theological Publications in India, 1986, pp. 151-152.

<sup>89</sup> *Ibid.*, pp. 152 and 154. Cf. G. GIROTTI, "La procedura per lo scioglimento del matrimonio nella fattispecie del 'privilegio paolino'," in *I procedimenti speciali nel diritto canonico*, Studi giuridici, no. 27, Vatican City, Libreria editrice Vaticana, 1992, p. 173.

Catholic Church if this partner was already baptised (after his marriages) in a non-Catholic church.

Paragraph one of the canon, which is specifically based on the provisions of the constitutions *Altitudo* and *Romani Pontificis*,<sup>90</sup> states that the other spouses are to be dismissed. This means that the convert cannot live with them anymore as husband and wife. It does not mean that they cannot form part of the larger household, especially if they are elderly or sick. Therefore, to prevent them from being exposed to penury or dishonour, they can form part of the household provided that the proximate danger of sin and scandal are removed.<sup>91</sup>

Paragraph two concerns the new marriage. The convert who wishes to use this privilege is required by the law to contract marriage with his or her chosen spouse according to a legitimate form recognised in canon law. Because this privilege extends only to those who have received baptism in the Catholic Church, the legitimate form is usually the canonical form.<sup>92</sup> However, if the chosen spouse decides not to be baptized or to be baptized in a non-Catholic Church, a dispensation from the canonical form could be granted to permit this marriage to be contracted according to some other legitimate form

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<sup>90</sup> BEAL, *CLSA Comm2*, p. 1371.

<sup>91</sup> Cf. Reply of the Holy Office to the Apostolic Delegate for Southern Africa, 6 May 1939 [Prot. N. 82m/36]. As quoted in A. ABATE, *Il matrimonio nell attuale legislazione canonica*, Brescia, Paideia Editrice, 1979, p. 289.

<sup>92</sup> Cf. canonical form of marriage (cc. 1108-1114); extraordinary canonical form (cc. 1116-1117); dispensation from canonical form (c. 1079); canonical form of a mixed marriage (c. 1127, §1); dispensation from canonical form for a mixed marriage (c. 1127, §2); canonical form of a marriage celebrated in secret (cc. 1130-1133); canonical form in the marriage of one using the Pauline privilege (c. 1148, §2); canonical form in a simple validation (cc. 1158; 1160); canonical form in a retroactive validation (cc. 1161; 1163, §1).

(c. 1127, §2).<sup>93</sup> The concession is to contract a valid marriage with one of the spouses to whom the convert partner is invalidly married. In other words, if the prospective convert wants to marry someone other than one of the spouses, the concession of c. 1148 cannot operate. This type of case could, however, be sent to the Holy See for dissolution in favour of faith by special concession.<sup>94</sup>

Matrimonial consent is to be exchanged in the legitimate form, that is, the form required by the Church law. Even if the person chooses to remain with the first spouse, consent is to be renewed according to canonical form after the person's baptism.<sup>95</sup> *Per se*, such a renewal of consent is not necessary as long as it is clear which of the spouses has been chosen since the naturally sufficient consent already exchanged with the chosen spouse could be presumed to continue. However, it is a prudent requirement that the consent be renewed,<sup>96</sup> as the first marriage may well have been invalid due to an intention against unity (c. 1101, §2).

If the chosen spouse with whom the new marriage is to take place remains unbaptized or receives baptism in a non-Catholic Church, then the required dispensation from disparity of cult or permission to marry a baptized non-Catholic is to be obtained. *Per se*, there would seem to be no need for a specific dispensation from the impediment of disparity of cult or permission for marriage with a baptized non-Catholic since this should be seen as implicit in the concession to choose one of the spouses regardless of

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<sup>93</sup> BEAL, *CLSA Comm2*, p. 1371.

<sup>94</sup> TAYLOR and DE BEKKER, *Parish Priests and Marriage Cases*, pp. 153-154.

<sup>95</sup> See PONTIFICAL COMMISSION FOR THE REVISION OF THE CODE OF CANON LAW, "Adunatio diei 31 ianuarii 1978," in *Communicationes*, 10 (1978), pp. 114-115.

<sup>96</sup> TAYLOR and DE BEKKER, *Parish Priests and Marriage Cases*, pp. 153-154.

his or her religious affiliation. However, again it is a prudent requirement that the dispensation or permission be given.<sup>97</sup> In such a case, dispensation from contracting the new marriage in canonical form can be granted according to the norm of c. 1127, §2. The other provisions of law which are to be observed in this case are: the new marriage is to be preceded by the pre-nuptial inquiry (cc. 1066-1070), marriage instructions (c. 1063), and any necessary dispensations and permissions so that it may be contracted validly and lawfully. Once the new marriage is validly contracted, the former marriage with the first and true spouse is *ipso facto* dissolved or canonically ceases to exist so that this partner too is free to marry.<sup>98</sup>

Paragraph three concerns the dismissed wives. This paragraph contains an important norm even though it cannot be said to be a *sine qua non* condition. According to this norm, the use of the concession of c. 1148, which opens the way to baptism for the convert party, must not result in harm to the first and legitimate spouse and the other spouses. Hence, the rest of the spouses should not be harmed either morally, that is, exposing them to dishonour, or socially, that is, degrading their standard of life, or economically, that is exposing them to poverty. The local ordinary is to keep this in mind particularly when the concession is allowed to operate and see to it that adequate provision is made for these spouses in accordance with norms of justice, which oblige one to render to the other his or her due: of Christian charity, which requires us to help

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<sup>97</sup> Ibid. Cf. T.J. GREEN, "The Revised Schema de Matrimonio: Text and Reflections," in *The Jurist*, 40 (1980), p. 118; also U. NAVARRETE, "Schema iuris recogniti 'de matrimonio' textus et observationes," in *Periodica*, 63 (1974), p. 652.

<sup>98</sup> TAYLOR and DE BEKKER, *Parish Priests and Marriage Cases*, p. 153. "The dissolution of the former marriage and the new marriage is to be recorded in the baptismal and marriage parochial records. The following formula may be used: "Marriage with N. ... dissolved in virtue of the use of the concession of c. 1148." Ibid., p. 154.

those in need; and of natural equity, which prompts us to mitigate any rigour of law by adapting our conduct to what is demanded by the concrete circumstance of the case.<sup>99</sup> Canon 1148 adds new subject matter in paragraph three that was not provided in c. 1125 of the *CIC/17*, that is, the obligation to support the wives who are dismissed. “This obligation pertains to natural law. It is considered fulfilled when the prescriptions of law, customs, or jurisprudence in the region in cases of separation, repudiation, or divorce are fulfilled, unless these rules are notoriously unjust.”<sup>100</sup>

The constitution *Romani Pontificis* permitted the polygamist to choose any of the wives willing to be baptized and to dismiss the others. Canon 1148 does not require that the choice of wife or husband be restricted to the one who is willing to receive baptism. Consequently, one may assume that, if among the several wives or husbands, one was a baptized Christian, this need not be the one chosen. However, the canon does not contemplate this possibility, for it twice refers to the several wives or husbands as *unbaptized*.<sup>101</sup>

No provision or mention is made for the needs of the dismissed husbands of a polyandrist.<sup>102</sup> If some of the children already born to the union remain with the convert

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<sup>99</sup> A. ABATE, “La Costituzione del Matrimonio nel nuovo Codice di Diritto Canonico,” in *La nuova legislazione canonica: corso sul nuovo codice di diritto canonico 14-25 febbraio 1983*, Studia Urbaniana 19, Rome, Urbaniana University Press, 1983, pp. 362-363.

<sup>100</sup> HERVADA, *CCLA*, p. 893.

<sup>101</sup> GRAMUNT, HERVADA and WAUCK, *Canons and Commentaries on Marriage*, pp. 89-90.

<sup>102</sup> “The canon’s failure to advert to the obligation of support for dismissed husbands probably results from the fact that polygyny [polygamy] is much more common than polyandry and that dismissed wives are exposed to much greater hardships than are dismissed husbands. Less understandable is the canon’s failure to mention explicitly the convert’s obligations toward the children born of these dismissed wives.” BEAL, *CLSA Comm2*, p. 1371.

and his or her spouse, they are not required to convert. Although this is not mentioned, the father of the children is bound in justice to see that they are provided for.

The canon continues to uphold a consistent policy and practice of the Catholic Church concerning polygamy. It is against the view of those societies which consider polygamy to be just as acceptable as monogamy. The canon stands within a constant theological and canonical tradition, and it well reflects what had been the doctrine and the consistent ordinary magisterial teaching of the Church on the question of admitting polygamists to the sacraments of initiation.<sup>103</sup>

### 3.2.5 – Canon 1149

Canon 1149 states:

An unbaptised person who, having received baptism in the Catholic Church, cannot re-establish cohabitation with his or her unbaptised spouse by reason of captivity or persecution, can contract another marriage, even if the other party has in the meantime received baptism, without prejudice to the provisions of can. 1141.<sup>104</sup>

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<sup>103</sup> Cf. MALONE, *The Canonical and Pastoral Implications of Canon 1148*, pp. 206 and 209.

Concerning the baptism of the true spouse, G. Taylor and E. de Bekker put it in question and answer form, as follows: “Can the legitimate and true spouse of a person who has several spouses receive baptism and continue to cohabit with this person even though he continues to live with the other spouses? The answer is in the affirmative provided that in the judgement of the local ordinary there is no danger of perversion for the convert party or scandal for the Christian community. Should real danger of perversion arise later, then the Catholic true spouse can use the Pauline Privilege, having interpellated the other partner about his intention, to release the other spouses.” TAYLOR and DE BEKKER, *Parish Priests and Marriage Cases*, pp. 153-154.

According to the Congregation for the Doctrine of the Faith: “... it must be noted that marriages to which the Pauline Privilege is applied and those marriages mentioned in Canons 1148-1149, *CIC* and 859-860, *CCEO* are dissolved by the law itself without making any recourse to a higher authority, once the conditions prescribed by the present legislation have been fulfilled. “Notandum autem est matrimonia, quibus applicatur privilegium paulinum et ea de quibus in cann. 1148-1149 *CIC* et 859-860 *CCEO*, solvi ipso iure, adimpletis condicionibus legislatione vigent praescriptis, quin recursus ullus necessarius fiat ad auctoritatem superiorem.” CDF, 2001 Norms, in KOWAL and WOESTMAN, *Special Marriage Cases and Procedures*, Appendix I, document II, p. 212.

<sup>104</sup> The Latin text reads as follow: “Non baptizatus qui, recepto in Ecclesia catholica baptismo, cum coniuge non baptizato ratione captivitatis vel persecutionis cohabitationem

The basis of c. 1149 (*CCEO* c. 860) is the constitution *Populis ac nationibus* issued by Gregory XIII in 1585. It is applicable to situations in which two non-baptized parties to a marriage are separated from each other due to captivity or persecution.<sup>105</sup> In this situation, if one spouse is converted, there must be an impossibility to know if the other spouse is also converted in the meantime.

The application of this canon presupposes that the convert who enters a second marriage fulfills the conditions and the usual canonical requirements for entrance into marriage.<sup>106</sup> First, a non-baptized person who married another unbaptized person from whom he or she is now separated due to captivity or persecution can enter a new marriage after baptism in the Catholic Church if he or she cannot re-establish cohabitation with the first spouse. Second, the new marriage is permitted even if the original spouse has received baptism since the separation, as long as the marriage was not consummated after both spouses were baptized. Third, the dissolution of the first marriage takes place by the law and without the personal intervention of the Roman Pontiff.<sup>107</sup>

A party baptized during the separation may enter a subsequent marriage even with a non-baptized person provided that the canonical requirements are fulfilled. The law presumes that reconciliation between the original spouses is impossible either

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restaurare nequeat, aliud matrimonium contrahere potest, etiamsi altera pars baptismum interea receperit, firmo præscripto can. 1141.”

<sup>105</sup>Cf. DOYLE, *CLSA Comm1*, p. 817; BEAL, *CLSA Comm2*, p. 1371; and FORNÉS, *Exegetical Comm*, p. 1564.

<sup>106</sup> DOYLE, *CLSA Comm1*, p. 818.

<sup>107</sup> BEAL, *CLSA Comm2*, p. 1371.

because, due to persecution or captivity, one spouse does not know the whereabouts of the other spouse and/or is prevented from resuming cohabitation with him/her.

If only one spouse converts, the case resembles a Pauline privilege although the canon does not specifically state that the second marriage dissolves the first. [...] If the other spouse also is baptized during the separation, the first spouse may still enter a second marriage. If both parties are baptized during the separation and before a subsequent marriage by either one, their union becomes sacramental though non-consummated. In this case, the canon contains an implicit dissolution of the ratified but non-consummated bond.<sup>108</sup>

A special characteristic that should be considered in c. 1149 is the possibility that the first marriage is ratified. The impossibility of a common life involves the absence of conjugal relations and, as a consequence, c. 1149 is not applicable if the marriage is consummated after the baptism of both parties.<sup>109</sup> If both have been baptized and sexual intercourse occurs, the marriage becomes consummated as well as ratified (cf. c. 1061 §1); therefore it becomes an absolutely indissoluble bond and, consequently, a second marriage is impossible for either party.

The canon may be applied to non-polygamous and also to polygamous cases. For instance, an unbaptized polygamous man is captured by warriors and carried off, and the first wife, also unbaptized, cannot restore cohabitation because there is no information of what happened to him; if she is baptized, she is free to marry another. The same is true if the man is baptized when the wife is separated from him by reason of captivity or persecution. Therefore, the circumstances in which the canon may be applied are such that it is presumed that contact or communication between the separated spouses is

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<sup>108</sup> DOYLE, *CLSA Comm1*, p. 817.

<sup>109</sup> See *ibid.* Cf. PONTIFICAL COMMISSION FOR THE REVISION OF THE CODE OF CANON LAW, “Adunatio diei 31 ianuarii 1978,” pp. 115-116; GIROTTI, “La procedura per lo scioglimento del matrimonio nella fattispecie del ‘privilegio paolino,’” pp. 173-174; A. SILVESTRELLI, “Scioglimento di matrimonio in favorem fidei,” in *ibid.*, pp. 181-182.

morally or physically impossible. “The canon implies that even if the other spouse is baptized there is no way of knowing this for certain. This is a case of doubt in which the faith of the convert as well as his or her right to marry is favoured (cf. c. 1150).”<sup>110</sup>

### 3.3 – Dissolution of the Bond in Favour of the Faith

The first article of the 2001 CDF *Norms for Completing the Process for the Dissolution of the Matrimonial Bond in Favour of the Faith* (= 2001 Norms) reads: “A marriage entered by parties, at least one of whom is not baptized, can be dissolved by the Roman Pontiff in favour of the Faith, as long as the marriage itself was not consummated after both spouses have received baptism.”<sup>111</sup> Here we see expressed the essential eligibility requirements to petition for a dissolution of marriage in favour of the faith: (1) at least one of the parties must be unbaptized at the time the marriage was contracted; and (2) if both parties are later baptized, there must have been no consummation afterward.<sup>112</sup> This follows from the fundamental Church teaching and canonical rule that a marriage which is ratified and consummated is indissoluble (c. 1141; cf. c. 1061, §1).

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<sup>110</sup> DOYLE, *CLSA Comm1*, pp. 817-818.

<sup>111</sup> “Matrimonium initum a patribus, quarum saltem una non sit baptizata, a Romano Pontifice solvi potest in favorem fidei, dummodo matrimonium ipsum non fuerit consummatum postquam ambo coniuges baptismum receperunt.” CONGREGATION FOR THE DOCTRINE OF THE FAITH, *Nomæ de conficiendo processu pro solutione vinculi matrimonialis in favorem fidei, Potestas Ecclesiae*, 30 April 2001.

Both the Latin original and an unofficial English translation of the 2001 Norms together with a commentary are published in KOWAL and WOESTMAN, *Special Marriage Cases and Procedures*, pp. 90-130; the Preface to the norms is in *ibid.*, Appendix I, document II, pp. 209-218.

After the promulgation and publication of the 2001 norms, the CDF issued *Notes regarding the Documentary and Procedural Aspects of Favour of the Faith Cases*. See *ibid.*, Appendix I, document III, pp. 219-224.

<sup>112</sup> On this point, article 17 of the 2001 Norms states:

The 2001 CDF Norms establish several additional conditions for the grant of the favour. (1) At the moment of the grant, there must be no possibility of restoring the *consortium* of the conjugal life. (2) The petitioner must not be the exclusive or prevailing culpable cause of the breakup of the common life. (3) The party with whom the new marriage is contracted or convalidated did not by his or her own fault provoke the separation of the spouses. (4) If a Catholic party intends to contract or convalidate a new marriage with a person who is not Catholic, he or she must declare in writing that he or she is ready to remove dangers of departing from the faith, and the non-Catholic party must declare in writing that he or she is ready to allow the Catholic party the freedom to profess the Catholic religion and raise the children as Catholics. (5) The favour is not granted a second time after the dissolution of a prior marriage in favour of the faith (arts. 4-6).

Unlike dissolution by the Pauline privilege, dissolution in favour of the faith does not require that an unbaptized spouse be baptized or that a baptized non-Catholic spouse seek full communion with the Catholic Church. If the conditions are met, the marriage can be dissolved in favour of the faith of a Catholic who wishes to marry one of the parties to the marriage to be dissolved.<sup>113</sup> The dissolution is not granted if the one seeking it was responsible for the failure of the marriage or if the person he or she desires to marry was instrumental in the breakup of the marriage. This lack of culpability for the

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§1. If at the time when the favour of dissolution is being sought the non-baptized spouse has received baptism, there must be an investigation of any possible cohabitation after the baptism. The witnesses are also to be questioned about this matter.

§2. The parties in the case are to be questioned whether after separation they have had some contact with each and of what kind and especially whether they have completed the conjugal act.

<sup>113</sup> BEAL, *CLSA Comm2*, p. 1372.

failure of the marriage is to be established by questioning the former spouse, if possible, and the future spouse. If all the other conditions have been met, a marriage between a Catholic and an unbaptized person entered into after a dispensation from the impediment of disparity of worship can be dissolved in favour of the faith.<sup>114</sup>

Unlike Pauline privilege cases which can be dealt with locally, petitions for dissolution in favour of the faith are instructed by the petitioner's local ordinary and forwarded to the Congregation for the Doctrine of Faith which has exclusive competence over matters touching on the privilege of the faith.<sup>115</sup> The Congregation reviews all documents accompanying the petition and, if all the conditions have been met, recommends dissolution to the Roman Pontiff who judges according to his own prudence whether the dissolution of the bond is to be granted or not.<sup>116</sup> The pope then dissolves the non-sacramental marriage in favour of the faith in virtue of the personal, non-delegable vicarious power which he possesses from Christ. Since the dissolution of a marriage is a favour and not a right, the Congregation does not customarily recommend dissolution of marriages entered into or convalidated after the dissolution of a previous non-sacramental marriage.<sup>117</sup>

The dissolution of the bond in favour of the faith is often called the "Petrine privilege" as a parallel to the Pauline privilege because the basis for granting the dissolution is taken to be the pope's apostolic power of the keys given to St. Peter (Mt

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<sup>114</sup> Ibid., pp. 1372-1373.

<sup>115</sup> CDF, 2001 Norms, arts. 2 and 3; cf. *PB*, 53.

<sup>116</sup> Preface to the 2001 Norms, in KOWAL and WOESTMAN, *Special Marriage Cases and Procedures*, pp. 212-213.

<sup>117</sup> BEAL, *CLSA Comm2*, p. 1373.

16:19).<sup>118</sup> Historically, the practice of dissolving the bond of marriage in favour of faith did not begin until the 1920s. There is no reference to it in the 1917 Code. The Preface provided by the Congregation of the Doctrine of the Faith to the 2001 Norms notes that the practice of granting a dissolution of the bond by the Roman Pontiff in individual cases was introduced only after the promulgation of the 1917 Code. It goes on to explain that, prior to the 1917 Code, canon law bound all the baptized, whether Catholic or not, to the impediment of disparity of cult, so the marriages between baptized Christians of all denominations and unbaptized people were invalid by reason of this impediment.<sup>119</sup> Since such marriages were now valid under the law of the 1917 Code, the Preface notes that “there was an increase in the number of marriages which were subject to the remedy of the bond.” It adds that there was a tremendous growth in the instability of marriages in the twentieth century due to ever-growing extensions of divorce, and this contributed to the need for this pastoral solution.<sup>120</sup>

Authors note that the first unmistakably clear instance of the grant of the dissolution of a marriage in favour of the faith was in 1924 by Pope Pius XI in a case

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<sup>118</sup> J. MC GRATH, “Favor of the Faith Cases,” in *New Catholic Encyclopedia*, vol. IX, New York, McGraw-Hill Book Co., 1967, p. 289, states: “Although there is no basis in ecclesiastical law for the nomenclature, this privilege is often also referred to as the Petrine privilege, being considered somewhat inaccurately as an extension of the Pauline privilege. It is, rather, an extensive interpretation of the Pauline privilege and implies the employment of a special power, namely, the vicarious power of the pope contained in the apostolic power of the keys.”

<sup>119</sup> CDF, 2001 Norms, in KOWAL and WOESTMAN, *Special Marriage Cases and Procedures*, p. 214. See F.C. EASTON, “Favor of the Faith Cases and the 2001 Norms of the Congregation for the Doctrine of the Faith,” in *CLSA Proceedings*, 64 (2002), p. 98.

<sup>120</sup> CDF, 2001 Norms, in KOWAL and WOESTMAN, *Special Marriage Cases and Procedures*, p. 214.

originating in the diocese of Helena, Montana.<sup>121</sup> John Beal summarizes developments thereafter.

After the promulgation of the 1917 code, cases began to be reported in which the Roman Pontiff had dissolved marriages involving only one unbaptized spouse in favour of the faith either of the unbaptized spouse who now wished to become a Catholic. These dissolutions could not be explained by the traditional principles governing the application of the Pauline privilege or even by the extensions of this privilege by the sixteenth century constitutions. Thus, these dissolutions were soon recognized as exercises of a heretofore unknown papal prerogative to dissolve nonsacramental marriages. The scope of this power to dissolve expanded steadily, albeit sometimes in fits and starts, until it extended to the power of the pope to dissolve a marriage of two unbaptized persons without the baptism of either of them in favour of the faith of a Catholic third party who wished to marry (or convalidate a civil marriage with) one of them.<sup>122</sup>

Due to the growing number of dissolution cases in the late 1920s and early 1930s, special norms on the dissolution of marriages in favour of the faith were issued by the Congregation of the Holy Office on 1 May 1934, entitled *Norms to Complete the Process in Cases of Dissolution of the Matrimonial Bond in Favour of the Faith by the Supreme Authority of the Roman Pontiff*. These norms were not published in the *Acta Apostolicae Sedis* but were sent directly to the bishops “in order to avoid the danger that the Church might be seen as favouring divorce in the media of social communication.”<sup>123</sup> After Vatican II, Paul VI called for a thorough study and updating of these 1934 Norms. This resulted in an instruction and accompanying revised procedural norms issued by the

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<sup>121</sup> T.C. O'BRIEN, “Favor of the Faith,” in P.K. MEAGHER, T.C. O'BRIEN, and C.M. AHERNE (eds.), *Encyclopedic Dictionary of Religion*, vol. F-N, Washington, DC, The Sisters of St. Joseph of Philadelphia, Corpus Publications, 1979, p. 1330.

<sup>122</sup> BEAL, *CLSA Comm2*, p. 1372. For a treatment of this twentieth century development which also speaks about dissolution of marriage for the salvation of the souls, see J.T. NOONAN, *Power to Dissolve: Lawyers and Marriages in the Courts of the Roman Curia*, Cambridge, MA, Harvard University Press, 1972, pp. 366-392.

<sup>123</sup> CDF, Preface to 2001 Norms, in KOWAL and WOESTMAN, *Special Marriage Cases and Procedures*, pp. 215-216.

Congregation for the Doctrine of the Faith in 1973, which also were not published but sent directly to the local ordinaries.<sup>124</sup>

During the process for the revision of the *Code of Canon Law*, special canons for the favour of the faith cases were prepared, but they did not make their way into the 1983 Code.<sup>125</sup> Because of the complexity and sensitivity of the material, reference to these favour of the faith cases was left outside the Code to be taken up in law at a later date in the form of particular norms to be issued by the Congregation for the Doctrine of the Faith and approved by the Supreme Pontiff. The Congregation for the Doctrine of the Faith investigated and studied the question of the dissolution of marriage in favour of the faith. This study resulted in the above-mentioned *Norms to Complete the Process for the Dissolution of the Matrimonial Bond under the Favour of the Faith* published by the CDF in 2001.

According to W. Kowal, the 2001 Norms on the dissolution of marriages in favour of the faith do not introduce any essential novelty as regards the substantial principles underlying the Church's discipline. Rather, the new norms "can be seen as the

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<sup>124</sup> CDF, Instruction, *Ut notum est*, 6 December 1973. See CDF, Preface to 2001 Norms, in KOWAL and WOESTMAN, *Special Marriage Cases and Procedures*, p. 216. For further explanation of the 1973 norms, see BEAL, *CLSA Comm2*, p. 1372.

<sup>125</sup> Cf. KOWAL and WOESTMAN, *Special Marriage Cases and Procedures*, p. 89. Sources show that, during the process of revising the Latin Code, various schemata incorporated the essence of the norms of the 1973 instruction. However, these norms were deleted prior to the promulgation of the 1983 code. In a private response of 8 September 1983, the CDF stated through the then apostolic delegate to the United States that the 1973 norms remain in effect even after the promulgation of the revised code. However, dissolution in favour of the faith is cryptically mentioned in *CCEO* c. 1384, with a reference to special norms of the Apostolic See. See BEAL, *CLSA Comm2*, p. 1372, note 56.

continuation of the effort of the Church to clarify and refine the principles regulating the Church's response to the needs of person who suffered a marital breakdown."<sup>126</sup>

Many people have used the term "privilege" of the faith in an obvious parallel to the Pauline Privilege.<sup>127</sup> However, there is a distinction between the dissolution of marriage in favour of the faith and the Pauline Privilege.

There are several differences between the privilege of the faith and the Pauline privilege. The Pauline privilege is applicable in case of two unbaptized persons, one of whom later becomes a convert, whereas the Petrine privilege is concerned with the marriage contracted between a validly baptized person (or one who is doubtfully baptized) and one who is not baptized. In cases of the Pauline privilege the dissolution takes place at the time when the party who is converted and baptized contracts a second marriage. In cases of the privilege of the faith, on the other hand, the marriage bond is dissolved at the moment the pope exercises his apostolic power. Finally, the Pauline privilege envisions the personal spiritual advantage of the convert, whereas the privilege of the faith can be granted in favour, or for the spiritual advantage of a third party, for example, the Catholic partner of a petitioner or the children born of a second invalid marriage.<sup>128</sup>

The dissolution of the bond in favour of the faith is applicable to polygamous marriages. Though divorce is rare in polygamous societies, it does occur, but more commonly a wife of a polygamous husband will simply leave him to preserve her dignity, peace of mind, and Catholic faith.<sup>129</sup> For instance, a polygamous man, who is

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<sup>126</sup> W. KOWAL, "The Power of the Church to Dissolve the Matrimonial Bond in Favour of the Faith," in *Studia canonica*, 38 (2004), p. 438.

<sup>127</sup> EASTON, "Favor of the Faith Cases and the 2001 Norms of the Congregation for the Doctrine of the Faith," p. 97.

<sup>128</sup> MC GRATH, "Favor of the Faith Cases," in *New Catholic Encyclopedia*, p. 289.

<sup>129</sup> Personal correspondence (10 April 2010) with KAHIGA. In this correspondence, he writes about an actual case, as follows: A polygamous man took a second wife, and the first wife simply walked away due to self dignity, faith and peace. She had one child with the husband, and later on she married again and now has a stable family with nine other children. Eventually, she discovered that she could marry in the Church, because she met the conditions for the dissolution in favour of the faith. Kahiga adds that there are many cases like this where women cannot tolerate sharing a husband with another woman. In most cases, the reason is based both on their Christian faith and their personal dignity.

unbaptized, contracts a presumably valid marriage with a first wife and sometime thereafter contracts a traditional marriage with a second wife. His first wife, who is baptized, leaves him. If the woman is Catholic, or she wants to marry a Catholic man, the first union may be dissolved in favour of the faith.

A traditional marriage contracted by an unbaptized polygamist is a non-sacramental marriage. It does not enjoy absolute indissolubility. Therefore, in principle, it is open to dissolution. It can be dissolved by the pope if there is a just cause (c. 1142). The power to dissolve these type of marriages (ratified but not consummated and non-sacramental marriages) in favour of the faith has been explained as one by which God dissolves the bond and thus allows a party to pass licitly to a new marriage through the vicarious action of the Roman Pontiff.<sup>130</sup>

### **3.4 – Presumption in Favour of the Faith**

In this section we shall briefly treat c. 1150 which is a fundamental rule that applies to all cases of the dissolution of marriage in favour of the faith. We shall first consider the meaning of the canon and thereafter provide an overview of the application of the privilege of the faith.

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<sup>130</sup> PIUS XII, Allocution to the Roman Rota, 3 October 1941, in AAS, 33 (1941), pp. 421-426; English trans. in W.H. WOESTMAN (ed.), *Papal Allocutions to the Roman Rota, 1939-2002*, Ottawa, Saint Paul University, 2002, pp. 11-16; also in T.L. BOUSCAREN (ed.), *The Canon Law Digest: Officially Published Documents Affecting the Code of Canon Law*, vol. II, Milwaukee, The Bruce Publishing Company, 1933-1942, pp. 454-458.

### 3.4.1 – The principle of c. 1150

Canon 1150 states: “In a doubtful matter the privilege of the faith enjoys the favour of law.”<sup>131</sup> The privilege of the faith signifies a divine concession favouring conversion to the Catholic faith and giving power to make that conversion possible by removing obstacles thereto.<sup>132</sup> The *privilegium fidei* of c. 1150 (CCEO c. 861) pertains to all marriages which can be dissolved through the Pauline privilege in accord with the norms of cc. 1143-1149 or through the special concession of the Roman Pontiff in individual cases.<sup>133</sup> The *privilegium fidei* of the canon is directly concerned with marriage cases. It is applicable not only to the Pauline privilege properly so-called but also to all cases wherein the marriage bond is dissolved in favour of the faith, including

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<sup>131</sup> Cf. CCEO c. 861. The canon reads: “In a doubtful matter the privilege of the faith enjoys the favor of the law.” Latin text: “In re dubia privilegium fidei gaudet favore iuris.” Cf. 1917 CIC, c. 1127.

<sup>132</sup> The phrase “privilege of the faith” is of recent origin, and canonically it seems to bear a threefold meaning. In a broad sense it signifies a general principle which confers the right to choose in doubtful cases the probable solution which will be favourable to the acquisition or preservation of the Catholic faith. See KEARNEY, *The Principles of Canon 1127*, p. 1.

In c. 1150, the phrase has specific application to marriage problems. It may refer to any judgement made in favour of the faith whereby a marriage of doubtful validity is judged either as valid or as invalid if that validity or invalidity opens the way for conversion to the faith and reception of baptism. See *ibid.*

In a strict sense, “the phrase signifies the faculty granted to a non-baptized person upon reception of baptism whereby he or she may contract a second marriage if the non-baptized party departs. This is the sense in which the privilege of the faith is most commonly used and, as such, it is synonymous with the Pauline privilege. Certainly c. 1150 refers at least to the privilege of the faith so understood.” A. MENDONÇA, “The Correct Interpretation of Canons 1150 and 1608, §4,” in *Studia canonica*, 31 (1997), p. 486.

The “privilege of the faith” is not, however, simply identical with the “favour of the faith.” The latter has an application beyond cases of the dissolution of non-sacramental marriages; the former does not. U. NAVARRETE, “Commentarium decreti Signaturæ Apostolicæ de recta applicatione canonum 1150 et 1608, §4,” in *Periodica*, 85 (1996), p. 370; cf. BEAL, *CLSA Comm2*, p. 1374.

<sup>133</sup> NAVARRETE, “Commentarium decreti Signaturæ Apostolicæ de recta applicatione canonum 1150 et 1608, § 4,” p. 370. See MENDONÇA, “The Correct Interpretation of Canons 1150 and 1608, §4,” pp. 487-488.

the favour of c. 1148 with respect to polygamous unions.<sup>134</sup> The privilege of the faith is also applicable to doubtfully valid marriages.<sup>135</sup> It is to be understood as that liberty given to a convert to Catholicism in virtue of which a doubtful marriage bond is dissolved or declared invalid.<sup>136</sup> The expression “privilege of the faith” is used in a broad sense and applies not only to matrimony but also to related matters, for example, a doubt about the fact or validity of baptism of one party (when the other party is unbaptized).

Canon 1150 implies that if one or both spouses petition for the dissolution of their non-sacramental marriage, they are entitled to the grant even if reasonable doubt persists concerning its applicability to the case because the privilege of the faith enjoys the favour of the law.<sup>137</sup> The phrase *in re dubia* used in the Latin text stands for doubtful matters related to the verification of the conditions necessary for the application of the privilege of the faith. Doubt in this canon represents a mental state of a person in which the mind hesitates between two contradictory statements and is unable to give a definitive assent to either of them.<sup>138</sup> “The doubt implied in c. 1150 must be positive and objective, in the

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<sup>134</sup> WINSLOW, *The Pauline Privilege and the Constitutions of Canon 1125*, pp. 1-2. Burton defines “privilege of the faith” in its proper sense as “the faculty granted to a convert, through power divinely bestowed, by which he may be freed from the bond of a marriage contracted in infidelity.” BURTON, *A Commentary on Canon 1125*, p. 116.

<sup>135</sup> HERVADA (*CCLA*, p. 894) comments on this canon with respect to nullity cases of non-sacramental marriages: “In cases of doubt regarding the validity of a marriage contracted before baptism, the baptized spouse is later allowed to contract a new marriage with a Christian one. This is not a case of dissolution, but of presumed nullity of the first marriage with the application of the *favor fidei*. If this favour of the faith justifies the dissolution, a fortiori, it justifies the presumption of nullity.”

<sup>136</sup> GREGORY, *The Pauline Privilege*, p. 112.

<sup>137</sup> ÖRSY, *Marriage in Canon Law*, p. 228; see MENDONÇA, “The Correct Interpretation of Canons 1150 and 1608, §4,” p. 496.

<sup>138</sup> KEARNEY, *The Principles of Canon 1127*, p. 49.

sense it must be based on due knowledge, and not merely subjective or negative (i.e., absence of due knowledge). The principle of c. 1150 can be applied only when the doubt is morally insoluble.”<sup>139</sup>

The presumption of c. 1150 may seem at odds with the apparently opposite presumption of c. 1060 (*CCEO* c. 779) which says that marriage enjoys the favour of the law and that its validity must be upheld when there is a doubt. Mendonça reconciles this apparent contradiction as follows:

On the one hand every validly contracted marriage enjoys the favour of the law in virtue of c. 1060. In case of positive doubt, the validity of such a marriage is to be upheld until the contrary is proven with moral certainty. In virtue of this general principle, all marriages, including non sacramental ones, must be considered valid until the contrary is proven with moral certainty. But the law provides for the dissolution of a non sacramental marriage in favour of the faith of a non-baptized party who embraces the Christian faith. Under certain conditions, such a dissolution can occur either in virtue of the law itself (in accord with the norms of cc. 1143-1149) or through a special pontifical concession. In either case, if there is any doubt about the essential conditions stipulated as necessary for the use of this privilege, contrary to the presumption of c. 1060, the decision must favour the faith of the party seeking the dissolution of the natural bond. [...] In this situation, therefore, the presumption of c. 1060 in favour of marriage yields to a presumption in favour of the faith, or to the liberty of a convert. This is the law.<sup>140</sup>

### **3.4.2 – The use of the privilege of the faith**

The principle of c. 1150 can be used validly in the following situations: first, if there is a doubt about the subsequent baptism of the other party after their final separation (c. 1149); second, if there is a doubt concerning the validity of a certainly non-sacramental marriage, for example, because of the doubtful validity of marriage consent or the existence of an impediment; third, if there is a doubt as to who was the first spouse

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<sup>139</sup> MENDONÇA, “The Correct Interpretation of Canons 1150 and 1608, §4,” pp. 484-485.

<sup>140</sup> See *ibid.*, pp. 489-490.

in a polygamous marriage; fourth, if there is a doubt concerning the interpellation, the sufficiency of the reason for a dispensation from the requirement of the interpellation, or the sincerity of the reply; fifth, if there is a doubt as to whether the convert was the unjust cause of the other party's departure.<sup>141</sup>

With reference to its application in matrimonial matters, the privilege of the faith has a wider signification and comprehension than the Pauline privilege. It also implies the exercise, on behalf of a convert to the faith, of the vicarious and ministerial power of the Roman Pontiff, by virtue of which the bond of a marriage, contracted in infidelity and not subsequently ratified and consummated, is dissolved; or a marriage newly contracted is recognized as valid.<sup>142</sup> Hence, the only marriages which cannot be dissolved are those which are sacramental and consummated (*rata et consummata*) between baptized persons, whether these are Catholics or non-Catholics, certainly or doubtfully baptized. The privilege *in favorem fidei* is used "to promote the life of faith of the person, who contracted a non-sacramental marriage, by allowing him or her to contract a new marriage. Regardless of any individual motivation factor, the primary motive is the universal one that is subordinated to and dependent upon the supreme norm of *salus animarum*."<sup>143</sup>

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<sup>141</sup> See KOWAL and WOESTMAN, *Special Marriage Cases and Procedures*, p. 80; see also F.M. CAPPELLO, *Summa iuris canonici in usum scholarum concinnata*, vol. II, 4<sup>th</sup> ed., Rome, Apud aedes Universitatis Gregorianae, 1942, p. 375; ÖRSY, *Marriage in Canon Law*, p. 228; KEARNEY, *The Principles of Canon 1127*, p. 52.

<sup>142</sup> WINSLOW, *The Pauline Privilege and the Constitutions of Canon 1125*, pp. 1-2.

<sup>143</sup> K.M. AMBORSKI, *The Development of the Process for the Dissolution of the Matrimonial Bond in Favour of the Faith*, Rome, Pontificia Universitas Lateranensis, 2004, p. 94.

### 3.5 – Invalidity of Marriage Due to the Exclusion of Unity/Fidelity

Thus far in this chapter, we have seen several canonical solutions to the problem of persons in a polygamous union who wish to convert to Christianity. All of these, however, involve non-sacramental marriages, whether between two unbaptized parties or one baptized and one unbaptized. This leaves unaddressed the situation of a sacramental marriage between two baptized, one or both of whom now wish to be received into the full communion of the Catholic Church, and/or wish to marry a Catholic, but who are in an irregular, polygamous union. Indeed, even some mainstream Christian denominations such as the Anglicans tolerate polygamy, so polygamous marriages are not uncommon among baptized non-Catholics in sub-Saharan Africa.<sup>144</sup> The pastoral approach of these ecclesial communities is not, however, reconcilable with Catholic teaching and canon law in which only monogamous marriage is acceptable. Therefore, a Christian spouse who is in a presumptively valid, sacramental marriage must seek a declaration of nullity of that marriage if he or she wants to be received into the Catholic Church and validly

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<sup>144</sup> In 1988, the Lambeth Conference of the Anglican Church adopted a pastoral resolution on polygamous situations in Africa by approving the principle that, under certain conditions, “in the culture where polygamy is practised and socially acceptable, a polygamist who responds to the Gospel and who wishes to join the Anglican Church may be baptized and confirmed with his wives and children.” See M. MARSHALL, *Church at the Crossroads: Lambeth 1988*, San Francisco, Harper and Row, 1988, p. 155.

The rationale was to avoid grave consequences associated with the dismissal of other wives and the disruption of kinship bonds among families, to uphold natural justice, and at the same time to safeguard the doctrine of the Church. According to the resolution, four conditions must be observed. First, the polygamist shall promise not to marry again as long as any of his wives at the time of his conversion are alive. Second, the receiving of such a polygamist has the consent of the local Anglican community. Third, such a polygamist shall not be compelled to put away any of his wives on account of the social deprivation they would suffer. Fourth, provinces where the churches face problems of polygamy are encouraged to share information of their pastoral approach to Christians who become polygamist so that the most appropriate way of ministering to them can be found. See R. COLEMAN (ed.), *Resolutions of the Twelve Lambeth Conferences 1867-1988: With an Introduction by Owen Chadwicle*, Toronto, Anglican Book Centre, 1992, pp. 211-212.

marry someone else. For example, two baptized non-Catholics marry, the man takes a second wife, the first wife leaves him and attempts marriage with another, and now she wants to be received into the full communion of the Catholic Church. The obvious ground for investigation in such a case is either an intention against unity/fidelity, or determining error concerning unity, on the part of the polygamous man. Marital unity, which implies fidelity, is an essential property of Christian marriage. The exclusion of unity/fidelity in marriage renders marriage invalid.<sup>145</sup>

This section consists of four sub-sections. The first introduces canons 1101 on simulation and 1099 on determining error. Subsequently, we treat briefly the exclusion of unity/fidelity, the juridical importance of commitment to marital fidelity, and canonical applications of fidelity in marriage.

### **3.5.1 – Canons 1101 and 1099**

Canon 1101(*CCEO* c. 824) and c. 1099 (*CCEO* c. 822) provide the juridical basis for marital nullity on the grounds respectively of simulation and determining error. Since both grounds are rooted in the natural law, they may be applied to the marriages of both Catholics and non-Catholics.

#### **3.5.1.1 – Canon 1101**

Canon 1101 reads as follows:

§1. The internal consent of the mind is presumed to conform to the words or signs used in the celebration of a marriage.

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<sup>145</sup> Pastorally, it is imperative that, in polygamous societies, the parties who marry in the Church be well informed of the consequences of the exclusion of marital unity and fidelity so that they can understand the meaning and importance of this essential property and maintain a monogamous and exclusive marital relationship.

§2. If, however, either or both of the parties should by a positive act of the will exclude marriage itself or any essential element of marriage or any essential property, such party contracts invalidly.<sup>146</sup>

Though this canon does not use the term directly, it refers to the *simulation* of matrimonial consent.<sup>147</sup> Paragraph one concerns the agreement between the words or signs expressed in the celebration of marriage, on the one hand, and the authentic internal will of the contracting party, on the other hand.

As an act of the will, matrimonial consent is internal to the mind and invisible to sensory perception. The existence of consent must, therefore, be deduced from its external manifestations in perceptible words, signs, and behaviour. [...] the law gives priority to the words or signs used in the celebration of marriage. The law presumes that the internal consent of the will corresponds with the words or signs employed to give it external expression during the marriage ceremony. Thus, when a couple exchanges consent according to the formula of the *Rite of Marriage*, they are presumed to have consented internally to marriage as it is understood by the Church.<sup>148</sup>

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<sup>146</sup> The Latin text reads:

§1. Internus animi consensus præsumitur conformis verbis vel signis in celebrando matrimonio adhibitis.

§2. At si alterutra vel utraque pars positivo voluntatis actu excludat matrimonium ipsum vel matrimonii essentielle aliquod elementum, vel essentialem aliquam proprietatem, invalide contrahit.

<sup>147</sup> Cf. DOYLE, *CLSA Comm1*, p. 784; and BEAL, *CLSA Comm2*, p. 1312.

The concept of simulation involves an internal act of the will by which marriage comes into being. Therefore, its external proof is difficult. Basically, it involves a person's taking a definite stand contrary to the Church's view of marriage. DOYLE, *CLSA Comm1*, p. 784.

<sup>148</sup> BEAL, *CLSA Comm2*, p. 1312. See DOYLE, *CLSA Comm1*, p. 784, who states: "The marriage covenant begins with the exchange of consent by the spouses. Consent is an act of the will and as such it is internal. The spouses must exchange their commitment to each other by means of words or signs which are perceivable to the senses, usually by pronouncing the marriage vows. Presumably the external expression is sincere and the spouses fully intend to give and accept each other as they begin their marriage. They are also presumed to understand and accept the obligations of marriage even though the marriage ritual does not mention them in detail.

"This presumption of the validity of an act is a commonsense part of human experience, operative in civil law as well as in canon law (e.g., contracts). With marriage there must be conformity between the intention and the outward expression because no one but the spouses can give consent to marriage, i.e., consent cannot be supplied by a parent or anyone else."

The law presumes that one's external behaviour conforms to one's internal intention. Nevertheless, proofs may be admitted to the contrary, as we see in the second paragraph of c. 1101 (*CCEO* c. 824).<sup>149</sup>

Paragraph two treats the exclusion of marriage itself or an essential element or property of marriage.<sup>150</sup> This concerns the discrepancy between the external manifestation of consent to marry and the internal will which causes the nullity of marriage. Even though the canonical norms require the contracting parties outwardly to express the same thing that they will internally, there may be a discrepancy between the two and, therefore, the presumption of conformity between the external and internal admits contrary proof. For the exclusion to be invalidating, it must have been committed by means of a positive act of the will.<sup>151</sup>

Marital consent is simulated when there is a contradiction between the external manifestation of consent and the internal intention of the will. Traditional Rotal

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<sup>149</sup> In 1212 Pope Innocent III was presented with a case in which a man married a woman only because she would not have intercourse with him under any other circumstances. The pope judged that there was in fact no marriage since the man exchanged consent, not for the purpose of marriage, but for reasons contrary to marriage. The man did not really intend to marry but only to establish the charade of a marriage in order to satisfy his sexual desires. Jurisprudence has looked to this case as an example of simulation (X 4, 1, c. 26, in A. FRIEDBERG (ed.), *Corpus Iuris Canonici*, vol. II, 2<sup>nd</sup> ed., Lipsiae, Ex Officina Bernhardi Tauchnitz, 1881, cols. 670-671.

The effect of conditions contrary to the substance of marriage was considered in the *Decretals of Gregory IX*. The last canon of title five states that the contract of marriage lacks effect if, among other things, a woman is married on the condition that she commit adultery for money. "Si conditiones contra substantiam coniugii inserantur, puta, si alter dicat alteri: 'contraho tecum, si generationem prolis evites,' vel: 'donec inveniam aliam honore vel facultatibus digniorem,' aut: 'si pro quaestu adulterandam te trades,' matrimonialis contractus, quantumcunque sit favorabilis, caret effectu; licet aliae conditiones appositae in matrimonio, si turpes aut impossibiles fuerint, debeant propter eius favorem pro non adiectis haberi." X 4, 5, c. 7, in FRIEDBERG (ed.), *Corpus Iuris Canonici*, col. 684. See T.P. DOYLE, "A New Look at the *bonum fidei*," in *Studia canonica*, 12 (1978), p. 12.

<sup>150</sup> See A. MENDONÇA, "Exclusion of the Essential Elements of Marriage," in W.H. WOESTMAN (ed.), *Simulation of Marriage Consent: Doctrine, Jurisprudence, Questionnaires*, Ottawa, Faculty of Canon Law, Saint Paul University, 2000, p. 43.

<sup>151</sup> See P.J. VILADRICH, "Matrimonial Consent (cc. 1095-1107)," in *CCLA*, pp. 851-852.

jurisprudence explains simulation as the coexistence of two acts of the will: the external act which says ‘I will’ and the internal act which says ‘I won’t’ to marriage. To simulate, one must be aware of the nature and obligations of marriage and knowingly reject or exclude either marriage itself or one of its essential elements or properties. The canon refers to exclusion by a positive act of the will, since the simulator internally rejects marriage outright while participating in the marriage ceremony for ulterior motives contrary to marriage. A person may also express consent yet intend his or her idea of marriage which excludes the true nature of Christian marriage.<sup>152</sup>

### 1.5.1.2 – Canon 1099

Canon 1099 states: “Error concerning the unity or indissolubility or sacramental dignity of marriage does not vitiate matrimonial consent provided that it does not determine the will.” Of relevance to this thesis is the ground of a determining error concerning the unity of marriage. An error concerning unity would be the mistaken judgement that marriage is not exclusively monogamous and polygamy is acceptable. This mistaken judgement wrong determines the will when it causes a person to contract marriage with the intention to act on that erroneous belief. “Such error may occur more frequently [...] among peoples shaped by non-Western cultures in which polygamy continues to be practiced and is socially accepted.”<sup>153</sup>

Whether a case is tried on the ground of determining error or simulation, the facts, proofs, and arguments will be much the same, for with both there must be moral certainty that there was a positive act of the will to exclude unity or fidelity. In regard to the *nature* of the positive act of the will, there is no exclusion where there was no *act* to exclude, which must be a positive act of the will. This is the reason why the legislator uses the verb *to exclude* for all cases intending to point out the identity between a

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<sup>152</sup> DOYLE, *CLSA Comm1*, p. 784; cf. BEAL, *CLSA Comm2*, p. 1312.

<sup>153</sup> BEAL, *CLSA Comm2*, p. 1311.

positive act of the will and the action proper to the verb “to exclude.”<sup>154</sup> In regard to the *object* of the act of exclusion, there is a necessity to distinguish between the internal will not to marry (total simulation)<sup>155</sup> and the internal will to seek a kind of relationship suited to one’s own liking, devoid of an essential element or property which flows from the conjugal bond (partial simulation).<sup>156</sup>

### 3.5.2 – Exclusion of unity/fidelity

Pius XI, in *Casti connubii*, sums up the official position of the Church on marital fidelity.

The second blessing of matrimony [...] mentioned by Augustine is the blessing of conjugal honour which consists in the mutual fidelity of the spouses in fulfilling the marriage contract, so that what belongs to one of the parties by reason of this contract sanctioned by divine law, may not be denied to him or permitted to any third person; nor may there be conceded to one of the parties

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<sup>154</sup> See VILADRICH, *CCLA*, p. 852.

<sup>155</sup> Total simulation is described as the complete rejection of marriage when one participates in the wedding ceremony to achieve an end other than true marriage, for example, a person who goes through a marriage ceremony to obtain a civil law benefit such as citizenship or extended residency in a country. See DOYLE, *CLSA Comm1*, p. 785; see also BEAL, *CLSA Comm2*, p. 1313.

<sup>156</sup> Partial simulation is the acceptance of marriage in general but with a rejection of one or more of the essential obligations or properties, in particular the rejection of any of the three goods of marriage: children, fidelity, or permanence. See DOYLE, *CLSA Comm1*, p. 785; see also BEAL, *CLSA Comm2*, p. 1313. Canon 1101, §2 says: “If however, either or both of the parties should by a positive act of will exclude marriage itself or any essential element of marriage or any essential property, such party contracts invalidly.”

When it is marriage itself that is not desired (total simulation), the positive act of exclusion may take place in three ways. The first is when one or both of the contracting parties, by a positive act of their will, have never wished to express an actual or a virtual intention to contract and lack the internal will without which there can be no bond. The second is when one or both of the contracting parties, by a positive act of their will, express an actual or virtual intention, without revocation, not to contract or a desired presence of a negative will concerning the bond. In this case, the object of the positive act of the will is the desired presence of the intention not to contract. The third is when one or both of the contracting parties, by a positive act of their will, express an intention not to bind themselves. In this case, the object of the positive act is desired against the natural obligation in justice to the bond, which means that the bond does not arise because its nature as a juridical bond is not desired. See VILADRICH, *CCLA*, pp. 852-853.

anything which, being contrary to the rights and laws of God and entirely opposed to matrimonial faith, can never be conceded.<sup>157</sup>

The understanding of the *bonum fidei* on the part of spouses and the unbreakable oneness between them is deepened in the Pastoral Constitution on the Church in the Modern World *Gaudium et spes*: “The intimate union of marriage, as mutual giving of two persons, and the good of the children demand total fidelity from the spouses and require an unbreakable unity between them.”<sup>158</sup>

One acts against the property of unity when the exclusivity of the bond is rejected by reserving the right to have sexual relations with a person other than one’s spouse or the right to marry another person while maintaining the first bond (cf. c. 1056).<sup>159</sup> Strictly speaking, unity means having only one spouse, that is, monogamous marriage. This means that anyone who enters marriage with an intention of taking more than one spouse at the same time denies the right to unity.

It has been said that the right to fidelity is included in the property of unity. But it should be noted that this property pertains only to the unity of the bond. Therefore, only the one who reserves to himself the right to have more than one wife (or husband), in the strictly polygamous sense, contracts invalidly due to the exclusion of the property of unity even though not all the wives would enjoy those marital rights in the same degree. The one who actually intends to marry only one wife and yet reserves to himself the right to commit adultery or excludes the obligation of conjugal fidelity also contracts invalidly [...].<sup>160</sup>

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<sup>157</sup> PIUS XI, Encyclical letter *Casti connubii*, 31 December 1930, in *AAS* 22 (1930), p. 546; H. DENZINGER, *Enchiridion Symbolorum: Definitionum et declarationum de rebus fidei et morum*, Friburgi Brisgoviae, Herder & Co., 1947, no. 2231, p. 647; English trans. in PIUS XI, Encyclical Letter on Christian Marriage, 31 December 1930, in *Fourteen Encyclicals of His Holiness Pope Pius XI, 1929-1937*, Washington, DC, National Catholic Welfare Conference, 1938, p. 9; also in DENZINGER, *The Sources of Catholic Dogma*, no. 2231, p. 585; SCHLECK, *The Sacrament of Matrimony*, pp. 60-61.

<sup>158</sup> *GS*, no. 48; FLANNERY1, p. 950.

<sup>159</sup> See VILADRICH, *CCLA*, p. 853.

<sup>160</sup> “Dixeris forte ius ad fidelitatem includi in proprietate unitatis. At notandum est hanc proprietatem dicere tantummodo *unicitatem vinculi*. Ideoque ob exclusam proprietatem unitatis

According to older jurisprudence, marital unity was reduced in scope to mean monogamy whereas, according to the newer jurisprudence, unity is extended to include fidelity.<sup>161</sup>

Fidelity is something different from unity. In the broad sense, marital fidelity refers to the trust, loyalty and support that spouses show each other. In the strict, juridic sense, it refers to sexual fidelity, i.e. having one's spouses as one's only sex partner. It means, therefore, that the partner lacks not only the right to have another spouse but the right to have another lover. The partner lacks the right not only to be a polygamist but to be an adulterer.<sup>162</sup>

The intention against fidelity is not necessarily the intention to marry more than one spouse but may be the intention to commit adultery while married to one spouse. An act of the will against marital unity can also take the form of an intention to *remove the right* to marital fidelity. To exclude fidelity in this way means that a person enters marriage with a firm belief that he or she has a right to the conjugal act with another person.<sup>163</sup> In a

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contrahit invalide tantummodo qui sibi reservat ius habendi plus quam unam uxorem (vel maritum), sensu stricto polygamico, etiamsi uxores non omnes iisdem iuribus eodemque gradu honoris matrimonii gaudeant. Qui vero intendit unam tantum habere uxorem, at sibi reservat ius adulterandi vel excludit obligationem fidelitatis coniugalis, invalide quidem contrahit, at non ob exclusam proprietatem unitatis, quia reapse hanc non excludit." U. NAVARRETE, "De iure ad vitae communionem: Observationes ad novum schema canonis 1086 §2," in *Periodica*, 66 (1977), p. 250.

Marital fidelity with respect to the *bonum fidei* is rarely mentioned in the early canonical collections, most probably due to the primitive stage of interest in consent as the efficient cause of marriage. See DOYLE, "A New Look at the *bonum fidei*," p. 11. However, the early Church fathers opposed strongly the mores of societies which granted the husband greater sexual freedom in marriage. See T.P. DOYLE, *The Understanding of the Concept "bonum fidei" in the Church's Canonical Tradition*, Canon Law Studies, 496, Washington, DC, Catholic University of America, 1978, pp. 178-346.

<sup>161</sup> See L.G. WRENN, *The Invalid Marriage*, Washington, DC, Canon Law Society of America, 1998, p. 132.

<sup>162</sup> *Ibid.*

<sup>163</sup> DOYLE, *CLSA Comm1*, p. 786; BEAL, *CLSA Comm2*, pp. 1313-1314. L.G. WRENN says that, according to standard jurisprudence, "[t]he good of fidelity is excluded not by a mere intention to commit adultery but only by a firm and specific refusal to make a complete donation of self, that is to say, by a reservation made by a positive act of the will to conduct oneself with

polygamous culture where men believe that they have a right to the conjugal act with more than one spouse, they typically also believe they can have sexual freedom even when married to only one spouse. By entering marriage with such an intention *contra bonum fidei*, they deny the right to the essential marital property and so marry invalidly.<sup>164</sup> When the spouse's right to an exclusive relationship is restricted or denied, fidelity is excluded. It can no longer be held that one would have to be a *de facto* polygamist in order to exclude the *bonum fidei*.<sup>165</sup> It suffices that one intends marriage while excluding monogamy or fidelity, even if one actually never attempts a polygamous marriage or has the opportunity to commit adultery. It is evident that, in sub-Saharan Africa where the traditional polygamous mindset is still operative, a great many marriages could be proven invalid due to the intention on the part of the man to exclude unity/fidelity as a result of simulation or error concerning marital unity.<sup>166</sup>

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others according to one's own pleasures, or by a firm intention at the time of the wedding to give the entirety of one's body to a lover with whom the contractant had entered a binding relationship prior to marriage." See L.G. WRENN, *Judging Invalidity*, Washington, DC., Canon Law Society of America, 2002, p. 55.

<sup>164</sup> Marital fidelity does not mean only refraining from extra-marital sexual intercourse but involves the whole person since the "one flesh" relationship which results from consent is neither limited to nor dependent on sexual intercourse alone. It must be totally directed to the whole person. See WRENN, *Judging Invalidity*, p. 55. See also DOYLE, "A New Look at the *bonum fidei*," pp. 5-40.

<sup>165</sup> M. DE MÛELENAERE, *The Canonical Significance of Marital Fidelity among the Bantu of South Africa*, doct. diss., Ottawa, Saint Paul university, 1985, p. 144.

<sup>166</sup> According to DE MÛELENAERE, "a person's character and convictions are influenced by the social and cultural values to which he is exposed. Each case [of nullity on the ground of error regarding unity or intention against fidelity] should thus be judged within the context of the culture which sustains the individual. [...] the factors in Bantu culture which could lead an individual to exclude fidelity are the encouragement of pre-marital sexual liaisons, the masculine prerogatives of sexual freedom, the polygamous mentality, the importance of the extended family and peer groups in the life of the individual, and the migratory labour situation" (*The 'Bonum Fidei' in an African Context*, pp. 224-225).

### 3.5.3 – Commitment to marital fidelity

Marital unity is an essential property of marriage, so commitment to fidelity on the part of both parties to marriage is necessary. Its juridical value is most significant when a party consents to marry. If the party has an intention contrary to this property, whether or not this intention is based on an erroneous belief, he/she simulates consent and marries invalidly.<sup>167</sup> Consequently, the spouses must be willing and freely intend to enter an exclusive relationship at the time of the wedding. “A firm intention to exclude, limit or restrict a spouse’s right to an exclusive relationship is considered sufficient to result in the canonical invalidity of the marriage.”<sup>168</sup>

Polygamous societies grant men greater sexual freedom in customary marriage than women have. People in these societies are not conscious of the fact that commitment to marital fidelity is an essential property of marriage in that both spouses are equally bound to a reciprocal obligation of loyalty and sexual exclusivity. In Christian marriage, moreover, fidelity is a sign of Christ’s union with the Church and is at the same time law, ideal and God’s will which demands an equal commitment from both spouses.<sup>169</sup>

More than preserving sexual rights and obligations, marital fidelity denotes total commitment and mutual dedication even during times of trial and difficulties, such as the

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<sup>167</sup> The understanding of fidelity as a juridical element of marriage developed in two stages: the first concerns fidelity as an obligation directly related to living out of marriage (*matrimonium in facto esse*), but it was later refined gradually by theologians and canonists [jurisprudence] to denote the obligations arising from the right to fidelity exchanged in marital consent (*matrimonium in fieri*). See DOYLE, “A New Look at the *bonum fidei*,” p. 10.

<sup>168</sup> DE MÛELENAERE, *The Canonical Significance of Marital Fidelity among the Bantu of South Africa*, p. 112. On p. 132, he says that an intention against fidelity “is an internal act of will whose existence is not usually directly discernible, and jurisprudence considers it difficult of proof.”

<sup>169</sup> A.M. AMBROZIC, “Indissolubility of Marriage in the New Testament: Law or Ideal?” in *Studia canonica*, 6 (1972), pp. 281-287.

case of a spouse who was deserted by the other: “[...] the spouse who remains faithful to a marriage which has broken up reflects God’s own fidelity. Married people have not been called to celibacy, but they have been called to fidelity to each other even under the most trying circumstances.”<sup>170</sup> Marital fidelity is a reciprocal obligation of sexual exclusivity and human loyalty between a man and a woman as equal partners in marriage; it is the sustaining element of marriage and the means by which marriage comes to completion.<sup>171</sup>

#### 3.5.4 – Canonical applications

The exclusion of the *bonum fidei* in marital consent renders marriage invalid. It is excluded if it is restricted in any way by limitation or condition in view of an extramarital relationship with one or more specific persons, or by the refusal to assume the obligation of fidelity in view of a relationship with persons still unknown.<sup>172</sup>

In concluding his investigation about the *bonum fidei* with regard to African marriages, De Mûelenaere lists eight canonical applications which should be kept in mind when assessing the validity of any marriage under the heading of the *bonum fidei*. First, the *bonum fidei* is one of the juridical essential elements of Christian marriage, without which marriage cannot be celebrated validly. Second, the *bonum fidei* pertains to the exclusivity of the marital relationship and by implication also to the unity of Christian marriage. Third, the *bonum fidei* is closely linked to marriage itself, to the

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<sup>170</sup> Ibid., p. 287.

<sup>171</sup> DOYLE, “A New Look at the *bonum fidei*,” pp. 6, 9.

<sup>172</sup> See DE MÛELENAERE, *The Canonical Significance of Marital Fidelity among the Bantu of South Africa*, p. 132.

*consortium totius vitae* and the *bonum coniugum*, for it is one of their sustaining elements. Fourth, as an obligation, the *bonum fidei* is equally binding on both spouses and, as a corresponding right, it does not permit any limitation of time or persons. Fifth, prevailing social or cultural attitudes could so influence an individual that he refrains from including the *bonum fidei* in his marital consent. In such a case, his strongly held but erroneous opinion of the nature of Christian marriage could lead to the non-assumption of the obligation of fidelity and the concomitant non-granting of the spouse's right to exclusivity. This would have to be verified in each instance. Sixth, the *bonum fidei* can also be limited by the conscious exclusion of the obligation of fidelity or of the spouse's right to an exclusive relationship; this may occur either at the time of consent or by an earlier and unrevoked act of the will. Seventh, frequent infringements of the *bonum fidei* during marriage, while not *per se* indicative of exclusion, may create a vehement presumption thereof. In some cases, however, they could be indicative of incapacity of assuming the obligation of fidelity. Eighth, in positive terms, the *bonum fidei* thus refers to the free acceptance by both spouses of a sexually exclusive relationship which demands a total and unconditional surrender of self in order to constitute marriage.<sup>173</sup>

Canonical studies and judicial decisions show that prevailing social and cultural attitudes exert a significant influence on an individual's personal commitment.<sup>174</sup> If such attitudes are contrary to the canonical norms and are so rooted in the individual that they affect his will, they may cause the marriage to be canonically invalid. Traditional, sub-Saharan African society is based upon the principles of male dominance and gender

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<sup>173</sup> Ibid., pp.167-168.

<sup>174</sup> Ibid., pp. 112-113.

division. The husband is recognized as the active partner in the marital relationship who is responsible for family initiatives, welfare and public responsibilities. In such polygamous societies, sexual exclusivity in marriage is mostly demanded from the wife and not from the husband who typically enjoys the same sexual freedom as the unmarried. The social and cultural attitudes of male dominance and the polygamous mentality do not encourage an understanding of marriage as an exclusive relationship. These social and cultural attitudes make it extremely difficult for a man to commit himself to marital fidelity and unity. Since sexual fidelity is an essential property of Christian marriage and its exclusion results in the invalidity of the union, there often is no genuine fidelity in polygamous societies in the Christian sense when the man continues to enjoy sexual freedom even after marrying.<sup>175</sup> This is a contradiction of the *bonum fidei*.

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<sup>175</sup> Cf *ibid.*, pp. 226-227. This situation can be compared with that of the Roman world as well as in the ancient Near-Eastern civilizations where the obligation of marital chastity applied only to the wife. This view of marriage was contrary to the teaching of the Church because the wife was regarded as a possession of her husband. She alone could commit adultery, and her transgression was often punished by death while the law left the husband's infidelity unpunished. The adultery committed by a wife was an offence against the husband, not against any kind of marital relationship. Furthermore, the relationship between the husband and wife was not based on the social or legal equality of the spouses. The above-mentioned legislation reflected the cultural attitude of marriage in those societies. In Roman law, wives who had sexual relations outside of marriage were deemed adulteresses and punished as such while married or single men who had sexual relations with the wife of another were guilty of *stuprum*, a broad term that included many kinds of sexual immorality outside marriage. Such men were not guilty of adultery but were viewed as accomplices to adultery. With this attitude, there was no place for fidelity. See P. CORBETT, *The Roman Law of Marriage*, Oxford, Clarendon Press, 1930, pp. 139-141.

Christianity radically changed this cultural attitude towards marriage. According to Christ's teaching, the spouses are equal in the sight of God because both were made in His image and likeness. Christ called the divine ideal of marriage set forth by the Father at the time of creation in which man and woman were joined in marriage and became two in one flesh (Gen 2:23-24). Their union is not merely physical but reflects the totality of the human person. This union of "two in one flesh" (Mt 19:6) involves a genuine relationship in which the spouses commit themselves to one another in all circumstances whether in sickness or in health, in

Jurisprudence understands that fidelity must not be excluded in the marital commitment made at the exchange of the wedding vows. In Christian marriage, both spouses are equally bound to grant to one another the right to an exclusive relationship and to accept freely the concomitant obligation of fidelity. This demands a total and unconditional surrender of self to constitute Christian marriage, and any attempt to restrict, limit or exclude the *bonum fidei* on the part of one of the spouses results in the invalidity of the marriage. According to jurisprudence, the *bonum fidei* can be denied in various ways. For instance, if a man knows about the obligation and yet consciously rejects it from his own marriage, he excludes fidelity explicitly. If he is unaware of the Church's teaching on fidelity and consciously intends the opposite in his marital commitment, he also excludes fidelity explicitly. But if he simply lives according to the prevalent attitudes of male prerogatives and considers himself equally free before and after marriage, he excludes fidelity implicitly in that he neither assumes the obligation nor concedes to his spouse the right to an exclusive relationship. The erroneous opinions regarding the nature of Christian marriage can thus influence the individual's consent so adversely that he contracts marriage invalidly. Another way in which these attitudes can invalidate an individual's marital consent is that, if a person becomes so accustomed to the prevailing male prerogatives and the polygamous mentality that they have become almost second nature to him, he may be unable to assume the obligations of an exclusive

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poverty or in richness. W. BRUEGGEMANN, "Of the Same Flesh and Bone Gen 2, 23a," in *Catholic Biblical Quarterly*, 32 (1970), pp. 532-542.

relationship. His marriage will then be invalid due to this incapacity to assume the obligation of fidelity.<sup>176</sup>

## **Conclusion**

The laws of the Church related to polygamy have a pastoral purpose. They are directed chiefly to facilitating the conversion to Christianity of persons who are in polygamous unions while upholding the Church's doctrine on the unity of marriage. The law provides several means for a person involved in a polygamous union to regularise their canonical status before being admitted to sacramental initiation. These solutions are variously applicable to marriages between two unbaptized, one baptized and one unbaptized, and two baptized parties.

The Pauline privilege (c.1143) is the dissolution by law of a non-sacramental marriage when one party accepts baptism but the non-baptized party departs or does not wish to cohabit with the baptized party or to cohabit peacefully without offense to the Creator. It may be employed in all cases where these conditions are found, including a marriage to a polygamous spouse. Canon law also knows of solutions that involve a broadening of the Pauline privilege; these originated in three sixteenth-century apostolic constitutions and are seen today in cc. 1148 and 1149. Canon 1148 allows a polygamous husband who is baptized to retain any wife of his choosing if it is hard for him to remain with the first; this also applies to a woman with several husbands. Canon 1149 allows a non-baptized person, after having received baptism in the Catholic Church, to marry

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<sup>176</sup> DE MÛELENAERE, *The Canonical Significance of Marital Fidelity among the Bantu of South Africa*, pp. 230-231; Cf. c. 1095.

again if he/she cannot restore cohabitation with a non-baptized spouse by reason of captivity or persecution, even if the other party has been baptized in the meantime.

The fourth solution involves the dissolution of a non-sacramental marriage between a baptized and a non-baptized party. The legislation governing it is found not in the Code but principally in special norms of the Congregation for the Doctrine of the Faith published in 2001. This dissolution in favour of the faith is applicable also to polygamous unions, for example, when the Christian wife of an unbaptized man leaves the marriage after her husband takes on one or more additional wives. The wife may apply for the dissolution of the marriage in favour of her Christian faith in order to marry someone else who is also free to marry. Unlike the first three solutions above, which operate *ex iure*, this dissolution is granted by the pope after the case is processed by the local ordinary and the CDF. All these dissolution cases are subject to the presumption stated in c. 1150: "In doubtful matters, the privilege of the faith enjoys the favour of the law."

A marriage that is ratified and consummated is indissoluble; only death can dissolve a valid bond of marriage between two baptized parties. Therefore, the only canonical solution that would enable someone to marry who is already in a presumptively valid marriage is to obtain a declaration of nullity of that marriage. This may happen in polygamous marriages particularly when the parties are both baptized and polygamy is tolerated or accepted by their Christian denomination. Likely grounds for processing such a case would be the exclusion of marital unity or fidelity due to partial simulation or determining error.

Despite the very great pastoral assistance potentially offered by this variety of canonical solutions, crucial pastoral challenges remain in implementing Church teaching and upholding canon law in polygamous cultures, especially with respect to the evangelisation of persons who want to become Catholic but who, for various reasons, do not want, or believe they cannot, extricate themselves from a polygamous union. These challenges will be addressed in the following chapter.

## CHAPTER FOUR

### EVANGELIZATION IN A POLYGAMOUS SOCIETY CANONICAL AND PASTORAL APPROACHES

#### Introduction

Many people who consider becoming Catholics face challenges posed by Church doctrine and canon law. This is especially true of men and women in polygamous unions who may reject the possibility of conversion to Catholic Christianity because they believe that they are unable to extricate themselves from a polygamous union. This chapter treats the Church's mission of evangelization in polygamous societies, in particular, some canonical and pastoral approaches that support the Church's doctrine and mission to evangelize polygamous societies today. Pope Benedict XVI has noted three historical phases of evangelization.

There are regions of the world that are still awaiting for a first evangelization; others that have received it, but need a deeper intervention; yet others in which the Gospel put down roots a long time ago, giving rise to a true Christian tradition but in which, in recent centuries – with complex dynamics – the secularization process has produced a serious crisis of the meaning of the Christian faith and of belonging to the Church.<sup>1</sup>

This chapter is concerned with both first and second evangelization. There are areas of sub-Saharan Africa that still wait for a first evangelization, but many more that have been partially evangelized, with Christians living side by side with non-Christians, some of whom are in polygamous unions. The ministry of proclaiming the Good News, with the ultimate goal of converting polygamous families to Christianity, requires all agents of evangelization to employ canonical and pastoral approaches which are practical and at

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<sup>1</sup> BENEDICT XVI, Homily, in *L'Osservatore romano*, 26 (30 June 2010), p. 5.

the same time in conformity with the Church's teaching. At the same time, these approaches may assist in dealing with the problems caused by polygamy so that individuals and families who want to become Catholics are in a better position to do so.

The chapter is divided into seven major sections that have a common aim: to assist all agents of the Church and, indeed, all the Catholic faithful to make the apostolate among polygamists more practical; to carry it out more efficiently by involving key canonical organs and offices of the Church; and to make Church doctrine and law, especially on marriage, clearly understood and accepted by prospective converts. Section one explains briefly the concept of evangelization. Section two treats briefly the meaning of inculturation and evangelization of cultures. The goal of the third section is to show that polygamous societies need to be evangelized; the Church cannot ignore them but is obliged by divine law (Mt 28:18-20; Mk 16:15-16) to proclaim the mystery of Christ, and they in turn have the right to receive the message of salvation. In truth, they already possess seeds of divine truth which can enable them to respond favourably to the Christian message. Section four treats various means of communicating the Good News that are found in canon law, both universal and particular, which can be of particular pastoral advantage in the evangelization of polygamous peoples. The focus of section five of this chapter is the diocesan pastoral plan, especially its key role in coordinating the evangelization and catechesis of polygamous families. The sixth section treats the apostolate of women, which can be of significance in assisting women to become conscious of their dignity and rights so they are better prepared to resist the maltreatment and oppressive practices that are often endemic in polygamous societies. The seventh and final chapter is on justice and peace.

#### 4.1 – Concept of Evangelization

Evangelization is a complex process, a rich and dynamic reality which involves many elements, thus making it difficult to define completely in a few words.<sup>2</sup> In his apostolic exhortation, *Evangelii nuntiandi* (EN), Paul VI examines the complexity of evangelizing action.<sup>3</sup> He points out that evangelization consists of various elements which must be taken into account.

[...] evangelization is a complex process involving many elements as, for example, a renewal of human nature, witness, public proclamation, wholehearted acceptance of, and entrance into, the community of the church, the adoption of the outward signs and of apostolic works. These elements may appear to be inconsistent and even mutually exclusive, but in fact they are complementary and perfect each other. Accordingly, it is essential to consider each element in relation to the others (EN 24).<sup>4</sup>

The mission of evangelization is not simply about recruiting new Church members. The fullness of salvation offered by the Church involves the wholeness achieved in lives lived in dedication and service to God's kingdom. The aim of the Church's mission of

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<sup>2</sup> See P. VADAKUMPANDAN, *The Concept of Evangelisation in the Apostolic Exhortation "Evangelii Nuntiandi" of Pope Paul VI: A Study in Perspective, against the Background of the 1974 Synod of Bishops and in the Light of Contemporary Trends in the Catholic Theology of Mission*, doct. diss., Rome, Pontifical Urban University, 1985, pp. 17-19.

<sup>3</sup> 8 December 1975, in AAS, 58 (1976), pp. 5-76. The pope writes: "Evangelization has been defined as consisting in the proclamation of Christ Our Lord to those who do not know him, in preaching, catechetics, baptism and the administration of the other sacraments. But no such defective and incomplete definition can be accepted for that complex, rich and dynamic reality which is called evangelization without the risk of weakening or even distorting its real meaning (EN 17).

"[...] evangelization is to be achieved, not from without as though by adding some decoration or applying a coat of colour, but in depth, going to the very centre and roots of life. The gospel must impregnate the culture and the whole life of man, [...]. The gospel and, therefore, evangelization cannot put in the same category with any culture. They are above all cultures. [...] The gospel and evangelization are not specially related to any culture but are not necessarily incompatible with them. On the contrary, they can penetrate any culture while being subservient to none" (EN 20). Translation in FLANNERY2, pp. 718-719.

<sup>4</sup> FLANNERY2, p. 721.

evangelization is not the expansion of the Church for its own sake. All men and women are invited into the Church so that they can join a community dedicated to preaching, serving and witnessing to God's reign.<sup>5</sup>

The Church has been called to be present among peoples of different cultures and human groups, including socio-cultural contexts in which Christ and his Gospel are not known and in areas where there are no Christian communities sufficiently mature to be able to incarnate the Gospel in their own environment and proclaim it to other groups (AG 5; RM 33). This apostolate is carried out by the Church by means of the proclamation of the life and teaching of Jesus Christ and through the celebration of the sacraments and other means of grace (AG 5, 9; RM 42-45). The immediate aim of this missionary activity is the "implanting of the Church," that is, the building up of particular churches in the midst of peoples who do not believe in Jesus Christ and among whom the Church has not yet taken root (AG 6, 23, 27; RM 33-34, 48-50; c. 786) and whose culture has not yet been influenced by the Gospel (EN 18-20; RM 34, 53-54). For this reason, the first proclamation of the Gospel differs both from the ordinary pastoral care of the faithful and from efforts aimed at renewal of Christian faith and life (AG 6).<sup>6</sup>

Evangelization, the mission of announcing the message of salvation (Acts 13:26), is the primary task of the Church. It takes place in various ways and in various stages depending on the diversity of the situations in which those who proclaim the message

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<sup>5</sup> S.B. BEVANS and R.P. SCHROEDER, *Constants in Context: A Theology of Mission for Today*, New York, Maryknoll, Orbis Books, 2004, p. 8. For detailed information on the origins of the Church as it emerges in the New Testament and the acceptance of mission anywhere and everywhere in the world, see *ibid.*, pp. 10-19.

<sup>6</sup> P. GIGLIONI, "The Evangelization Process: Kerygma to Local Church," in S. KAROTEMPREL et al. (eds.), *Following Christ in Mission: A Foundational Course in Missiology*, Boston, MA, Pauline Books & Media, 1996, p. 204.

find themselves. Through the proclamation of the Gospel, which is the permanent priority of mission, faith comes into being when the message proclaimed is received (Rom 10:17). Kerygmatic preaching, that is, the first proclamation, must develop into faith-conversion in those who have received the message of salvation. Conversion to the Lord is the work of the Holy Spirit. The human response must not be forced but must be free and sincere. The Church strongly defends the freedom of individuals in matters of religion.<sup>7</sup> No one must be forced to act contrary to his or her conscience in the process of conversion; the supreme law of conscience must prevail (*DH 3*).<sup>8</sup>

Proclamation calls for love and respect for those who listen, using language adapted to their situation and remaining in communion with the entire ecclesial community. Kerygmatic proclamation of the Good News occurs chiefly by means of preaching to or the catechetical instruction of those who have not yet received the message of salvation in Jesus Christ (*EN 22*). It is made with the intention of leading them to conversion of heart, repentance and faith (*AG 13*). This is followed by a deepening of the kerygma to those who, through conversion, have entered the catechumenate and are about to complete the journey of Christian initiation (*AG 14*).<sup>9</sup> Evangelization is a process which begins with the first proclamation, continues with the catechumenate and growth in the faith, culminates with the celebration of sacramental initiation, and then is followed by an ever-deepening catechetical instruction, Christian living and authentic spirituality.

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<sup>7</sup> *AG 13; DH 2, 4, 10; GS 21; cc. 748, 787, §2; CCEO cc. 586, 588.*

<sup>8</sup> GIGLIONI, "The Evangelization Process," pp. 209-210.

<sup>9</sup> *Ibid.*, pp. 205-206.

## 4.2– Inculturation and the Evangelization of Cultures

In this section we shall first treat briefly the meaning of the inculturation as explained in the Encyclical Letter *Redemptoris missio*. There follows an exposition of the stages of the inculturation process, a brief explanation on how the Gospel should be inserted in the heart of polygamous families, the evangelization of cultures, incarnation of the evangelical messages within the polygamous cultures, the purification of cultural traditions, discernment of the positive from the negative elements, and finally use of the valid elements.

### 4.2.1 – Meaning of inculturation

Pope John Paul II, in his Encyclical Letter *Redemptoris missio*, states:

As she carries out missionary activity among the nations, the Church encounters different cultures and becomes involved in the process of inculturation. The need for such involvement has marked the Church's pilgrimage throughout her history, but today it is particularly urgent.

The process of the Church's insertion into peoples' culture is a lengthy one. It is not a matter of purely external adaptation, for inculturation 'means the intimate transformation of authentic cultural values through their integration in Christianity and the insertion of Christianity in the various human cultures.' The process is thus a profound and all-embracing one, which involves the Christian message and also the Church's reflection and practice. But at the same time it is a difficult process, for it must in no way compromise the distinctiveness and integrity of the Christian faith.

Through inculturation the Church makes the Gospel incarnate in different cultures and at the same time introduces peoples, together with their cultures, into her own community. She transmits to them her own values, at the same time taking the good elements that already exist in them and renewing them from within. Through inculturation the Church, for her part, becomes a more intelligible sign of what she is, and a more effective instrument of mission (*RM* 52).<sup>10</sup>

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<sup>10</sup> JOHN PAUL II, Encyclical Letter *Redemptoris missio*, 7 December 1990, in *AAS*, 83 (1991), pp. 249-340. Translation in *Encyclical Letter Redemptoris missio of the Supreme Pontiff John Paul II on the Permanent Validity of the Church's Missionary Mandate*, Boston, Pauline Book & Media, 1999, p. 69.

Inculturation “reveals a fresh approach to the evangelization of cultures.”<sup>11</sup> The process whereby catechesis takes flesh in various cultures includes two dimensions: on the one hand, the ultimate transformation of authentic cultural values through integration in Christianity and, on the other, the insertion of Christianity in the various human cultures. Thus, one can speak of inculturation *ad extra* and inculturation *ad intra*.<sup>12</sup> Inculturation refers to the unique presence of the Christian experience within the culture of the people in whose midst the Church takes root. This presence is realized in a process of dialogue, “in which the Christian community takes on the values of local people, develops them in a truly Christian sense and leads them to a more universal communion.”<sup>13</sup> It is a requirement of evangelization and a path towards full evangelization that will enable the Church to bring out its full message of justice and peace.<sup>14</sup> “Inculturation makes evangelization begin at the very depths of hearts and customs.”<sup>15</sup> It is therefore necessary that during the work of evangelization in polygamous societies, one takes into account the positive elements of their culture. However, without proper inculturation the

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<sup>11</sup> H. CARRIER, *Evangelizing the Culture of Modernity*, New York, Maryknoll, Orbis Books, 1993, p. 64.

<sup>12</sup> “Inculturation *ad extra*” indicates the impact of evangelization on the culture of the people who receive the Gospel while “inculturation *ad intra*” refers to the effect in the life of the Church as a result of its presence within a new culture. A.A. ROEST CROLLIUS, “Inculturation,” in S. KAROTEMPREL et al. (eds.), *Following Christ in Mission: A Foundational Course in Missiology*, Boston, MA, Pauline Books & Media, 1996, pp. 150 and 152.

<sup>13</sup> Ibid.

<sup>14</sup> See J.P. MBYEMEIRE, *A Theological Analysis of the Problem of Justice and Peace: The Contribution of the Special Synod for Africa and the Church in Uganda*, Rome, Pontificia Universitas Urbaniana, 1997, p. 6.

<sup>15</sup> SYNOD OF BISHOPS: SPECIAL ASSEMBLY FOR AFRICA, *The Church in Africa and her Evangelizing Mission towards the Year 2000*, p. 45.

approach to polygamous families will remain difficult. Therefore, proper inculturation is an important need to approach the problem.

#### **4.2.2 –The stages of the inculturation process**

There are three main stages in the process of inculturation. The first stage consists in the Christian life and message becoming present within a given culture. This stage coincides with the beginning of evangelization and the formation of a group of faithful in a given cultural area. This beginning means a period of learning about the values of a new culture. The openness and receptivity to these values is necessary for the work of evangelization. The second stage occurs when the local Church has gained sufficient ability in understanding the various elements of the local culture and also a degree of competence in expressing the Christian message on various levels of this culture. This begins the stage of transformation. With regard to inculturation *ad extra*, the effects of evangelization on the culture are now becoming evident. Regarding inculturation *ad intra*, this entails a long process of discernment, purification and creation of new forms to adequately explain and express elements of the Church's tradition. The third stage begins with the establishment of a new communion. This communion is to be found on the level of the local Church in its communion with the culture, and then it opens itself to all humanity.<sup>16</sup>

#### **4.2.3 – The Gospel in the very heart of polygamous families**

The gospel becomes relevant and reliable when it is communicated to people through their own culture. The Word was incarnated in a given cultural context. He must be reincarnated in a specific culture and find appropriate human response through it. Therefore the gospel is received, experienced, affirmed and

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<sup>16</sup> ROEST CROLLIUS, "Inculturation," p. 152-153.

proclaimed through a culture. Culture plays a crucial role in the God/humanity dialogue.<sup>17</sup>

The Gospel is experienced and expressed in different ways and at different times. While God's self-revelation first took place in Judaic culture, Pentecost was the manifestation of God's impartial action in all cultures. Since Pentecost, the Gospel has taken root in many cultures. Church history reveals that any authentic response to the Gospel has always been contextual. In fact, the Gospel is contextual by its very nature. The Christ-event is the saving event of God and, as such, pertains to all humanity and creation. The uniqueness and universality of the Gospel is experienced and continuously affirmed in the diversity of cultures. This is its strength. The Gospel makes the Church a confessing community of the faith in many cultures. Secondly, the Gospel should not simply be transmitted from one culture to the other; it must be reincarnated. Being God's saving act in the life of human beings, the Gospel must be fully re-owned by people in and through their own cultural forms, patterns, norms and values. The Gospel deals with God/humanity relations; therefore it cannot be isolated from the concrete world. It has to become incarnate in the life of human beings and the community. The issue is how to incarnate the Gospel in a cultural context in polygamous culture and make it a transforming reality, bringing it into dialogue to express the universality of Christian marriage. Thirdly, the Gospel should cross all human frontiers and be taken to all people, cultures and lands. The Gospel is not only a reality to be lived in (in-reach), but also a reality to be taken out (outreach). However, crossing frontiers must be accompanied by

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<sup>17</sup> I. ARAM, "The Incarnation of the Gospel in Cultures: A Missionary Event, Geneva, 1995," in J.A. SCHERER and S.B. BEVANS (eds.), *New Directions in Mission and Evangelization 3: Faith and Culture*, New York, Maryknoll, Orbis Books, 1999, pp. 31-32.

respect and sensitivity to the cultural values and norms of the other. Fourth, the Church cannot exist without some form of inculturation, but it is never exhausted by any particular culture. It always transcends culture; it is cultural. God assumed humanity in a particular culture to restore it to its authenticity. The blind identification of the Gospel with a particular culture is the negation of the very nature of the Gospel. Christ meets us in our own cultural contexts. He is confessed through specific cultural patterns and forms. The Gospel is affirmed through cultures and not in cultures. Culture is only an instrument, framework and context to embody and articulate the Gospel. How can we go beyond the Jesus of history, who is so deeply rooted in our cultures, and identify ourselves with the Christ of faith? The Gospel creates a dynamic dialogue of cultures and finally leads people to one Christ through cultural diversities.<sup>18</sup>

Inculturation as a profound insertion of the Gospel in the very heart of a determinate culture<sup>19</sup> enables the fertile seed of the faith to germinate, develop and bear fruit according to the potentiality and peculiar character of that culture. Through inculturation, the Church can make the Gospel incarnate in polygamous cultures and at the same time introduce peoples into her community. In approaching polygamous families, one must consider seriously their myths, customs, rituals, prayers and songs. For example, some polygamous societies believe that death is absolute and final. By examining with them their myths of the origin of death, its coming through man's sin, we can move to the Good News that God not only did not abandon his original plan but

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<sup>18</sup> Ibid., pp. 32-34.

<sup>19</sup> V. MOSCA, "Diritto liturgico e inculturazione. Orizzonti teologici, normativi e pastorali," in *Inculturazione, diritto canonico e missione*, Rome, Urbaniana University Press, 2003, p. 123.

actually sent His Son to announce and effect the restoration of the possibility of everlasting life. In this way, the inculturation will be meaningful to them, deepen and strengthen their faith, and embrace it through personal commitment.

The Gospel of Christ can enter into communion with all the various cultures, be incarnated, lived and expressed in each of them (*RM* 52). In fact, it can be adapted to and expressed in any form of healthy human culture. The Church can make use of all to make it penetrate into hearts of people. Through inculturation, it is easy to approach the culture of the polygamous families in such a way that they are enabled from within themselves to be fertile because, as the synod of bishops said: “Christianity becomes itself enriched when through inculturation it enters into dialogue with peoples and with their cultures.”<sup>20</sup>

#### **4.2.4 – The evangelization of cultures**

The expression “evangelization of cultures” expresses one aspect of the process of inculturation, that is, the impact that the preaching of the Gospel has on the cultures of humanity.<sup>21</sup> Speaking about the evangelization of cultures, Pope Paul VI said: “Evangelization is to be achieved, not from without as though by adding some decoration or applying a coat of colour, but in depth, going to the very centre and roots of life” (*EN* 20).<sup>22</sup> On the other hand, Pope Paul II emphasized the need to address cultures. He said: “The synthesis between culture and faith is not just a demand of culture, but also of faith. A faith which does not become culture is a faith which has not been fully received, not

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<sup>20</sup> SYNOD OF BISHOPS: SPECIAL ASSEMBLY FOR AFRICA, *The Church in Africa and Her Evangelizing Mission towards the Year 2000*, p. 43.

<sup>21</sup> ROEST CROLLIUS, “Inculturation,” p. 151.

<sup>22</sup> FLANNERY2, p. 719.

thoroughly thought through, not fully lived out.”<sup>23</sup> Inculturation, therefore, is an inseparable aspect of evangelization.<sup>24</sup> It means the presentation and re-expression of the Gospel in forms and terms proper to a culture—processes which result in the reinterpretation of both, without being unfaithful to either. Inculturation is a creative development which, as the International Theological Commission rightly pointed out, participates in the dynamism of cultures and their intercommunication.<sup>25</sup> Inculturation means both that the Gospel challenges cultures and that culture re-expresses the Gospel.<sup>26</sup> The Church is aware that culture is a reality to be evangelized and that is why it is called to listen carefully to people in order to understand them and find the right words to bring the originality of the Gospel message to people by trying to penetrate and reach the soul of different cultures and respond to their expectations by making them grow in the dimension of faith, hope and Christian charity. Evangelizing cultures goes parallel with criticizing and denouncing everything in a culture that contradicts the Gospel and is opposed to the dignity of a person in his or her personal and community dimension.<sup>27</sup>

One of the consequences of inculturation is that both evangelizing and evangelized cultures mutually influence each other. This is a normal outcome of the

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<sup>23</sup> As quoted in *L'osservatore romano*, 15 (28 June 1982), p. 7.

<sup>24</sup> The evangelization will be complete if it takes account of the increasing interplay of the Gospel and people's concrete lives (*EN* 29).

<sup>25</sup> INTERNATIONAL THEOLOGICAL COMMISSION, “Faith and Culture,” *Omnis Terra*, no. 198, 1989, p. 264; P. ARRUPÉ, “Letter to the Whole Society on Inculturation,” in J. AIXALA (ed.), *Other Apostolates Today*, vol. III, Saint Louis, Institute of Jesuit Sources, 1981, p. 172.

<sup>26</sup> SHORTER, “Inculturation: Win or Lose the Future,” p. 55.

<sup>27</sup> E.P. PACELLI (ed.), *International Secretariat of the Pontifical Missionary Union*, Rome, Propaganda Fide, 2010, p. 169.

intercultural process. It is to be expected that evangelized cultures acquire culture traits from the evangelizers, reinterpret them, and integrate them within their own authentic systems. It is also expected that evangelizing cultures are enriched in their turn by the new cultural expressions of Christianity they have provoked.<sup>28</sup>

#### **4.2.4.1 – The incarnation of the evangelical message in the polygamous cultures**

The incarnation<sup>29</sup> of the evangelical message in polygamous cultures is a real and proper requirement of the message itself which is addressed to everyone, since all have been called to the messianic salvation.<sup>30</sup> Polygamous families are profoundly linked to a strong culture, and the building up of the Kingdom of God cannot avoid borrowing the positive elements of human culture or cultures of those to whom are destined the Gospel and the Reign of God proclaimed by it. These people have the fundamental right to hear the Word of God as far as the salvation of their soul is concerned, to live it and express it, according to their native social-cultural categories. In other words, it is their right to reach Christ, to know him and to love him according to their peculiar way of being, of thinking and of acting, that is, remaining true to themselves, without losing anything of their proper identity.

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<sup>28</sup> EN 63-64.

<sup>29</sup> Incarnation can be described as the mystery of the Second Person of the Blessed Trinity's becoming man, the mystery of Jesus Christ's being God and man, the mystery of His being God-Man. The word Incarnation (from the Latin *caro*, flesh) means the putting on or the taking on of flesh. “Καὶ ὁ λόγος σαρξ ἐγένετο” – “And the Word was made flesh” (Jn 1:14). The word Incarnation may refer to the Word's becoming man; thus it would mean the operation by which the Triune God, forming a determined human nature in the womb of the Virgin, elevated it and efficiently united it to the Second Divine Person. The word *Incarnation* may also refer to the resultant union; thus it would mean the wondrous, singular, and eternally permanent union of the divine nature and the human nature in the one Person of the Word. E.A. WEIS and J. WALSH (eds.), “Incarnation,” in B.L. MARTHALER et al. (eds.), *New Catholic Encyclopedia*, vol. VII, 2<sup>nd</sup> ed., Detroit, Thomson/Gale, 2003, p. 373.

<sup>30</sup> Cf. MOSCA, “Diritto liturgico e inculturazione,” pp. 118-119.

Polygamous families are to be instructed very carefully so that they can understand that, with the incarnating of the Gospel in their culture, the Church by no means seeks to destroy that culture. For polygamous families, to accept the Christian message does not signify for them the renunciation of their own personalities or of the culture that has formed them. The Christian faith does not address itself to the renunciation of any value which is authentically human, because all that is authentically human, one can say, is already profoundly Christian. The incarnation of the divine message of the Gospel in the customs and culture of people has been encouraged by popes and most Catholic theologians. For example, during his address to the bishops of Zimbabwe on their *ad limina* visit in 1982, Pope John Paul II repeated what he said during his pastoral visit to Nigeria.

The Church truly respects the culture of each people. In offering the Gospel message, the Church does not intend to destroy or to abolish what is good and beautiful. In fact she recognizes many cultural values and through the power of the Gospel purifies and takes into Christian worship certain elements of people's customs. The Church comes to bring Christ; she does not come to bring the culture of another race. Evangelization aims at penetrating and elevating culture by the power of the Gospel.<sup>31</sup>

The Church, living in diverse situations in the countries of sub-Saharan Africa, has the duty to explain the message of Christ in her preaching to diverse cultures and to all people. In this way the people can more readily probe it, more deeply understand it, and give it better expression in liturgical celebrations and in the life of the diversified community of the faithful (cf. *GS* 44 and 58). This adaptation of the preaching of the

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<sup>31</sup> JOHN PAUL II, Allocution, 18 June 1982, in *L'osservatore romano*, 15 (28 June 1982), p. 4.

revealed Word must be taken as a mode of all evangelization (*LG* 13 and 17) so that it might be authentic and efficacious.

Proclaiming the Gospel, the Church procures whatever good is in the minds and hearts of people, whatever good lies latent in the rites, customs and cultures of diverse peoples. This is not only saved from destruction but is also purified, strengthened, raised up, healed, ennobled and perfected unto the glory of God (*LG* 13 and 17). The Church emphasizes the catholicity of the People of God at the same time as she tends to centralize all humanity in Christ, the Head of creation, in the unity of his Spirit (*LG* 13). Therefore, far from destroying or impoverishing the cultures of the peoples, the Gospel of Christ raises them, perfects them, renders them fruitful from within, strengthens them, completes them and restores them in Christ (cf. *LG* 13 and 17; *GS* 58).

#### **4.2.4.2 – The purification of the cultural traditions**

Naturally, in a polygamous culture, there are negative and positive elements. It is on this basis that there is a need for the renewal and perfection of religious cultural traditions. “Inculturation facilitates not only the integration of cultural values but also the purification of those elements not in keeping with the exigencies of the gospel.”<sup>32</sup> It “is written into the very logic of the incarnation. God became man so as to share with man his plan of salvation (I Tim 2:4). In this way the gospel finds expression in the genius of a people, and will continue to find expression in the genius of every people that accepts it.”<sup>33</sup>

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<sup>32</sup> SYNOD OF BISHOPS: SPECIAL ASSEMBLY FOR AFRICA, *The Church in Africa and her Evangelizing Mission towards the Year 2000*, p. 44.

<sup>33</sup> Ibid.

The Gospel always provokes, by reason of its very nature, an explosion of profound renewal in the life of people and necessarily also in their cultures. The evangelical message renews and perfects the religious – cultural traditions of the peoples and purifies them from those elements which may possibly be incompatible with the Gospel. It discerns in them the positive elements from the negative elements. This means that those elements which are not in contradiction with the Christian religion and which, in consequence, can be assumed as an expression of it, are taken positively. On the other hand, those which are incompatible with the evangelical message cannot be assumed by it. It is of these latter elements that cultures are to be purified. The purification of the cultural traditions is not other than their participation in the redemptive virtue of Christ. They are thus rendered participants of that newness introduced by Christ into the world by his death and resurrection.

#### **4.2.4.3 – Discernment of the positive elements from the negative elements**

Separation of the good from the bad in a culture's values and way of life, its institutional patterns, its goals and accomplishments demands a principle of discernment. When the evangelizer looks for such a principle, he or she reaches for the Gospel as interpreted by the faith of the Church.<sup>34</sup> Pope John Paul II, in his encyclical Letter *Redemptoris missio*, mentions two basic guidelines in incarnating the Gospel in Peoples' culture.

In this regard, certain guidelines remain basic. Properly applied, inculturation must be guided by two principles: 'compatibility with the gospel and communion with the universal Church' [FC 10]. Bishops, as guardians of the 'deposit of faith,' will take care to ensure fidelity and, in particular, to provide discernment,

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<sup>34</sup> F. GEORGE, "Evangelizing Our Culture," in S. BOGUSLAWSKI and R. MARTIN, *The New Evangelization: Overcoming the Obstacles*, Mahwah, NJ, Paulist Press, 2008, pp. 44-45.

for which a deeply balanced approach is required. In fact there is a risk of passing uncritically from a form of alienation from culture to an overestimation of culture. Since culture is a human creation and is therefore marked by sin, it too needs to be 'healed, ennobled and perfected' [LG 17].<sup>35</sup>

The process of inculturation must constantly take into account the positive elements from the culture of the polygamous families because these elements form part of their first line-heritage. It must then establish a relationship between these elements and those of Christianity.

Regarding the question of the inculturation of marriage, however, there is a need to evaluate the various marriage customs and take into account the distinction between the essential values or elements and the external rites of marriage, as well as the two key-principles: compatibility with the Gospel and communion with the universal Church. Polygamy, however, always radically contradicts the unity of Christian marriage. The negative elements in polygamous culture, such as discrimination and oppression of women, disunity, untrue love, infidelity, jealousy and marrying girls who are below the legal minimum of age, cannot be inculturated, since they are incompatible with the content of genuine Christian marriage and canonical norms. In the case of such negative elements or customs, the task of discernment and purification is therefore necessary.

#### **4.2.4.4 – Use of precious cultural gifts**

“The process of inculturation must constantly take into account the positive elements of African Traditional Religion.”<sup>36</sup> In sub-Saharan Africa there are many precious gifts of different cultures – for example, traditional songs (tribal melodies),

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<sup>35</sup> RM 54; *Encyclical Letter Redemptoris missio*, p. 71.

<sup>36</sup> SYNOD OF BISHOPS: SPECIAL ASSEMBLY FOR AFRICA, *The Church in Africa and her Evangelizing Mission towards the Year 2000*, p. 56.

vessels, vestments, stories, proverbs, saying and riddles, dialogue, vocabulary, ritual symbols, musical instruments, drum strokes, hand-claps, traditional dancing and body language.<sup>37</sup> These precious cultural gifts should be used in faith instruction (evangelization), after being studied by the diocesan pastoral council (inculturation committee) and being approved by the local ordinary.

This kind of process needs to take place gradually, in such a way that it really is an expression of the community's Christian experience. As Pope Paul VI said in Kampala: 'It will require incubation of the Christian 'mystery' in the genius of your people in order that its native voice, more clearly and frankly, may then be raised harmoniously in the chorus of other voices in the universal Church.'<sup>38</sup> In effect, inculturation must involve the whole people of God, and not just few experts, since the people reflect the authentic *sensus fidei* which must never be lost sight of. Inculturation needs to be guided and encouraged, but not forced, lest it rise to negative reactions among Christians. It must be an expression of the community's life, one which must mature within the community itself, and not be exclusively the result of erudite research. The safeguarding of traditional values is the work of a mature faith (*RM* 54, §2).<sup>39</sup>

The first step in this approach is trying to appreciate with them the goodness of what is there, to build on it, and to use whatever will help them understand what the Gospel means for them. This is important because these things have meaning for them and it is therefore harmful to discriminate against them abruptly. A means of avoiding this danger is to pragmatically make use of what is beneficial in their culture especially if it will also make Christianity more meaningful to them, and then show that, although somewhat different to what they had, it is now integrated into a richer form.

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<sup>37</sup> J.K. NJINO, R. SESANA and J.P. KIRBY, *Communicating the Gospel Message in Africa Today*, Eldoret, AMECEA Gaba Publications, 1992, pp. 7-16.

<sup>38</sup> PAUL VI, Allocution, 31 July 1969, in *AAS* 61 (1969), p. 577.

<sup>39</sup> *Encyclical Letter Redemptoris missio*, pp. 71-72.

The Church in sub-Saharan Africa should educate the agents of evangelization to examine, to respect and love what is deepest and most valuable in the polygamous culture. Then, after critical analysis and study, those positive elements can be used without contradicting the fundamental faith and teaching of the Church. This is a better model and a proper methodology in mission to be utilized when evangelizing any polygamous group.

### **4.3 – Evangelization in Polygamous Societies**

Although the Church achieved remarkable growth in sub-Saharan Africa in the twentieth century, there are still many millions of people who have never known Christ. Thus, the Church needs to continue its mission of evangelization. One cannot deny the activity of the Holy Spirit in the cultures of the sub-Saharan peoples even where the Church does not yet exist. These cultures already possess elements of Christian truth, which we call “seeds of the Word.”<sup>40</sup> People of good will are influenced by the activity of the Holy Spirit and by these seeds of divine truth so that they are disposed to respond favourably to evangelization and to find expression for the Gospel in their culture.<sup>41</sup> This is a process which needs to be taken step by step starting with a first evangelization and followed by the pre-catechumenate and the catechumenate proper.<sup>42</sup> Each of these stages will be addressed in turn, drawing on the applicable liturgical laws and canons of the

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<sup>40</sup> Cf. Lk 8:11

<sup>41</sup> A. SHORTER, *Evangelization and Culture*, London, Geoffrey Chapman, 1994, pp. 78-79.

<sup>42</sup> The following terms are used in the Code for the word “catechumenate” in its substantive forms: *praecatechumenatus* is used once in c. 788, §1 (CCEO c. 587, §§ 1 and 2); *catechumenatus* is used four times, in cc. 788, §1; 788, §3; 851, §1 and 865, §1; *catechumenus* is used six times, in cc. 206, §1; 206, §2; 788, §2; 788, §3, 1170; and 1183, §1.

Latin Code. Nor does evangelization end with sacramental initiation but must continue with the ongoing Christian formation of the baptized.

#### 4.3.1 – Preparatory phase

Preparatory phase is the phase during which research is carried out, languages learned, contacts made, and the ground prepared for evangelization. [...] It is a necessary step in first/primary evangelization and is inseparable from it.<sup>43</sup> This phase includes the activity of Christians who dedicate themselves to social or charitable works, dialogue concerned with moral and religious values, justice and peace, liberation, co-responsibility, or to the instruction of culture, particularly when the aforementioned aspects are inspired by Gospel values and the solicitude that all may know the love of God revealed in Christ.<sup>44</sup> The law of the Church insists on the importance of dialogue in evangelization. “By the testimony of their words and of their lives, missionaries are to establish a sincere dialogue with those who do not believe in Christ so that, taking their

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<sup>43</sup> SHORTER, *Evangelization and Culture*, p. 75. Shorter points out: “Some years ago, a Catholic missionary society was beginning work among the nomads of northern Kenya. It was proposed to spend three to four years making contact with the people, studying them and researching their social and cultural life before beginning evangelization proper. This was an excellent suggestion, but it was pointed out to them that their very presence among the nomads was already the start of the evangelization process, which could not, in fact, be postponed once it had begun.” *Ibid.*, p. 23.

<sup>44</sup> B. HÄRING, *Evangelization Today*, Notre Dame, IN, Fides Publishers, 1974, p. 43; *idem*, *Faith and Morality in a Secular Age*, Slough, St. Paul Publications, 1973, pp. 207-217. Sometimes the term “pre-evangelization” conceals a false ideology which maintains that increased literacy, cultivation, technical progress, and social and political organisation are more urgent than evangelization and actually are a condition for it. According to HÄRING, pp. 43-44, those who think in this way hide the Gospel and have not yet been liberated by it and through it.

native character and culture into account, ways may be opened up by which they can be led to know the good news of the Gospel” (c. 787, § 1).<sup>45</sup>

In polygamous societies, evangelization predisposes the will of people for ready submission to Christian standards of conduct. Involvement in this effort is a fundamental duty of the people of God, as expressed in c. 781 (*CCEO* c. 584, §1).<sup>46</sup> This task does not belong only to the hierarchy or to foreign missionaries but also to the baptized natives because, by virtue of their faith in Christ, they too are called to be missionaries.<sup>47</sup>

The activity of evangelization should be an integral part of the life of a baptized Christian, but this does not mean that the evangelizer acts alone. [...] [C]ommunity-building is linked to evangelization; it is also true that evangelization is a community responsibility. Through the sacrament of baptism, a person is inserted into the Christian community and accepts the obligations which this community imposes. [...] [T]he Christian community is both the outcome of evangelization and its driving force. The community is the agent of evangelization and the principal sign of its accomplishment.<sup>48</sup>

Evangelization in polygamous societies is a community responsibility which can be conducted by those who are deeply permeated by the Gospel and who are convinced of the priority of the kingdom of God over any social or moral work and purely humanistic

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<sup>45</sup> The Latin text reads as follows: “Missionarii, vita ac verbi testimonio, dialogum sincerum cum non credentibus in Christum instituant, ut ipsis, ratione eorundem ingenio et culturæ aptata, aperiantur viæ quibus ad evangelicum nuntium cognoscendum adduci valeant (c. 787, §1).

<sup>46</sup> Cf. *AG* 2 and 35.

<sup>47</sup> Missionaries as ministers of the Gospel are believers in Christ who are sent for missionary activity by competent ecclesiastical authority. They may be lay men or women, members of religious communities or members of secular clergy (deacons, priests or bishops). These may include indigenous (natives) to the missionary area or from elsewhere, that is, non natives (cf. c. 784). See J.A. CORIDEN, “Missionary Action of the Church (cc. 781-792),” in *CLSA Comm1*, p. 561.

<sup>48</sup> SHORTER, *Evangelization and Culture*, p. 57.

values. Hence, evangelization in polygamous societies is an apostolate which requires dedication and testimony to the Gospel.

#### **4.3.2 – Primary/First evangelization**

Primary evangelization is the term used to refer to the early stages of evangelization of those who have not yet heard the Good News of the Kingdom.<sup>49</sup> Also called “first evangelization,” it exists in situations in which Church implantation has not yet taken place. The local Churches, including those in sub-Saharan Africa, must establish and periodically renew their pastoral priorities for the evangelization of these societies, and primary evangelization must be among their first concerns.

Primary evangelization should be a priority of local mission, as discerned by the local Church. [It] follows the path of interreligious dialogue. It seeks to discover what is of God in the cultural and religious traditions of the unevangelized. It looks for signs of the activity of the Spirit and for the elements of Christian truth [...] It notes the various ways in which the people of these traditions yearn consciously or unconsciously for Christian fulfillment, and it calls them to repentance and conversion. At the appropriate moment, it identifies and names the hitherto unknown Christ, whose Spirit has been at work among them. It speaks to the human imagination about Christ and invites the people to learn about him and consciously to commit themselves in love and freedom to him.

[...] When the primary evangelization phase is complete, the new Christian community still needs nurturing, while it consolidates itself socially and culturally. It may even need a ‘second wind’ of primary evangelization, a boost – as it were – to keep it on course, even after it has developed ecclesial institutions.<sup>50</sup>

Pastoral care, or “pastoral evangelization,”<sup>51</sup> as well as “missionary evangelization”<sup>52</sup> are needed in polygamous societies. “Missionaries are to ensure that

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<sup>49</sup> Ibid., pp. 23 and 75.

<sup>50</sup> Ibid., p. 77.

<sup>51</sup> According to Shorter, pastoral evangelization, which is often simply called “pastoral care,” means the activity of establishing God’s Kingdom in the home community. This is the usual form of evangelization. It is concerned with proclamation, prayer and praxis. It is directed towards the home community that is more or less homogeneous and well integrated. Even if it is

they teach the truths of the faith to those whom they judge to be ready to receive the good news of the Gospel so that, if they freely request it, they may be admitted to the reception of baptism” (c. 787, §2).<sup>53</sup> Those who express a desire to embrace the faith during the

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made up of people of different races and cultures, it supposes that these different groups are in communication with one another. A multicultural community may be a configuration of equally respected participant cultures or infracultures. What is envisaged in this form of evangelization is a community which is not divided by human barriers and cultural allegiances that prevent normal communication.

Pastoral care helps people to discover and respond to Christ in their lives. This means reaching out to them in the places where they live, work and play. Preaching, teaching and offering spiritual advice at worship centres have their importance, but organizing pastoral teams, carrying out pastoral visitation, setting up contact structures, starting associations and founding basic communities may be ultimately more effective. Therefore it helps people to develop an awareness of Christian ethics and social teaching, so that the Gospel may be proclaimed and lived in every context of work and life. It involves dialogue with many different traditions and “worlds.” There is a dialogue with the reigning socio-cultural ethos or philosophy of life. There is also ecumenical and interreligious dialogue, dialogue with non-believers, atheists and agnostics. SHORTER, *Evangelization and Culture*, pp. 62-65.

<sup>52</sup> “Like pastoral evangelization, missionary evangelization is defined with reference to the vocation of the evangeliser. Whereas, in pastoral evangelization, the evangelizer builds God’s Kingdom in his/her own community, culture or local Church, missionary evangelization occurs when the evangelizer crosses a human frontier to build the Kingdom in another culture, another language, another nation or local Church.” *Ibid.*, p. 67.

Missionary evangelization is carried out not only by the ordained ministers but also by lay people. “Some lay people are called to become missionary evangelizers, local or global, in the strict sense of the word. They really share in the vocation to witness the Gospel across cultural and other human frontiers. They do this, either as pastoral workers, or by pursuing their own specializations and professions. Sometimes they join missionary organizations, either lay missionary movements, or clerical and religious institutes which offer associate status to lay people.” *Ibid.*, p. 73; cf. CONGREGATION FOR THE CLERGY et al., Instruction on Some Questions regarding Collaboration of the Non-ordained Faithful in the Ministry of Priests *Ecclesiae de mysterio*, 15 August 1997, in *AAS*, 89 (1997), pp. 852-877; English trans. in *Origins*, 27 (1997-1998), pp. 397, 399-409. However, missionary evangelization and primary evangelization are not identical. The concept of missionary evangelization is larger and more all-embracing than primary evangelization. Missionaries are oriented towards primary evangelization by their vocation and training for crossing borders. Nowadays, however, being a missionary usually means placing oneself at the service of a foreign local Church.

<sup>53</sup> The Latin text reads as follow: “Curet ut quos ad evangelicum nuntium recipiendum æstiment paratos, veritates fidei edoceant, ita quidem ut ipsi ad baptismum recipiendum, libere id petentes, admitti possint” (c. 787, §2).

stages of first/primary evangelization, including polygamists, should be informed of what will be expected of them during their formation in the precatechumenate.

#### **4.3.3 – Precatechumenate**

According to the liturgical law of the Rite of Christian Initiation of Adults (RCIA), Christian initiation formally begins with admission to the catechumenate, but the preceding period of the precatechumenate is of great importance as well and should not be omitted. It is the time of evangelization in which those who are not yet Christians open their hearts to the Holy Spirit so that they may believe and be freely converted to the Lord.<sup>54</sup>

The whole period of the precatechumenate is set aside for evangelization so that the true desire to follow Christ and to seek baptism may mature (RCIA, no. 10). According to the liturgical law, “the episcopal conferences may provide, if necessary and according to the local circumstances, a method to receive interested inquirers,” also called “sympathizers” (RCIA, no. 12). Such reception is optional and is done without any rite. It expresses the inquirer’s sound intention rather than faith and should be adapted to local conditions and opportunities. It is to be carried out at meetings and gatherings of the local community in a setting of friendly exchange where the inquirer or sympathizer is presented by a friend and welcomed and received by the priest or by some other appropriate and worthy members of the community (RCIA, no. 12).

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<sup>54</sup> *Ordo initiationis christianæ adultorum*, 6 January 1972, editio typica, Typis polyglottis Vaticanis, 1972, no. 9. All quotations of the RCIA are from the 1982 ICEL copyrighted translation in *The Rites of the Catholic Church as Revised by Decree of the Second Ecumenical Council and Published by Authority of Pope Paul VI*, New York, Pueblo Publishing Co., 1983. ICEL published a significantly adapted version of the RCIA in 1985, but the earlier one is used in this thesis for consistency with the *editio typica* of 1972.

#### 4.3.4 – Catechumenate

The catechumenate<sup>55</sup> can be defined as “a process by which catechumens, whether adults or children of catechetical age, are prepared for baptism according to an organized method, which includes liturgical rites as well as instruction; also the state or order of catechumens, carrying canonically defined privileges.”<sup>56</sup> The admission to the catechumenate takes place when the period of the precatechumenate has been completed and the candidates have been grounded in the fundamentals of Christian life and teaching.<sup>57</sup> During this period, the candidates are given pastoral formation and are trained by suitable disciplines (cf. AG 14). The preparation can take several months or sometimes even years. Regarding the period of preparation, the RCIA states:

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<sup>55</sup> The word *catechumenus* or catechumen, from which is derived the discipline of the catechumenate, has its roots in the New Testament though there is no direct mention of the term “catechumenate” in the New Testament writings. The same may be considered as derived from the word “*kathakheo*” which denotes information that comes to the attention of someone or a communication that one receives (for example, Ac. 12: 21-24). See P. MACHADO, *The Catechumenate and Its Canonical Implications: With Special Reference to Can. 788*, Rome, Pontificia Universitas Urbaniana, 1997, p. 2. For more information on the word “*kathakheo*,” cf. W.F. ARNDT and F.W. GINGRICH (eds.), *A Greek-English Lexicon of the New Testament and Other Early Christian Literature*, 2<sup>nd</sup> ed., Chicago, The University of Chicago Press, 1979, pp. 423-424. It is used in a specific sense in the following texts: 1 Cor 14:19; Gal 6:6b; Rom 2:18; Acts 18:25; Lk 1:14.

“A catechumen is a person who, with the intention of becoming a Christian, undertakes a period of spiritual and catechetical formation in preparation for sacramental initiation into the church. Sometimes the catechumenate is spoken of broadly to include the period of the precatechumenate before the rite of acceptance into the order of catechumens. The term *catechumen* is also used at times in a strict sense to exclude the *elect*, those who have enrolled their names at the beginning of the second step in Christian initiation (RCIA, 118).” J.M. HUELS, *The Catechumenate and the Law: A Pastoral and Canonical Commentary for the Church in the United States*, Chicago, IL, Liturgical Training Publications, 1994, p. 5.

<sup>56</sup> E. YARNOLD, “Catechumenate,” in B.L. MARTHALER et al. (eds.), *New Catholic Encyclopedia*, vol. III, 2<sup>nd</sup> ed., Detroit, Thomson/Gale, 2003, p. 249.

<sup>57</sup> M.A. O'REILLY, “The Missionary Action of the Church cc. 781-792,” in *CLSA Comm2*, pp. 947-948; AG 14; RCIA, no. 15.

The catechumenate or pastoral formation of catechumens continues until they have matured sufficiently in their conversion or faith. If necessary, it may last for several years. By the teaching of the whole Christian life and by an introductory period of appropriate length, the catechumens are well initiated into the mysteries of salvation, in exercise of Gospel morality and in the sacred rites which are to be celebrated later on. In this way they are introduced into the life of faith, the liturgy and the charity of the people of God.<sup>58</sup>

Historically, an antecedent to the catechumenate may be found in Judaism, for instruction was required before an adult gentile was admitted to circumcision and proselyte baptism and, similarly, before the initiatory washing practiced by the Qumran community. In the Christian tradition, mention of the catechumen (*katēchoumenos*) and the catechist (*katēchōn*) occurs already in Paul (Gal 6:6).<sup>59</sup> The more immediate origin of the catechumenate was in the post-apostolic era. By the late third century it had developed into a full-fledged discipline for the preparation of those seeking to become Christian. The formation was thorough and well rounded, including doctrinal, spiritual, and moral aspects, leading up to the liturgical rites that sealed the catechumen's relationship with the Church.<sup>60</sup>

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<sup>58</sup> RCIA, no. 98. RCIA, no. 20 states: "The period of time suitable for the catechumenate depends on the grace of God and on various circumstances, such as the plan of instruction to be given, the number of catechists, deacons, and priests, the cooperation of the individual catechumens, the means necessary to reach the place of the catechumenate and to live there, and help of the local community. Nothing can be determined a priori. The bishop has the responsibility of setting the period of time and directing the discipline of the catechumenate. After considering the conditions of their people and region (SC 64), Episcopal conferences should regulate this matter more specifically."

In extraordinary circumstances (special cases), when the candidate cannot go through all the stages of initiation and considering the spiritual preparation of the candidate, the local ordinary may decide to shorten the period of the catechumenate. In individual cases, he may allow it to take place in one celebration (RCIA, nn. 98, 240).

<sup>59</sup> YARNOLD, "Catechumenate," p. 249.

<sup>60</sup> MACHADO, *The Catechumenate and its Canonical Implications*, p. 2.

When Christianity became a state religion during the reign of Constantine and conditions for the spread of the faith were favourable, the catechumenate declined and experienced disintegration. It was restored completely after the Second Vatican Council and made mandatory with the publication in 1972 of the *Ordo initiationis christianae adultorum*.

In light of its history, the catechumenate stands for the process or institution by which a person intending to receive baptism is prepared for the reception of this sacrament through catechesis, liturgical celebrations, and community living. The canons that refer to the catechumenate proper speak of admitting the candidates to the sacrament of baptism after having undergone a process. First, they must manifest the intention to receive baptism (cc. 851, 1°; 865, §1); second, they must have completed the precatechumenate; third, they are admitted to the catechumenate proper by means of a liturgical ceremony with their names being inscribed in the proper book (c. 788, §1); fourth, they must have been adequately instructed in the truths of the faith and the duties of a Christian (c. 865, §1); fifth, they must have been tested in the Christian life over the course of the catechumenate (c. 865, §1); and sixth, they must be urged to have sorrow for personal sins (c. 865, §1).

The Constitution on the Sacred Liturgy, *Sacrosanctum concilium* (1963), laid down the general directives for the catechumenate: “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” (SC 64).<sup>61</sup> The Constitution goes on to state: “In mission countries, in addition to what is furnished by the Christian tradition, those elements of initiation rites may be admitted which are already in use among some peoples in so far as they can be adapted to the Christian ritual [...]” (SC 65).<sup>62</sup> These directives may also be applicable in evangelizing polygamous societies.

In 1965 the Council set out more detailed pastoral guidelines in the Decree on the Church’s Missionary Activity *Ad gentes divinitus*. The decree stated clearly that the catechumenate is a period not only for instruction but also for gradual spiritual development and introduction to the life of the local community (AG 13).

Those who have received from God the gift of faith in Christ, through the Church [LG 17], should be admitted with liturgical rites to the catechumenate which is not a mere exposition of dogmatic truths and norms of morality, but a period of formation in the whole Christian life, an apprenticeship of sufficient duration, during which the disciples will be joined to Christ their teacher. The catechumens should be properly initiated into the mystery of salvation and the practice of the evangelical virtues, and they should be introduced into the life of faith, liturgy and charity of the People of God by successive sacred rites [SC 64-65] (AG 14).<sup>63</sup>

The catechumenal process calls for the cooperation not only of clergy and catechists but also the godparents (*patrini*) and the whole community (cf. AG 6).<sup>64</sup>

The candidate’s faith and conversion develop by a process which is both intellectual and spiritual. Blessings, exorcisms and other rites are celebrated not merely to mark and encourage progress but also as instruments of formation. In this way the

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<sup>61</sup> FLANNERY1, p. 21.

<sup>62</sup> Ibid.

<sup>63</sup> Ibid., p. 828.

<sup>64</sup> See YARNOLD, “Catechumenate,” p. 253.

catechumens are already connected to the Church, though not yet completely incorporated into it. Indeed, the Church grants certain prerogatives to catechumens that are proper to Christians (c. 206, §2). They are admitted to the blessings of the faithful and permitted, should they die, a Christian burial. They may celebrate their marriage in the Catholic Church, even to another non-Christian (RCIA, no. 18).<sup>65</sup> Nonetheless, they are normally dismissed from the Eucharistic assembly after they have been prayed for in the general intercessions.

According to W.G. Blum, polygamists who are to be received as catechumens need special attention and care. They should not be received with the other catechumens who are engaged in a proximate preparation for the reception of baptism, but their catechumenate should take on a special form because it is only a remote preparation for baptism.<sup>66</sup>

The purpose of the catechumenate for the polygamists is to help them live their Christian life to the fullest in the state in which they find themselves. Their status as catechumens is not looked upon as necessarily either permanent or temporary. Rather, through instruction they are brought to understand that God in his providence has

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<sup>65</sup> A distinct rite is used, the Rite of Celebrating Marriage between a Catholic Party and a Catechumen or a non-Christian, which is chapter IV of the *Ordo celebrandi Matrimonium*, editio typica altera, 1991. Despite its title, the rite may be used even when a catechumen is not marrying a Catholic party. See J.M. HUELS, "The Significance of the 1991 *Ordo celebrandi Matrimonium* for the Canon Law of Marriage," in *Studia canonica*, 43 (2009), p. 114.

<sup>66</sup> W.G. BLUM, *The Unity of Christian Marriage Considered in Relation to the Polygamous Cultures of Uganda*, Kisubi, Uganda, Marianum Press, 1972, p. 61. There is some historical precedent for establishing an extended catechumenate as well as for excluding certain persons from baptism. From its earliest times the Church was not concerned about baptizing converts quickly. Indeed, a catechumenate lasting several years was very common and considered necessary. See TH. MAERTENS, *Histoire et pastorale du rituel du catéchuménat et du baptême*, Bruges, Publications de Saint-André, 1962, pp. 87-88.

permitted them to contract obligations which they cannot abandon in order to receive baptism. They should be encouraged to fulfill these obligations and to trust that God will grant them the opportunity for full incorporation into the Christian community, if and when this is in keeping with the divine plan. Instead of directing the concern to the future, the emphasis of the catechesis should be directed to what they can now do in their present circumstances.<sup>67</sup>

The second major step of the catechumenate is characterized by the election of candidates for sacramental initiation and the enrolment of their names. This ideally takes place in a liturgical rite celebrated by the bishop or his delegate at the beginning of Lent (RCIA, no. 133).

The second stage of initiation begins the period of purification and enlightenment or illumination, marked by a more intense preparation of heart and spirit. At this stage the Church makes the 'election,' that is, the choice and admission of the catechumens who because of their dispositions are worthy to take part in the next celebration of the sacraments of initiation. This stage is called election because the admission made by the Church is founded in the election by God, in whose name the Church acts. It is also called the enrolment or inscription of names because the candidates, as a pledge of fidelity, write their names in the book of the elect.<sup>68</sup>

On the basis of the recommendation of the godparents and catechists, the local community vouches for the candidates' readiness for baptism, and their names are

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<sup>67</sup> See BLUM, *The Unity of Christian Marriage Considered in Relation to the Polygamous Cultures of Uganda*, p. 62.

<sup>68</sup> RCIA, no. 22. According to RCIA, no. 24, the catechumenate ends with the celebration of the rite of election, thus completing the lengthy formation of the mind and heart. The one elected is encouraged to advance toward Christ with greater generosity. "From the day of their election and admission, catechumens are called 'elect.' They are also called *competentes*, mature catechumens who strive together or contend to receive the sacraments of Christ and the gift of the Holy Spirit. They are also called the enlightened or illumined, because baptism itself is called enlightenment or illumination and by baptism neophytes are illumined in the light of faith. In our day, other terms may be used which are better adapted to common understanding according to the nature of the languages and civil cultures of various regions."

recorded in a book.<sup>69</sup> The election is a matter of great concern for the growth of catechumens; therefore it must be noted carefully by the whole community and the entire Church (RCIA, no. 135). Before the election and enrolment, the candidates are expected to have experienced a conversion of mind and morals, to have gained a sufficient knowledge of Christian teaching, and to have developed a clear sense of faith and charity. A consideration of their worthiness is required (RCIA, no. 23), including their marital status. A catechumen who is a polygamist must have his marital status regularized before he is admitted to the rite of election. Polygamists can be accepted into the Christian community as catechumens, but this acceptance is not without limitations. Those polygamists whose marital situation has not been regularized can be accepted only in the first stage of the catechumenate, excluding election, enrolment, and sacramental initiation (RCIA, nn. 133-142).

If the marital situation is regularized, the next step in the journey of sacramental initiation is the celebration of the rite of election. This rite marks the beginning of the period of final, more intense preparation for the sacraments of initiation during which the elect will be encouraged to follow Christ with greater generosity. For a person to be enrolled among the elect, he or she must have enlightened faith and the deliberate intention of receiving the sacraments of the Church. The election of catechumens is a matter of great concern to the Church, and the decision to admit them to the rite should be weighed carefully (RCIA, nn. 133-136).

As a means to avoid an error in judgment, it would be wise to hold a deliberation on the suitability of the candidates before the liturgical rite is celebrated. This is done by those involved in training the catechumens—presbyters, deacons and catechists—and by the godparents and delegates of the local community. If

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<sup>69</sup> Cf. RCIA, nn. 22, 133.

circumstances permit, the assembly of catechumens may also take part. This deliberation may take various forms, depending on local conditions and pastoral needs. This acceptance should be noted by the celebrant during the liturgical rite.<sup>70</sup>

Catechumens who have not regularized their marital situation may retain their status as a catechumen for as long as they live. Moreover, when they are in danger of death, they can be admitted to sacramental initiation after fulfilling the minimal canonical requirements. Concerning the rite of adult initiation in proximate danger of death or at the point of death,<sup>71</sup> the RCIA states that:

If he has already been accepted as a catechumen, he must promise that when he recovers, he will complete the usual training. If he is not a catechumen, he must show serious signs of conversion to Christ and of renunciation of pagan worship and should not seem to be bound by any obstacles to a moral life, such as “simultaneous” polygamy. Furthermore, he should promise that when his health is restored, he will follow the whole course of initiation suitable to him (RCIA, no. 279).

A polygamist who is in danger of death and who has already been accepted as a catechumen can be admitted to the sacraments of initiation provided he has knowledge of the principal truths of the faith, manifests the intention to receive baptism, and promises to observe the requirements of the Christian religion (c. 865, §2).

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<sup>70</sup> Ibid., no. 137, pp. 62-63.

<sup>71</sup> Various expressions are used in the canonical tradition to signify danger of death: *articulus mortis*, *periculum mortis* and *urgente mortis periculo*. *Articulus mortis* suggests that death that is certain and imminent, that is, the state of infirmity in which many ordinarily die. *Periculum mortis* suggests that death that is near and probable, that is, the state of infirmity in which it is probably and prudently feared that a person will soon die. The terminology *urgente mortis periculo* is explained by some authorities as something akin to *articulus* or certainly something more than merely *periculum mortis*. According to Dowdall, most writers before the 1917 Code taught that the distinction between *articulus* and *periculum mortis*, though sound theoretically, had little or no practical value and should not be enforced or insisted upon when the administration of the sacraments was concerned. See R.M. DOWDALL, *The Celebration of Matrimony in Danger of Death*, Vatican City, Polyglot Press, 1944, pp. 3-12.

#### **4.3.5 – Ongoing Christian formation**

The ongoing formation of converts is necessary for strengthening and deepening their faith and assisting them in leading a good Christian life.<sup>72</sup> Converts to the faith who were formerly polygamists may themselves play an effective role in the evangelization of polygamous families, which is another reason for their continuing faith formation. This ongoing formation should consist of two, mutually complementary dimensions: on the family level and the community level. It should include religious instruction and programs on family life, youth, and marriage. Also desirable are seminars on inner healing and reconciliation as well as opportunities for counseling.

To promote better marriages, there is a need for continued follow-up of married couples. This can be done through clubs and associations, marriage encounter and other associations, family movements, basic ecclesial communities, seminars, retreats, marriage renewal courses, jubilee celebrations and natural family planning. Where feasible, a “permanent mobile team” composed of a priest, sister, catechist and other committed and outstanding Catholic Christian(s), chosen by the diocesan pastoral council, can be formed for coordinating ministry to and the ongoing formation of converts (and those yet to be baptized as well). The diocesan bishops should encourage these efforts through pastoral letters and instructions (cc. 34, 394). An effective pastoral centre in each diocese would also go a long way in meeting these crucial needs.

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<sup>72</sup> See RCIA, nn. 37-40; cc. 773-780.

#### 4.4 – Communicating the Good News

People in polygamous societies frequently live in circumstances of stress and even crisis due to the negative effects of polygamy.<sup>73</sup> They may also live in great hope, especially those who want to embrace Christianity. Pastoral ministers must work so that these people may enter through church doors with a desire to encounter the Good News, already carrying in them the seeds of the Reign of God.<sup>74</sup> This requires that, even before formal admission to the catechumenate, they be offered appropriate pastoral care.<sup>75</sup>

Pastoral ministers should reach out to people in polygamous societies and aid them to search for and encounter meaning in life. They need to be offered a different pathway to deal with and respond to the deepest longings of human hearts – to love, to be loved, to share, and to blossom. It is important for pastoral ministers to learn to know and understand these people, their specific culture, and their religious aspirations. Pastoral ministers can help polygamists express and satisfy their deepest longings by encountering God and other people through love. As faith deepens and takes on not only a personal but also a world dimension, polygamous societies will change. These

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<sup>73</sup> The negative effects of polygamy are outlined in chapter one of this thesis.

<sup>74</sup> Cf. J.J. WALSH, *Integral Justice: Changing People Changing Structures*, Maryknoll, NY, Orbis Books, 1990, p. 108.

<sup>75</sup> “Pastoral care is a communal concept. It exists whenever persons minister to one another in the name of God. It is not a new concept but has its theological roots in the Judeo-Christian tradition. Any ministry of the Church that has as its end the tender, solicitous care of persons in crisis is pastoral care. In this light pastoral care exists when the hungry are fed, when the naked are clothed, when the sick are healed, when the prisoners are visited [when polygamous societies are evangelized]. Therefore, pastoral care has always existed in the Church because the needs of persons are ministered to by others all the time. Roles and functions as worship, church administration, preaching and teaching are not generally considered pastoral care, they become resources for pastoral care when their dominant concern is for the care of individual persons and their families in crisis situation.” E.P. WIMBERLY, *Pastoral Care in the Black Church*, Nashville, Abingdon, 1979, p. 18.

developing peoples will be empowered to change their polygamous way of life through a new paradigm informed by Christianity.<sup>76</sup> Canon law, both universal and particular, offers structures to attain this ultimate goal, all of which involve various forms of communication. Among these are structures that promote united pastoral action, especially the diocesan pastoral council, the presbyteral council, assemblies of priests at the diocesan or deanery levels, small Christian communities, the media of social communication, and various forms of dialogue. Effective use of such means of communication and interaction is vital for the progress of the Church's mission of evangelization.

#### **4.4.1 – Canonical structures fostering united pastoral action**

To deal with any problem successfully, be it social, economic, political, anthropological, canonical or pastoral, there is needed a united approach that respects and builds on solid mutual relationships. Where there is unity, there is strength; where unity is lacking, weakness and division prevail. Some dioceses in sub-Saharan Africa lack unity and good mutual relationships among the bishop, priests and people within the diocese. This is the result of many factors, including tribalism, jealousy, favouritism, individualism, laziness, argumentativeness, lack of accountability, and poor leadership.

Since polygamy is a challenging pastoral problem in sub-Saharan Africa, it needs to be addressed carefully by all agents of the Church, clerical and lay, acting in collaboration and harmony. The bishop, clergy, religious, catechists and other faithful involved in evangelization must be united in their approach and work together. Such

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<sup>76</sup> Cf. *ibid.*, p. 109.

mutuality and cooperation are easily understood values in sub-Saharan African cultures due to the peoples' strong attachment to and experience of family, both nuclear and extended, but experience shows that this understanding does not always translate into effective pastoral action, particularly at the diocesan level where pastoral planning and good co-ordination are most necessary.

The bonds of relationships in the diocese are multiple, involving bishop, *presbyterium*, deacons, religious and lay faithful. "The fact that there are in the Church pastors, lay people or religious, does not imply inequality in the dignity common to all the members (LG 32); it rather expresses the articulation of joints and functions in a living organism."<sup>77</sup> If all these groups of the faithful communicate and cooperate well, there will be unity, peace and harmony within the diocese, and problems can be faced in solidarity. As the African proverb goes: "one finger does not kill a louse." Communal responsibility is needed to approach the problem of polygamy.

#### **4.4.1.1 – Diocesan pastoral council**

A potentially effective, even if often underutilized, canonical structure for pastoral planning and co-ordination is the diocesan pastoral council. "In each diocese, insofar as pastoral circumstances suggest, a pastoral council is to be established. Its function, under the authority of the Bishop, is to study and weigh those matters which concern the pastoral works in the diocese, and to promote practical conclusions

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<sup>77</sup> SACRED CONGREGATION FOR RELIGIOUS AND SECULAR INSTITUTES and SACRED CONGREGATION FOR BISHOPS, Directives for Mutual Relations between Bishops and Religious in the Church *Mutuae relationes*, 23 April 1978, in AAS, 70 (1978), pp. 473-506; FLANNERY2, p. 211.

concerning them” (c. 511).<sup>78</sup> Since a diocesan pastoral council is composed of members of Christ’s faithful who are in full communion with the Church (c. 512, §1), this in itself is a real reflection and an authentic sign of unity in the diocese. The pastoral council ideally serves as a “structured means for dialogue [...] to investigate pastoral needs, to discern options to address those needs, and to make a specific recommendation of one of those options.”<sup>79</sup> It can serve well as the meeting point for representatives of all the members of the diocese in union with the bishop.<sup>80</sup> The pastoral council, with broad representation from a variety of areas, social groups, and apostolates, can bring the faithful together in a forum for regular dialogue to investigate and weigh matters that bear on pastoral activities and to formulate practical conclusions regarding them. In this setting, the problem of polygamy can be addressed in solidarity with the broader community and, hopefully, better pastoral strategies will be the outcome. The pastoral council can give recommendations on how to meet pastoral needs in polygamous societies. These recommendations will ordinarily indicate a means of implementation

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<sup>78</sup> *CD 27* states: “It is highly desirable that in every diocese a special pastoral council be established, presided over by the diocesan bishop himself, in which clergy, religious and laity specially chosen for the purpose will participate. It will be the function of this council to investigate and consider matters relating to pastoral activity and to formulate practical conclusions concerning them.”

The pastoral council can help the bishop to formulate practical conclusions concerning evangelization of polygamous families. The decree on the Church’s missionary activities, *Ad gentes divinitus*, no. 30 states: “For better coordination, the bishop should, as far as possible, establish a pastoral council in which clergy, religious and lay people would have a part through elected delegates. He should also take care that apostolic action is not entirely restricted to those who have already been converted, but that a fair proportion of workers and funds is directed to the evangelization of a non-Christians.”

<sup>79</sup> J.A. RENKEN, “Pastoral Councils: Pastoral Planning and Dialogue among the People of God,” in *The Jurist*, 53 (1993), p. 132.

<sup>80</sup> Cf. R. PAGÉ, *The Diocesan Pastoral Council*, translated by B.A. Prince, Paramus, NJ, Newman Press, 1970, p. 58.

involving perhaps some other agent and, at the same time, the council can continue to do planning for the community.<sup>81</sup>

#### 4.4.1.2 – Priests’ meetings

Unity and mutual cooperation among the clergy themselves and in conjunction with the bishop are very important for providing pastoral care to polygamous families. Any division between bishop and priest in a diocese is like a crack in a house with the consequences being that the pastoral work in the diocese will waver and deteriorate. This can be avoided by bringing priests together for regular meetings at both the diocesan and deanery levels.

It is a canonical obligation of all clerics to promote unity and cooperation among themselves (c. 275; *CCEO* cc. 379; 381, §3). Moreover, according to c. 369 (*CCEO* c. 177, §1), the bishop governs the diocese with the cooperation of the *presbyterium*. Consequently, there must exist a unity and mutual cooperation between the bishop and priests. There is a hierarchical communion in the diocese between the bishop and the priests by virtue of which they participate in different degrees but in an identical priesthood and ministry, thus forming a single *presbyterium* (*LG* 28; *CD* 28).

The key canonical structure for promoting the unity and cooperation of priests in the diocese is the presbyteral council. Canon 495, §1 states:

In each diocese is to be established a council of priests, that is, a group of priests who represent the *presbyterium* and who are to be, as it were, the Bishop’s senate. The council’s role is to assist the Bishop, in accordance with the law, in the governance of the diocese, so that the pastoral welfare of that portion of the people of God entrusted to the Bishop may be most effectively promoted.<sup>82</sup>

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<sup>81</sup> Cf. RENKEN, “Pastoral Councils,” p. 147.

<sup>82</sup> The Latin text reads as follows: “In unaquaque dioecesi constituatur consilium presbyterale, cœtus scilicet sacerdotum, qui tamquam senatus sit Episcopi, presbyterium

In order to consolidate or strengthen this unity of mission, the members of the presbyteral council, who represent the body of priests, both secular and religious, advise and assist the bishop in the management of the diocese (*PO 7*).

The unity and cooperation between the bishop and priests can be enhanced through this council as well as other meetings of priests, including regular assemblies of all the priests of the diocese. All-priests' meetings or all-diocesan clergy meetings are a practical means of establishing and maintaining unity and mutual relations between priests and the bishop in order to foster the apostolate in a diocese and address common problems, including potential approaches to the problems arising from polygamy.

Canon 374, §2 recommends the grouping of parishes into several infra-diocesan structures such as vicariates forane, also called deaneries.<sup>83</sup> The main function of these vicariates forane or deaneries is to foster pastoral care. Deanery meetings where programs, policies, and principles are shared and discussed by the priests of that particular place who are engaged in the pastoral work may be an effective means for maintaining unity and support as well as for sharing the richness of diverse perspectives and experiences. The deanery meeting can also foster solidarity in pastoral action towards polygamists.

The unity and mutual relationship among priests and bishop in each diocese requires the existence and regular use of Church organs such as the presbyteral council

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repræsentans, cuius est Episcopum in regimine diœcesis ad normam iuris adiuvere, ut bonum pastorale portionis populi Dei ipsi commissæ quam maxime provehatur (c. 495, §1).

<sup>83</sup> The Latin text of c. 374 reads: §1. Quælibet diœcesis aliave Ecclesia particularis dividatur in distinctas partes seu parœcias. §2. Ad curam pastoralem per comunem actionem fovendam plures parœciæ viciniore coniungi possunt in peculiare cœtus, uti sunt vicariatus foranei.

and deanery meeting. Without them, the unity among the priests and bishop could be weak, and it would be difficult to deal with problems or develop pastoral policies for the diocese.

#### 4.4.2 – Small Christian communities

The 1974 Synod of Bishops and Pope Paul VI in *Evangelii nuntiandi* devoted considerable attention to basic communities (EN 58). These are groups of Christian families in the same neighbourhood whose purpose is their own evangelization and growth in the Christian life.<sup>84</sup> Several episcopal conferences, including the bishops of East and Central Africa, adopted the building of small Christian communities as a key priority of their pastoral plan for communicating the message of salvation.<sup>85</sup>

The small (or basic) Christian community brings together several families in a given neighbourhood. It is a cell of committed Christians at the service of the Church and in dialogue with the world. It is concerned first and foremost with how to be Christian in a given life-context and with how to penetrate the local culture and bring the values of the gospel to bear upon it. [...] It enjoys a measure of structural freedom, while at the same time acting as an agent of

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<sup>84</sup> SHORTER, *Evangelization and Culture*, p. 59.

<sup>85</sup> SYNOD OF BISHOPS: SPECIAL ASSEMBLY FOR AFRICA, *The Church in Africa and Her Evangelizing Mission towards the Year 2000 «You Shall Be My Witness»*, Vatican City, Vatican Press, 1993, p. 39. See SHORTER, *Evangelization and Culture*, p. 59.

Small Christian communities are also known as basic Christian communities or basic ecclesial communities. These communities appear in various forms from country to country but in general they bring together several families from an area within a parish or territory to form an organized local group of the faithful gathered in the name of the Lord (cf. Mt 18:20). They are a means of developing a more participative Church in which people find their rightful place. As domestic church (LG, no. 11), they are true expressions of ecclesial communion for sub-Saharan Africa because they fit the culture, family and clan structure. They foster “a sense of belonging” and being united for a common purpose in the Church. They are also primarily tangible and local realities (SHORTER, *Evangelization and Culture*, p. 58). Therefore, small Christian communities can be strong instruments of evangelization of polygamous families and a sure way of imparting the teachings of the Church. They are efficient means of spreading the Gospel and inculcating the values of justice and peace. These issues can be dealt with at the grassroots level in the daily life of the small Christian communities.

pastoral care in the parish. In the small Christian community collaborative ministry can be realized in a manner that is not yet possible at other levels of the Church, and which is effective for evangelization. Such witness can prepare a mentality which is more favourable towards giving women a place in Church leadership.<sup>86</sup>

In order to deal with the problem of polygamy at the grassroots level, the establishment and formation of the small Christian community is optimal, for it has the potential to influence the wider society. Since community is important both to the sub-Saharan African cultures and to Christianity, formation of small Christian communities must be considered a primary focus of any pastoral plan.

A. Mringi describes small Christian communities as a gathering of eight to twelve families, depending on local conditions and on the natural community on which it must be built. The number should be small enough so that it is possible for the members to know each other and to minister easily to one another. This gathering should include prayer, sharing, and mutual support whereby everyone learns from and evangelizes each other. A Christian community lives and experiences Christ on a daily basis and together participates in ecclesial services and ministries.<sup>87</sup> Members recognize that their neighbourhood community is under the lordship of the Saviour Jesus Christ and under the guidance of the Holy Spirit who helps them to persevere in prayer, share the word of God and engage in concrete local issues, which may include providing for the basic needs of its members with regards to health, economy, education and recreation.

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<sup>86</sup> A. SHORTER, "Inculturation: Win or Lose the Future," in J.A. SCHERER and S.B. BEVANS (eds.), *New Directions in Mission and Evangelization 3: Faith and Culture*, Maryknoll, NY, Orbis Books, 1999, p. 64.

<sup>87</sup> A. MRINGI, *Small Christian Communities in Eastern Africa with Particular Reference to Tanzania: Canonical Implications*, Canon Law Studies, 514, Washington, DC, Catholic University of America, 1985, Ann Arbor, Michigan, UMI, 1988, pp. 110-111.

Small communities can play a significant role in the evangelization of polygamous societies. This may be done through commitment to outreach, by physical and spiritual support, regular visits whether at times of joy or sorrow, and developing friendly relations with the polygamists. These communities together can reflect on their lives by sharing the Word of God and by nurturing the community in faith. With this model of life, polygamous families can be attracted to and be invited to join the small Christian communities. They therefore can experience real interpersonal relationships at the grassroots level and feel a sense of communal belonging, both in living and in working. It is here, within these communal cells, that the faithful live the faith in every aspect of life and thus have the potential to spread it to others through words and good example.<sup>88</sup>

To deal with the problem of polygamy from the grassroots, dioceses in sub-Saharan Africa should draw on the resources of the small Christian communities where they exist and establish them where they do not. This should be a key pastoral priority.<sup>89</sup>

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<sup>88</sup> These communities can also help eliminate individualism and egoism, both of which are contrary to Christian faith and praxis. See *ibid.*, p. 109.

<sup>89</sup> According to SHORTER, *Evangelization and Culture*, pp. 59-60: [Small Christian communities] provide an immediate life context within which Christians can practice their faith and carry out their vocation to evangelize. They are a new way of being Church and of building the Kingdom of God within the neighbourhood. Although Christians join them freely and they reflect given human environments – geographical, socio-economic, interpersonal – small Christian communities help to restructure the parish and to provide a resource for its pastoral team. [...] Small or basic communities exist for the parish and for helping to carry out its evangelizing role.

[...] They meet to pray, to study Scripture and to apply it to daily life. They carry out pastoral visits to the sick and needy. They help to organize spiritual retreats and doctrine courses. They intervene to correct abuses of social justice. They offer support to married couples and families. They teach catechism and help to prepare members to receive the sacraments and to celebrate the Sunday liturgy. They contribute to the liturgical and spiritual life of the parish as a whole. They undertake development and co-operative projects. In all these ways small Christian communities carry out the task of evangelization through proclamation, praxis and prayer.

Small Christian communities can carry out the task of evangelization among polygamous societies by respecting, welcoming, encouraging and caring for their unbaptized neighbours, in effect, acting as true disciples of Christ in the service of the Church and of the world.<sup>90</sup>

#### 4.4.3 – Social communication systems

The Second Vatican Council, in the Decree on the mass media *Inter mirifica*, states:

The Catholic Church was founded by Christ our Lord to bring salvation to all men [to everybody]. It feels obliged, therefore, to preach the gospel. In the same way, it believes that its task involves employing the means of social communication to announce the good news of salvation and to teach men [people] how to use them properly.

It is the Church's birthright to use and own any of these media which are necessary or useful for the formation of Christians and for pastoral activity. Pastors of souls have the task of instructing and directing the faithful how to use these media in a way that will ensure their own salvation and perfection and that of all mankind.<sup>91</sup>

Communication is a very important agent, or instrument, for the evangelization of polygamists. Most of the polygamous families live in areas where there are few or no mass communication systems and, as a consequence, they miss important information and guidance that could help influence them to change their traditional ways of thinking which go against canonical norms and the Church's teaching. Because of the lack of means of communication and contact with other families of different cultures, some polygamous families live in their own world and think that polygamy is the only way of life. The world for them is a "closed shop" which they believe is made by God with

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<sup>90</sup> Cf. *ibid.*, p. 144.

<sup>91</sup> *IM* 3; FLANNERY1, pp. 284-285.

certain rules, regulations, and laws that cannot change, and they think the best way to make one's way in this world is to continue to follow the customs, ways, and laws of their forefathers. Anything outside traditional boundaries is strange and threatening. Contact between them and members of other societies who do not observe the same customs is minimal and occurs usually only when necessary for business. Their cultural identity is very strong, which could be interpreted either as a healthy pride in and acceptance of themselves or as a sort of dogmatism, an exclusivity born of a culture that feels its existence threatened by outside forces. The Church cannot evangelize them unless it establishes and maintains good contact with them. To reach these people effectively, the establishment or improvement of communication systems is vital. The legislator's recognition of the importance of the media is seen in the establishment of a distinct dicastery of the Roman Curia entrusted with this area.<sup>92</sup> The Code, too, reflects this concern in c. 822 (*CCEO* c. 651) and in the subsequent canons on instruments of social communication.

§1. In exercising their office the pastors of the Church, availing themselves of a right which belongs to the Church, are to make an ample use of the means of social communication.

§2. Pastors are also to teach the faithful that they have duty of working together so that the use of means of social communication may be imbued with a human and Christian spirit.

§3. All Christ's faithful, especially those who in any way take part in the management or use of the media, are to be diligent in assisting pastoral actions, so that the Church can more effectively exercise its office through these means.<sup>93</sup>

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<sup>92</sup> The Pontifical Council for Social Communications "takes pains to see that newspapers and periodicals, as well as films and radio or television broadcasts, are more and more imbued with a human and Christian spirit" (*PB* art. 170, §1). "With special solicitude the Council looks to Catholic newspapers and periodicals, as well as radio and television stations, that they may truly live up to their nature and function, by transmitting especially the teaching of the Church as it is laid out by the Church's magisterium, and by spreading religious news accurately and faithfully." *Ibid.*, §2.

<sup>93</sup> The Latin texts of c. 822 reads as follows:

The modern media include the press, the cinema, radio, television, the Internet, newspapers, pamphlets and periodicals. According to Vatican II, they can rightly be called “the means of social communication,” which “can reach and influence not merely single individuals but the very masses and even the whole of human society” (*IM 1*). The communication systems can play a key role in evangelizing polygamous families primarily by taking them out of their closed world and bringing them into the global community. This can raise their awareness and enable them to discern positive and negative elements in their culture. The use of the media can help people in polygamous families, especially women and girls, to recognize that they have rights. Moreover, it can inform men in this society to respect the rights and dignity of women. The Church’s use of the various means of communications in an open, honest, and positive way can create good public relations, which facilitates the work of evangelization in polygamous societies, promotes critical self-awareness, helps the people to recognize their rights and gives them insight so that they can discern the good and evil influences of their culture.

Apart from the use of the modern media of communication, the use of traditional ways of communication is also important toward the evangelization of polygamous families because “traditional means draw their inspiration from a certain worldview and are understood by a whole people: the story, drama, proverb, debate, dance, mime,

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§1. Ecclesiae pastores, in suo munere explendo iure Ecclesiae proprio utentes, instrumenta communicationis socialis adhibere satagant.

§2. Iisdem pastoribus curae sit fideles edocere se officio teneri cooperandi ut instrumentorum communicationis socialis usus humano christianoque spiritu vivificetur.

§3. Omnes christifideles, ii praesertim qui quoquo modo in eorundem instrumentorum ordinatione aut usu partem habent, solliciti sint operam adiutricem actioni pastoralis praestare, ita ut Ecclesia etiam his instrumentis munus suum efficaciter exercent.

theatre, music, feasting, etc.”<sup>94</sup> These traditional means of communication are often lively and spontaneous and may be very effective in the task of evangelization. “It ought to be recognized that the Church usually gives a special place to traditional means in her pastoral work, especially in making use of song, dance, the drum, proverbs and mime. These means are plentifully employed in preaching (the bedrock of communication in the Church) and on the occasion of liturgical celebrations.”<sup>95</sup>

#### 4.4.4 – Dialogue

Dialogue is communication that is bilateral or multilateral. People are not just talked at but talk together. Sub-Sahara African societies love constructive dialogue because, involving all parties, it results in a strong consensus. The Church needs to take account of this fact in its work of evangelization, both by efforts to dialogue directly with the people, including polygamous families, the elders of the community, as well as members of other Christian denominations and faiths.<sup>96</sup>

Canon law recognizes the importance of dialogue in the evangelization of non-believers (c. 787, §1).<sup>97</sup> It is indispensable in the evangelization of polygamous families who cannot be expected to accept the demands of the Gospel without giving voice to their own cultural values. A true evangelization is achieved by respecting and listening to one another, which is what sincere dialogue seeks. Through sincere dialogue suited to the

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<sup>94</sup> SYNOD OF BISHOPS: SPECIAL ASSEMBLY FOR AFRICA, *The Church in Africa and Her Evangelizing Mission towards the Year 2000*, p. 106.

<sup>95</sup> Ibid.

<sup>96</sup> Dialogue is an important characteristic of the world we live in. See *ibid.*, p. 57.

<sup>97</sup> Cf. *PB*, arts. 163-165.

abilities, culture and background of the polygamous families, the Gospel message may be freely embraced (cf. c. 748, §2).

People are naturally attracted to those who listen with genuine interest to their problems. This is a happy experience that produces trust. Listening to people and showing interest in them wins their hearts and gives them the freedom to express themselves and identify their potential problems. The dialogic process can prevent conflict and discord and bring about mutual understanding. It is necessary that the dialogue continue also when the persons involved in a polygamous marriage wish to be baptized. In particular, it is necessary to reach an agreement between a polygamist and his wives so that the conversion will not be a cause of suffering for them or their children.

In dialogues with sub-Saharan peoples, special attention must be paid to the elders who are the traditional leaders of their families and communities. Family and clan elders/leaders play a great role in these societies. Frequently, they are the ones who make decisions in the clan, and often they are the traditional lawmakers. They are respected by all members of the clan, and their decision on any issue is often final even if it is a wrong decision or it runs contrary to the Church's teaching and canonical norms. For example, some believe God inspires them to be polygamists because marrying several wives will give them many children to fill their household, help in various activities in their families, and perpetuate their ancestry.

Male elders are regarded as the principal authority figures in these societies. A woman or young person who would presume to teach in their place would be looked down upon and humiliated. The Church's ministers must therefore pay special attention

to the elders and leaders because of their influence and authority. The best way to achieve this is to immerse oneself in their culture and listen to them as they interact and solve problems. Through other social activities such as working with them, eating, drinking, and dancing, one has the opportunity to observe the spirit of dialogue which marks the relationships among the people. Prayer, respect, charity, patience and collaboration are also necessary means of approaching the elders.

With the introduction of something new and threatening such as the monogamous union proposed by the Church, one is confronted with the biggest obstacle which polygamists, especially elders, fear most, for they have the most to lose. Hence, unless the elders are convinced of the value of Christianity, any evangelization effort, even if partially successful among the women, youth and children, will prove futile in the long run. The Christian formation of these leaders may seem a monumental task, but it will have the best chance of success if carried out in an atmosphere of friendly dialogue.

The word “dialogue” has a special meaning in religious circles where it often indicates formal or informal discussions between Christians of different denominations or between members of different faiths.<sup>98</sup> Bernard Häring noted that “the problem of polygamy is confronted by the African Churches as a whole and not only by

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<sup>98</sup> The Second Vatican Council exhorted all the Catholic faithful to recognize the signs of the times and to take an active and intelligent part in the work of ecumenism. “The restoration of unity among all Christians is one of the principal concerns of the Second Vatican Council. Christ the Lord founded one Church and one Church only. However, many Christian communions present themselves to men [people] as the true inheritors of Jesus Christ; all indeed profess to be followers of the Lord but they differ in mind and go their different ways, as if Christ himself were divided [1 Cor. 1:13]. Certainly, such division openly contradicts the will of Christ, scandalizes the world, and damages that most holy cause, the preaching of the Gospel to every creature” (*UR* 1). FLANNERY1, p. 452.

Catholics.”<sup>99</sup> Since the Catholic faithful in much of sub-Saharan Africa do not live in isolation from other Christians, there is a great need of collaboration with these other Christian denominations in pastoral outreach to and evangelization of polygamous families. Due to indifference on the part of some Christians with regard to this problem of polygamy, however, such dialogue may be difficult, but it is a necessary aspect of the Church’s divine mandate: *ut unum sint*.<sup>100</sup>

One of the canonical obligations of the diocesan bishop is fostering ecumenism as it is understood by the Church (cc. 383, §3; 755, §2). Ecumenical cooperation within local churches may lead to common pastoral strategies that can facilitate outreach to polygamous families, especially those who are seeking entrance into the Church.<sup>101</sup> If the Christian churches and ecclesial communities speak with one voice in their dialogue with the traditional rulers and cultural elite, there is the greater likelihood that their message will be heard, leading to the conversion of heart required before customs in opposition to

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<sup>99</sup> HÄRING, *Evangelization Today*, p. 146.

<sup>100</sup> In John’s Gospel, Jesus prays: “That all may be one, as you, Father, are in me, and I in you; I pray that they may be one in us, that the world may believe that you sent me” (Jn 17:21). See JOHN PAUL II, Encyclical Letter *Ut unum sint*, no. 9, 25 May 1995, in AAS, 87 (1995), pp. 921-982; trans. *Christian Unity: Encyclical Letter Ut unum sint, 25 May 1995 of the Holy Father John Paul II on Commitment to Ecumenism*, Sherbrooke, Quebec, Médiaspaul, 1995, pp. 12-14.

<sup>101</sup> “[...] Cooperation among Christians vividly expresses that bond which already unites them, and it sets in clearer relief the features of Christ the Servant. Such cooperation, which has already begun in many countries, should be developed more and more, particularly in regions where social and technological evolution is taking place. It should contribute to a just appreciation of the dignity of the human person, to the promotion of the blessings of peace, the application of Gospel principles to social life, and the advancement of the arts and sciences in a truly Christian spirit. It should also use every possible means to relieve the afflictions of our times, such as famine and natural disasters, illiteracy and poverty, lack of housing, and the unequal distribution of wealth. Through such cooperation, all believers in Christ are able to learn easily how they can understand each other better and esteem each other more, and how the road to the unity of Christians may be made smooth” (*UR* 12; FLANNERY1, pp. 462-463).

Christian tradition and morals can be removed.<sup>102</sup> Lack of dialogue and cooperation among the Christian denominations, all comprised of baptized brothers and sisters, can only discredit their message, obfuscating that unity for which Christ prayed and diminishing their credibility in the eyes of the local leadership.

The Church in sub-Saharan Africa has to dialogue also with the African traditional religion because it represents the common cultural, religious and spiritual rooting for all who belong to the same ethnic group. In it are found elements which, if purified and elevated in the light of the Gospel, can become a firm foundation of religious and cultural heritage upon which an authentic Christian life can be built. Such “dialogue” cannot take place in any formal sense, for African traditional religion lacks the hierarchical or structural organization and developed theological tradition for such to occur. Rather, the dialogue will primarily be that of listening to the people, immersing oneself within their culture, attempting to understand their values and thereby little by little planting the seeds of the Christian faith on fertile soil.<sup>103</sup>

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<sup>102</sup> “There can be no ecumenism worthy of the name without interior conversion. For it is from newness of attitudes of minds [see Eph 4:23], from self-denial and unstinted love that desires of unity take their rise and develop in a mature way. [...] The faithful should remember that they promote union among Christians better, that indeed they live it better, when they try to live holier lives according to the Gospel. For the closer their union with the Father, the Word, and the Spirit, the more deeply and easily will they be able to grow in mutual brotherly love” (*UR* 7).

<sup>103</sup> Cf. Mk 4:1-9; Mt 13:1-9; Lk 8:4-8.

## 4.5 – Diocesan Pastoral Plan

A diocesan pastoral plan or program can be a very helpful means of coordinating the evangelization and catechesis of polygamous families.<sup>104</sup> Polygamous families cannot change if there is no evangelization; evangelization cannot flourish if there is no basic foundation established by catechesis; and catechesis cannot be carried out throughout the diocese if there is no good pastoral program. In particular, the pastoral plan should develop strategies and structures to foster the apostolate of evangelization and catechetical instruction.

### 4.5.1 – The apostolate of evangelization

According to c. 781 (*CCEO* c. 584, §1), the Church is missionary in its nature. The work of evangelization is to be considered a fundamental duty of all the people of God (cf. *AG* 2 and 35).<sup>105</sup> The seed of faith sown by primary evangelization, born and nurtured, will gain its momentum and, step by step, conversion to Christianity will be

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<sup>104</sup> “Pastoral planning, under the guiding leadership of the Holy Spirit, is nothing new in the Church. From the very beginning of our history as God’s people redeemed in Jesus our Lord, planning has been a common part of our life. In the Acts of the Apostles, for example, we see the need to care for the Greek widows (6: 1-6), the need to catechize the great numbers in Antioch (11: 19-26), the need to relate Mosaic laws to Gentile converts (15: 1-35), and so forth. In each of these instances, and countless similar ones throughout history, church leaders discovered particular pastoral needs, discerned ways to address them, and then selected one of the possible options. This is ‘pastoral planning’.” RENKEN, “Pastoral Councils,” p. 132.

<sup>105</sup> “Consonant with baptism, each of the faithful in accord with his or her own proper condition participates in the priestly, prophetic and kingly functions of Christ (c. 204). All of the Christian faithful enjoy a true equality and dignity and cooperate in building up the Body of Christ in accord with their condition and function (c. 208).” R. MCDERMOTT, “Woman, Canon Law on,” in B.L. MARTHALER et al. (eds.), *New Catholic Encyclopedia*, vol. XIV, 2<sup>nd</sup> ed., Detroit, Thomson/Gale, 2003, p. 820.

achieved. This apostolate of evangelization needs personnel who are well trained and committed to proclaim the Good News by word and deed.

Evangelization personnel include catechists, members of lay apostolate groups, lay pastoral ministers,<sup>106</sup> marriage counselors, clergy and religious. In areas where there are not enough clergy and religious, catechists often take their place on the “front line” of evangelization. They conduct the liturgy of the Word and offer catechesis at all levels — to adults, teenagers, and children. They prepare children for the sacraments of penance, Holy Eucharist and confirmation. Given their central role in evangelization, they need to be trained to help direct and form a Christian perspective in the social milieu of polygamous families. Canon 780 emphasizes the formation of catechists: “Local Ordinaries are to ensure that catechists are duly trained to carry out their office properly, namely, that continuing formation is available to them, that they have an appropriate knowledge of the teaching of the Church, and that they learn both the theory and the practice of the principles of pedagogy.”<sup>107</sup> The diocesan pastoral program thus needs to attend to the training of sufficient catechists to meet the needs of Christian formation throughout the diocese.

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<sup>106</sup> See A. ASSELIN, “The Laity and the Church’s Office of Governance,” (Class notes), Ottawa, Faculty of Canon Law, Saint Paul University, 2009, p. 71. Asselin explains that the term, “lay pastoral minister,” which can also designate all forms of ministry exercised by lay people, includes persons who participate in the exercise of the pastoral care without a pastor under the supervision of a priest-moderator (c. 517, §2). According to her, the role of the lay pastoral minister has enormously evolved since the promulgation of the 1983 code. She gives as an example that, in Quebec, there is frequently a clustering of parishes with one pastor or a moderator of several communities and a lay person in charge of the pastoral care. Some rural parishes no longer have a resident priest, and sacramental celebrations and Sunday Eucharist can no longer be assured. This can be compared to the situation in sub-Saharan African, especially in rural areas where there is a shortage of priests.

<sup>107</sup> For the formation of catechists for the missions, cf. c. 785.

The diocesan pastoral plan should also include a role for all the faithful in the apostolate of evangelization. All baptized are called to play their part in the Church's mission. This entails a pastoral plan that includes the organization of families, parents, children, and youth for this mission. The laity should be encouraged to carry out the work of evangelization, not only within their families but also to the larger community, including polygamous families. This obligation of the faithful to undertake the apostolate, which proceeds from their baptism, is emphasized by c. 225, §1.

Since lay people, like all Christ's faithful, are deputed to the apostolate by baptism and confirmation, they are bound by the general obligation and have the right, whether as individuals or in associations, to strive so that the divine message of salvation may be known and accepted by all people throughout the world. This obligation is all the more insistent in circumstances in which only through them are people able to hear the Gospel and to know Christ.<sup>108</sup>

Lay persons, by their witness of Christian life and fidelity to their baptismal obligations, have a great role in the evangelizing mission to polygamous families in sub-Saharan Africa. To motivate and encourage the laity to become involved in the apostolate of evangelization, every diocese should establish a centre for their formation with the necessary courses, workshops, and programs.

There is also a great need of fostering vocations to all ministries. The work of evangelization involves the whole family of God — lay people, clergy and religious.

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<sup>108</sup> The importance of the involvement of lay persons in pastoral structures such as in parishes, dioceses, teaching institutions, hospitals or elsewhere cannot be overstated. All these institutions need personnel and people with different talents. This need cannot be taken into consideration without the involvement of lay people. Unfortunately, some priests fear collaborating with the lay faithful in the pastoral ministry. These priests must be helped to overcome their fear and mentality. Co-responsibility, active collaboration and good relationships among the people of God are essential elements in the mission of evangelization.

Goals cannot be achieved without basic and ongoing formation,<sup>109</sup> and this requires a concerted effort at both the parish and diocesan levels.

To promote and nurture vocations, the diocesan pastoral plan should provide for the organization of vocation groups from small Christian communities. These specific groups can conduct different youth activities, develop associations, and offer seminars, workshops or even a youth congress to educate with regards to different vocations. By means of these endeavors, youth can discover and use their talents and thus be encouraged and enabled to recognize their vocations. Parents, too, must be educated in their responsibility to foster vocations by showing good example, forming their children in chastity, protecting them from ideological and moral danger, bringing them into the ecclesial community and assisting them in recognizing and pursuing their vocations.

The vocational committees should encourage families to emphasize the role of family prayer and Bible reading in the fostering of vocations. These committees can assist teachers in incorporating the dimension of vocational awareness in religious education in schools and in colleges and in strengthening apostolic vocation groups in these settings. Indeed, this responsibility pertains to the whole local Church under the moderation of the bishop (cf. c. 385).

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<sup>109</sup> These lay people commit themselves to render services to the apostolate of the Church so the appropriate formation for them is canonically required (cf. c. 231).

“[...] It is a great joy to the Church to see growing day by day the number of lay people who are offering their personal services to associations and works of the apostolate, whether within the confines of their own country, or in the international field, or, above all, in the Catholic communities of the missions and of the young Churches.

“Pastors are to welcome these lay persons with joy and gratitude. They will see to it that their condition of life satisfies as perfectly as possible the requirements of justice, equity and charity, chiefly in the matter of resources necessary for the maintenance of themselves and their families. They too should be provided with the necessary training and with spiritual comfort and encouragement” (AA 22). For the ongoing formation of clergy, cf. c. 279 and, for religious, cc. 660 and 661.

Spiritual cooperation between polygamous families and outstanding Christian families is another approach to evangelize polygamous families. The members of small Christian communities can arrange among themselves a plan whereby every outstanding and committed Christian couple within the community maintains a relationship with a selected polygamous family, the aim being to help that family grow and bring them to conversion. Since some Christians condemn polygamists, this will also serve to educate them on how to take a positive approach to their evangelization.

Youth and children, too, have their own role to play in evangelization, which should be recognized and organized in the diocesan pastoral plan. The Church, as the family of God, depends very much on the stability and strength of children and young people in furthering evangelization. They are very important members in the community for the present and future Church in sub-Saharan Africa. Children, as Pope John Paul II said, “are a continual reminder that the missionary fruitfulness of the Church has its life-giving basis not in human means and merits, but in the absolute gratuitous gift of God.”<sup>110</sup> With regard to young people, the pope said: “Youth must not be simply considered as an object of pastoral concern for the Church. In fact young people are and ought to be encouraged to be active on behalf of the Church as leading characters in evangelization and participants in the renewal of society.”<sup>111</sup>

Through good upbringing and education, children and youth will have the necessary basis for participating in evangelizing groups. If they are provided with a solid Christian upbringing, beginning in their own Christian families, they will be a good

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<sup>110</sup> JOHN PAUL II, Post-synodal Apostolic Exhortation *Christifideles laici*, 30 December 1988, in AAS, 81 (1989), p. 484; English trans. in *Origins*, 18 (1988-1989), p. 584.

<sup>111</sup> *Ibid.*, pp. 583-584.

example and will attract children and youth from other polygamous families. Unfortunately, in much of the world where children and youth form the largest percentage of the people of God, the majority of them are underprivileged, oppressed and/or suffer various kinds of injustice. In many instances, the younger generation lives with parents who do not fulfill their parental duties.<sup>112</sup> Thus, the formation of children cannot be fully successful without accompanying it with necessary social assistance.

The formation of youth and children, moreover, is a communal responsibility. “One knee does not bring up a child,” says an African proverb, or “one hand cannot nurse a child.” This proverb equally applies to bringing up children in the faith. The Christian youth themselves can be effective evangelizers of their non-Christian companions.<sup>113</sup> This is because youth participate in activities in common, such as games, choir, study, visiting one another and conversing. Small children, as well, are naturally inclined to interact with each other. Youth and children from polygamous families can learn good morals from the youth and children of Christian families.<sup>114</sup>

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<sup>112</sup> P.N. BOAMPONG, *A New Approach to the Youth Apostolate in Ghana*, Rome, Pontificia Universitas Lateranensis, 1980, pp. 25-26.

<sup>113</sup> These ministries can be coordinated with groups such as YCS (Young Catholic Students) and VIWAWA (Catholic Youth Group).

<sup>114</sup> J.P. MBYEMEIRE, *A Theological Analysis of the Problem of Justice and Peace: The Contribution of the Special Synod for Africa and the Church in Uganda*, Rome, Pontificia Universitas Urbaniana, 1997, p. 10, recalls that the African Synod acknowledged that young people, while in need of education in school and in the Church, must find their primary educators in the family and local society. Young people have to be called into dialogue with the Church, and they have to be supported in their commitment to Jesus Christ and their grasp of the Gospel, for none of the concerns of evangelization – witness, inculturation, justice, peace and development – can be realized without the cooperation of the new generations. Undoubtedly, this concern calls for the invention of new models of development to meet the challenge of integrating the enormous potential of the young generations who have the potential of assimilating the Gospel of Christ, and the values of justice and peace.

#### 4.5.2 – Catechetical instruction

Catechetical instruction is an instrument of evangelization which must not be neglected in evangelizing polygamous families.<sup>115</sup> A systematic course of religious instruction should lead the minds of all, especially those of children and adolescents, to an understanding of the principal components of the living treasure of truth which God has communicated to us and which the Church in the course of her long history has always been zealous to enunciate ever more comprehensively.<sup>116</sup> The Church has always looked on catechesis as a sacred duty and an inalienable right. Therefore, it cannot be dissociated from the Church's pastoral and missionary activities as a whole.<sup>117</sup> The specific aim of catechesis is "to develop, with God's help, an as yet initial faith, and to advance in fullness and to nourish day by day the Christian life of the faithful, young and old. It is in fact a matter of giving growth, at the level of knowledge and in life, to the seed of faith sown by the Holy Spirit with the initial proclamation and effectively transmitted by baptism."<sup>118</sup>

Catechesis, that is, the education of children, young people and adults in the faith,<sup>119</sup> should be organized for polygamous families who are in any stage of the pre-

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<sup>115</sup> See cc. 773-780.

<sup>116</sup> PAUL VI, Apostolic Exhortation *Evangelii nuntiandi*, 8 December 1975, in AAS, 68 (1976), pp. 5-76; English trans. in FLANNERY2, p. 729.

<sup>117</sup> JOHN PAUL II, Apostolic Exhortation *Catechesi tradendae*, 16 October 1979, in AAS, 71 (1979), pp. 1277-1340; English trans. in FLANNERY2, pp. 769-772.

<sup>118</sup> Ibid., p. 774.

<sup>119</sup> Ibid., p. 772. Cf. SYNOD OF BISHOPS: SPECIAL ASSEMBLY FOR AFRICA, *The Church in Africa and Her Evangelizing Mission towards the Year 2000*, p. 86.

catechumenate or catechumenate proper.<sup>120</sup> This can be achieved in part by drawing on the traditional value of working in groups to sustain solidarity among those who first hear the Good News and subsequently prepare intellectually and spiritually for sacramental initiation. The catechetical instructions should emphasize the meaning and importance of the sacraments in the Christian life, the concept of God and the obligations of parents. Those who have expressed the wish to embrace faith in Christ and to receive baptism are to be admitted to the catechumenate in accordance with the program of the diocesan pastoral council and other universal and particular laws (cc. 788, §1; 852, 1<sup>o</sup>). Family life education, seminars, workshops and congresses are means of evangelizing polygamous families. To the extent possible, they should be required components of the pastoral program.

Sacramental life is the foundation of the Christian family. Hence, a purposeful program for formation about all sacraments should be emphasized by the diocesan pastoral plan. In addition to preparation for the sacraments of initiation, catechumens must also be prepared for the eventual celebration of the sacrament of penance and taught the meaning of other sacraments that they may receive during the course of their Christian life. Parents must be prepared for the baptism of their children (c. 851, 2<sup>o</sup>). Baptized children must be prepared for confirmation, penance, and first Holy Communion (cc. 889, §2; 913-914; 987-989).

A proper catechesis on marriage, stressing marital unity and indissolubility, is needed for both youth and couples, including those currently in irregular marriages due to polygamy. This catechesis is to be done in every stage of instruction, including an

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<sup>120</sup> See CONGREGATION FOR THE CLERGY, *General Directory for Catechesis*, 11 August 1997, Vatican City, Libreria editrice Vaticana, 1997, nn. 60-68.

emphasis on personal and familial prayer, the marital covenant, family life and welfare, and other aspects of the Church's teaching on marriage.<sup>121</sup>

Pope John Paul II, in his Post-synodal Apostolic Exhortation on the Family *Familiaris consortio*, insisted on the preparation of young people for marriage and family life. Christian values concerning married and family life must be passed on through a gradual process of formation involving parents, society and the Church. This marriage preparation is a continuous process with several stages — remote, proximate, immediate and ongoing.<sup>122</sup> A clear and unambiguous catechesis appropriate to age groups and stage of life “can lead to both an understanding and an acceptance of this Christian imperative by which the spouses imitate Christ in his unconditional giving of self.”<sup>123</sup>

Education for marriage should begin in the home because children develop their attitudes toward marriage and family living in the early years of life and it should continue as a part of the total education of the individual in school, church, and community. Specific information should be given expectant parents about infant and child care; to parents of preschoolers about dealing with questions children ask; to parents of teen-agers about adolescence and the physical and interpersonal problems that arise in this period; and to parents of young adults themselves concerning facilities for meeting suitable persons of the opposite sex and methods of evaluating their potentialities as marriage partner. Such education should involve preparing engaged couples to deal with the natural adjustments of early marriage.<sup>124</sup>

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<sup>121</sup> See P. PENGU, “Pastoral Care of the Traditional and Modern Polygamous,” in *African Ecclesial Review*, 28 (1986), p. 211.

<sup>122</sup> Cf. *FC* 66; c. 1063. These stages are treated at length in **Error! Main Document Only.**PONTIFICAL COUNCIL FOR THE FAMILY, Document (unidentified), “Preparation for the Sacrament of Marriage and Its Celebration,” (booklet), 13 May 1996, Libreria editrice Vaticana, 1996.

<sup>123</sup> DE MÛELENAERE, *The Canonical Significance of Marital Fidelity among the Bantu of South Africa*, p. 234.

<sup>124</sup> E.H. MUDD et al. (eds.), *Marriage Counseling: A Case Book*, New York, Association Press, 1958, p. 477.

It is not unusual for couples to avoid marrying according to the canonical form because they lack the financial means for a “church wedding.” Accordingly, efforts should be made to educate couples about the true meaning of Christian marriage and the advantages of a simple marriage ceremony, thereby minimizing expenses for such secondary matters as clothing and the reception. They should also be taught that, even if they lack a sufficient dowry or bride price, this should not hinder a marriage in Church. Couples should be shown the futility and adverse consequences of the exaggerated expenses that go beyond their means. This will enable those who are not wealthy to avail themselves of a marriage recognized as valid and sacramental in accord with the canonical form (c. 1108). It may, moreover, help reduce the oppression and exploitation of women, something which is inherent in the bride price system whereby the woman seems to be bought and thus considered a commodity or the property of the husband.

Ideally, catechists should have access to the assistance of marital or pastoral counselors in the preparation of persons for marriage.<sup>125</sup> This may especially be needed with respect to persons in polygamous marriages to help them face the difficult decisions

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<sup>125</sup> Premarital counseling focuses on an earlier stage of individual or “couple” development and interaction. The counselor assists the person or persons to discuss pertinent questions and anxieties, to resolve some of the problems or conflicts that arise before marriage, and to attain a more flexible perspective. This also anticipates later marital adjustment. This approach can be applied to polygamous families. “There is, too, a strong educational emphasis in premarital counseling. It may well be considered as preventive in character. It is believed on the basis of experience to date that careful examination and discussion of the suitability of the personalities to each other, of personal and cultural attitudes and differences, of the impact of parental relationships, of the influence of sexual concepts, information and experiences, facilitates the process of later adjustment. Premarital counseling aims not only to prepare a couple to avoid serious problems but helps them to recognize conflict at an incipient level and, when indicated, to seek professional assistance.” MUDD et al. (eds.), *Marriage Counselling*, p. 261.

involved in the regularizing of their marital situation.<sup>126</sup> Where the human and economic resources are available, the diocesan pastoral program should therefore include provision for pastoral counseling of those in the catechumenate, pre-marital preparation, and other stages of Christian formation.

In the course of catechetical instruction, it is important to let polygamists know that they are valued and loved by the Church and, irrespective of their irregular marriage, have prerogatives in the Church which permits them to participate in some activities proper to Christians (cf. cc. 206; 788; 1170; 1183, §1).<sup>127</sup> They have the right to be evangelized, to be received into the Christian community, and to be given ongoing catechesis to influence them to live as good people. They should be encouraged to come to church, continue to seek instruction, attend meetings, be involved in good works, and participate in various activities like joining the parish choir, visiting the sick, and being associated with a small Christian community. These aspects of Christian living, together with a more formal catechetical instruction, will encourage them and enable them to feel

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<sup>126</sup> Pastoral counseling is a specialized type of pastoral care offered in response to individuals, couples, or families who are experiencing and able to articulate the pain in their lives and willing to seek pastoral help in order to deal with it. A pastoral counselor is a person with a commitment to an education for religious ministry who is functioning in an appropriate setting for ministry and accountable to a recognized religious community. It is a function performed by persons in the profession of ministry and it offers a relationship to that understanding of life and faith through the person of the pastoral counselor. J. PATTON, "Pastoral Counseling," in R.J. HUNTER et al. (eds.), *Dictionary of Pastoral Care and Counseling*, Nashville, Abingdon Press, 1990, pp. 849-850. Cf. E.P. WIMBERLY, *Pastoral Counselling and Spiritual Value: A Black Point of View*, Nashville, Abingdon, 1982, pp.19-25; D. LYALL, *Counselling in the Pastoral and Spiritual Context*, Buckingham, Open University Press, 1995, pp. 31, 36-38.

<sup>127</sup> "Although catechumens are not yet members of the faithful, they are incorporated in a way which is neither full nor conclusive in the ecclesiastical community ('coniunguntur cum Ecclesia, quæ eos iam ut suos fovet'). They may participate in activities proper to Christians, but not in those that are exclusive to Christians." J. HERVADA, "Christ's Faithful (cc. 204-231)," in *CCLA*, p. 167.

that they are being respected and valued and will assist them enormously in their formation for their eventual initiation into the Christian community.

#### **4.6 – The Apostolate of Women**

Polygamy is one of the manifestations of the oppression of women in sub-Saharan Africa. As a social-cultural institution, polygamy has degraded women and enslaved them for quite a number of centuries. One of the ways to do away with this oppression is through the apostolate of women in polygamous societies. This apostolate by women will assist women in fighting against maltreatment and practices that oppress them and in becoming conscious of their dignity and identifying their rights such as inheritance,<sup>128</sup> the right of girls to join religious life and acquire an education in school, and the right to development and self-reliance projects.

##### **4.6.1 – Opposing the oppression of women**

In sub-Saharan Africa, the position of women leaves much to be desired. The polygamous culture has always benefited men, mainly at the expense of women. This situation has contributed to the emergence of “the apartheid of gender” in which the status of women is inferior to that of men. Women are given less recognition, and they often find themselves in vulnerable positions, exposed to exploitation and other evils.

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<sup>128</sup> In polygamous families there is an increased loss of property rights by widows because the customary laws deny women inheritance rights. This contributes to their poverty, which in turn accelerates polygamy. The Church in sub-Saharan Africa, in collaboration with organizations such as the Young Women’s Christian Association, can offer assistance and support to women by educating them about the laws and by offering legal assistance through lawyers and community workers who are knowledgeable about inheritance laws.

Therefore, the position of women in polygamous families and in the life of the Church in sub-Saharan Africa merits particular attention.

“In many societies in Africa, cultural imperatives result in insensitivity, especially in human rights.”<sup>129</sup> In polygamous families, women are oppressed and exploited, used like instruments of cheap labour, contrary to their dignity and human rights. Additional wives are considered a way to increase the size of a man’s household and thereby to attend thoroughly to his domestic needs. Many wives enable the man to gain social recognition and distinction, offering entertainment to his neighbours and friends by providing the additional food needed for a feast to serve the guests. In some cultural contexts, the wife is compared to an eye: “To marry one wife is like being one-eyed, while having two wives is like having *two eyes* and therefore capable of seeing far and wide.”<sup>130</sup>

In polygamous families, women clearly do not have the same status as men but remain inferior to them. They have little chance of asserting themselves as free human beings or improving themselves as persons. They always remain the victims of polygamy, contrary to canonical norms which insist on the dignity and rights of women.<sup>131</sup> “With few exceptions,” writes McDermott, “the Christian faithful share a

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<sup>129</sup> SYMPOSIUM OF EPISCOPAL CONFERENCES OF AFRICA AND MADAGASCAR, *The Church as Family of God: Instrumentum Laboris: Pastoral Letter*, Accra, SECAM Publication, 1998, p. 30.

<sup>130</sup> KAHIGA, “Polygamy: A Pastoral Challenge to the Church in Africa,” p. 125.

<sup>131</sup> “Women are members of the laity (c. 207, §1) or consecrated to God through the profession of the evangelical counsels by means of vows or other sacred bonds recognized and sanctioned by the Church (c. 207, §2). Women as members of the Christian faithful share with men the rights and obligations set forth in the canons (cc. 208 and 223). Likewise, lay women share rights and obligations with lay men (cc. 224-231). Women enjoy an equal status with men in the determination of domicile (c. 104), in changing rite at the time of marriage (c. 112, §1 no.

common juridic status in the 1,752 canons of the 1983 Code of Canon Law. Women are recognized in law as members of the Christian faithful, baptized in Christ, incorporated into the Church, and constituted persons with duties and rights proper to Christians in accord with their condition (c. 96).”<sup>132</sup> The Synod of Africa stated that it “affirms strongly the rights and duties of women in building up the family and taking full part in the development of the Church and society.”<sup>133</sup> A good strategy to achieve this objective is to place great emphasis on mobilizing women and educating them to participate fully in achieving all rights owed to them. The forming of Catholic women’s groups and other groups, such as Women in Development / Gender in Development,<sup>134</sup> will help in educating women about their rights and dignity and fighting against maltreatment. It can help them advance spiritually, educationally, economically and morally. Women’s associations can also help them protect their rights under the traditional laws and customs.

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2), in establishing associations of the faithful (c. 299, §1) or joining them (c. 298), and in choosing a place for Christian burial (c. 1177).” MCDERMOTT, “Woman, Canon Law on,” p. 820.

<sup>132</sup> MCDERMOTT adds: “The Second Vatican Council affected a notable shift in the ecclesial perspective of women and major changes in her canonical status in the universal law of the Church. Biblical and theological insights, the concept of the Church as *COMMUNIO*, conciliar regard for significant human values such as the human dignity and social advancement of persons, resulted in a significant change in the Church’s attitude toward woman. This gradual evolution can be traced through the antepreparatory and preparatory documents, conciliar discussions, and the definitive texts of the council. Pope John XXIII in *Pacem in terris* addressed the social progress of woman and decried the deprivation of her fundamental rights in many parts of the world. Conciliar documents, particularly *Lumen gentium* 32, *Gaudium et spes* 9, 29, 60 and *Perfectae caritatis* 15, addressed woman’s dignity as person, her equality with man and corresponding rights and responsibilities in the mission of Christ.” Ibid.

<sup>133</sup> SYMPOSIUM OF EPISCOPAL CONFERENCES OF AFRICA AND MADAGASCAR, *The Church as Family of God*, p. 30.

<sup>134</sup> See FIRST SYNOD OF THE ARCHDIOCESE OF ARUSHA, “The Church Christ Wants Us to Be,” pp. 18-19.

#### 4.6.1.1 – Dignity and rights of African women in the family

Historically, women everywhere were in a state of subordination to a greater or lesser extent. Law, which regulated the relations of men in society, sanctioned the subjection of woman. For example, the Barbarian society that co-existed with the Greco-Roman world, founded as it was on force, showed no great willingness to recognize the personhood of woman; her legal status was one of perpetual tutelage.<sup>135</sup>

It is noteworthy to observe that, in the course of history, the rights of women were altered. As social and economic conditions developed and changed during the Middle Ages, the single woman gradually freed herself from legal restrictions. This was especially true in the domain of private law. With the advent of the feudal system, if one had attained nobility and political power, there was the possibility of owning land. Thus, women of noble birth were able to inherit land and take ownership of it. When the French Revolution first erupted, the rights of women were not primarily changed. However, women did play a big part in the French Revolution and, since equality was the main staple for change for the advocates of this political upheaval, women were included and treated somewhat equally. By examining the laws of the different countries as to the position of woman with regard to the exercise of political and public rights, one may follow the women's rights movement through its various phases in different regions and to perceive the limits provisionally assigned to it by the conscience of the civilized world.<sup>136</sup>

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<sup>135</sup> M. OSTROGORSKI, *The Rights of Women: A Comparative Study in History and Legislation*, Philadelphia, Porcupine Press, 1980, p. xi.

<sup>136</sup> See *ibid.*, pp. xi-xiv.

“Change” does not have the same value for all women. For some it brings hope, but for others it brings dread. One can only think of the poorest of women in sub-Saharan Africa who are unconcerned with social progress unless it brings food and other necessities for their families. Their priority is their families, keeping them safe and fed. They see little value in becoming liberated from traditional strictures. To restore the dignity and rights of African women in the family, there is a need for the particular Churches in sub-Saharan Africa to be unanimous in condemning the customs and practices that deprive women of their rights and their dignity as human beings, for example, female circumcision, sexual exploitation, cultural subjection, and economic and educational deprivation.

In polygamous cultures, many women feel they have little choice but to obey the laws of the culture. They know that the husband can and will marry a second wife so, very often, the first wife herself participates in searching for the right woman who will be a good companion, thereby seeking to prevent the man from bringing home a second wife who will contribute to disharmony and perpetual strife in the extended family. She participates in polygamy not because she herself wants her husband to take another wife but to avoid a lesser evil. This way of thinking cannot be overcome without assistance from other women.

With the Christian apostolate of women, the modern sub-Saharan African woman who suffers perpetual slavery under male chauvinism can come to know her marital rights, recognize her human dignity and be made aware of the fact that she is equal.<sup>137</sup>

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<sup>137</sup> “A woman’s dignity is closely connected with the love which she receives by the very reason of her femininity; it is likewise connected *with the love which she gives in return*. The truth about the person and about love is thus confirmed.” JOHN PAUL II, Apostolic Letter

Thus, she can become more assertive with this knowledge and awareness. She can then choose not to tolerate any longer the continuous oppression of her husband.

#### **4.6.1.2 – The special needs of girls**

Girls are typically those most victimized in a polygamist society. Most of them are deprived of their fundamental right to go to school because they are forced to marry. The majority are married below fourteen years of age – which is the legal minimum for validity in canon law (c. 1083, §1).<sup>138</sup> Worse still, when it is recognized that the baby to be born is a girl, a future marriage is arranged for her even before birth.<sup>139</sup> As a result of this “booking” of a girl baby, it is not unusual for a middle-aged man with several wives to marry a young girl of about twelve years of age.<sup>140</sup> Another problem is that men want to marry women or girls who have little or no education because they fear to have their traditional role challenged. They believe that such women, who are not trained in any

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*Mulieris dignitatem* on the Dignity and Vocation of Women on the Occasion of the Marian Year, 15 August 1988, Rome, Vatican Polyglot Press, 1988, p. 109.

<sup>138</sup> The marriage of a non-Catholic younger than fourteen would be recognized as valid in canon law provided it is valid in the civil law, unless there were some basis in the divine positive or natural law for its nullity.

<sup>139</sup> “The notion of a foetus as thing of God is also associated with a coercive form of foetal betrothal. A man may approach a pregnant woman and beg for her unborn ‘daughter’ with the gift of the anointment, by smearing butter across her womb. The child might of course be male or die young. However, the suitor has taken his chance, and if the child is born a girl and survives to the age of marriage, it is as if God has shown a favour towards the suit, and it would be dangerous to offer her to any other man. If the child is a boy who survives, then again this is God’s will and he and the suitor should become close ‘stock friends’, a term that also refers to the navel-string.” P. SPENCER, *The Maasai of Matapato: A Study of Rituals of Rebellion*, London, Manchester University Press, 1988, p. 39.

<sup>140</sup> “It is the elders, and especially her father, who determine her marriage to a man who is normally at least twice her age, and occasionally even four times or more. Her removal to a totally new and strange milieu is an awesome prospect to which she has been conditioned from her earliest years. She is offered no alternative other than to accept her obligation to honour her father’s choice with his blessing or to risk his anger, which would have the effect of a curse.” *Ibid.*, p. 14.

skills, will be submissive and good wives. This is but another manifestation of oppression of women in polygamous cultures.

It is important for local churches in sub-Saharan Africa to help negate these cultural and family pressures on girls. For one thing, Church-run schools should be open to non-Christian children of polygamous families so that girls may learn about their inherent dignity and rights, including the right to an education and to pursue their own vocation in life. Other strategies should also be attempted, like vocational groups in small Christian communities, schools and training centres. Also of great value is an educational plan that makes a deliberate effort to respond to the particular needs of girls in these societies, seeking to ensure that they have a quality education that will allow them to make free choices in life, among which may include the choice to pursue the consecrated life in a religious institute.

#### **4.6.2 – Education for development and self-reliance**

Christians believe that they are called to participate in the ongoing creation and redemption of the world, which means assuming responsibility for this world and in particular for human development. This call is not limited to the progress of the baptized but to all people created in the image and likeness of God, including polygamists. Social development work aiming to free people from poverty through self-sufficiency is not something incidental to the evangelization of polygamous families but must go hand in hand with it. Self-reliance projects must be considered in parallel with the work of evangelization.

Polygamy, though rooted in culture, is often maintained and accelerated by poverty, especially on the side of women. Many women in polygamous families are

poor. In some cases, a polygamous husband is in a good position to offer a poor girl greater social and economic security, with lands and a better home, greater prestige within the community, and other goods valued in her society.<sup>141</sup> In this situation, it is completely understandable how poor girls and their parents would find attractive the marriage proposal of a wealthier man. These poor girls accept marrying rich men, not for better or worse, but only because of their wealth and the security and status it will bring.

Therefore, it is incumbent upon the Church in sub-Saharan Africa to make every effort to improve the situation of women in every possible way, not only in the sphere of education but also in their socio-economic condition. This can be done by providing women with an education for development and self-reliance. They need to be made aware of available social services and assisted in developing self-reliance projects which will help them to eradicate poverty.

The Church's ministers and leaders cannot live the polygamous women's lives for them. What they can do is act as catalysts, bringing to light the need for and the possibilities of action. The Church can help them sensitize local leaders, help them decide on the programs and then aid them in implementing these programs by putting them in touch with the appropriate social agencies. Self-reliance projects can assist women in polygamous families to help themselves and avoid depending on the rich men who marry them. The goal is to empower women in polygamous societies to be engaged in social development that is holistic, enabling them to grow fully and mature spiritually and physically in relative security by means of reducing oppression and poverty. This will also enable them to achieve greater independence from traditional cultural strictures.

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<sup>141</sup> BLUM, *Forms of Marriage: Monogamy Reconsidered*, p. 109.

#### 4.7 – Justice and Peace

The Church in sub-Saharan Africa faces deep crisis, contradictions and strife, abuse of human rights, and disregard for human dignity. This situation makes the apostolate of evangelization difficult. The Second African Synod took place in Rome in October 2009 on the theme, “The Church in Africa in Service to Reconciliation, Justice and Peace.” Its aim was to help bring reconciliation, peace and justice in African societies. Therefore, justice, peace and reconciliation are to be considered not as some specialized functions suited only to those specially trained but as part of deeper process of evangelization.<sup>142</sup>

There is no apostolate whatsoever that could be undertaken and succeed in polygamous families without incorporating justice and peace into its model and then applying this model to every family member. It is the duty of the Church in sub-Saharan Africa to contribute to justice and peace of her people. Unless evangelization integrates them and uses them successfully, it cannot be complete and integral. Likewise, justice and peace will not be well understood nor be well propagated in the Church unless evangelization takes them up successfully. The extensive failure of the attainment of principles of justice and peace in Africa has been attributed to inept evangelization, or evangelization not well understood and not well received.<sup>143</sup>

Even if the relation of inculturation to justice and peace may not be directly clear, it is plausible to regard justice and peace as the outcome of an inculturated evangelization when the African Christian will be able to understand, for example, what the Gospel means by love, charity, justice, peace and neighbor;

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<sup>142</sup> O. MUBANGIZI, “Agent of Reconciliation, Justice, and Peace: The Church in Africa in an Era of Globalization,” in A.E. OROBATOR (ed.), *Reconciliation, Justice, and Peace: The Second African Synod*, Maryknoll, New York, Orbis Books, 2011, p. 111.

<sup>143</sup> MBYEMEIRE, *A Theological Analysis of the Problem of Justice and Peace*, p. 6.

and indeed, what it means to be a Christian or to be human from a perspective nearest to his or her imagination. For the present trend of affairs with rampant injustices and unrest show that the people have not yet grasped the Gospel. The success of inculturation in Africa will affect evangelization and therefore the understanding of the Gospel, and consequently the valuation of justice and peace.<sup>144</sup>

Justice and peace must be strengthened as an approach to evangelization in polygamous societies. It is also the ideal of the Pontifical Council for Justice and Peace, so that justice and peace in this world may be strengthened in accordance with the Gospel and the social teaching of the Church.<sup>145</sup> This requires commitment, such as by means of a committee or similar organ that will facilitate and coordinate all matters related to justice and peace.

#### **4.7.1 – Commitment to justice and peace**

The Church in sub-Saharan Africa should denounce and completely disassociate herself from evil deeds that go against justice and peace in the society and try to be a living example, excellent and resolute in demands for these important elements. The Church must commit herself to all issues pertaining to justice and peace. A commitment to justice, peace, human rights and human promotion is a witness to the Gospel when it is a sign of concern for persons and is directed towards integral human development (*RM* 20).<sup>146</sup>

The existence of disharmony and perpetual wars in polygamous families is something quite possible. This may be caused by the favouritism, infidelity or

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<sup>144</sup> Ibid., pp. 6-7.

<sup>145</sup> JOHN PAUL II, Apostolic Constitution *Pastor bonus*, 28 June 1988, in *AAS*, 80 (1988), pp. 841-930, art. 142.

<sup>146</sup> *Encyclical Letter Redemptoris missio*, p. 32.

discrimination on the part of the husband, enmity among the children of other wives and jealousy between the co-wives. “The union of minds between the one man and the two or more wives is a recipe for disaster. Competition between the two wives will ensue in terms of who wins the man’s authentic attention and love. It so seems that the man is incapable of intellectually appreciating the two equally, he certainly will love one and despise the other which in itself might lead to discontent and conflicts in respect to the distribution of resources.”<sup>147</sup> Occasionally, quarrels arise in the polygamous household. The existence of this possibility must be seriously looked at within polygamous families.

The approach of the problem of polygamy can be achieved easily if the question of justice and peace is clearly understood and implemented by the whole society. Without justice and peace for every age group, gender,<sup>148</sup> and the entire society, it will be very difficult to approach the problem. So there is a need for this important element to be defended by the Church in sub-Saharan Africa to ensure that no one in the polygamous families is being deprived of this human right. It is the duty of the Church to help all people understand that one person’s lack of justice or peace today is everyone’s problem and that activity on behalf of justice and peace is no longer just an available option but is rather an urgent necessity. Christian concern for justice for all God’s people is part of the actual core of Christian life.<sup>149</sup>

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<sup>147</sup> KAHIGA, “Polygamy: A Pastoral Challenge to the Church in Africa,” p. 127.

<sup>148</sup> The issue of gender was one of the topics discussed in the Second African Synod. See A. ARABOME, “Woman, You Are Set Free: Women and Discipleship in the Church,” in OROBATOR, *Reconciliation, Justice, and Peace*, pp. 119-129.

<sup>149</sup> WALSH, *Integral Justice*, p. 109.

#### **4.7.2 – Committee of justice and peace**

A committee of justice and peace is an organ that may facilitate the exercise of justice and peace and, at the same time, coordinate all matters relating to it. The personnel indentified with this committee should be well qualified and able to deal appropriately with all issues relating to justice and peace. The committee must undertake efforts to eradicate discrimination, marginalization, and any kind of oppression in polygamous societies.

The committee will have the duty to educate people about the matters of justice and peace, collaborate with the diocese on issues related to justice and peace, and with this collaboration defend and stand firm on these issues within polygamous families. For example, they should teach, offer advice, and especially encourage men in polygamous families to recognize the rights of women and girls. They should also stand with these women as they fight for equal opportunity in education and the acquisition of property. This committee should emphasize to both men and women in polygamous society the importance and dignity of each human life.

From faith human communities of all parts of the world and all ages of human history have drawn the hope that the peace which is so needed for human societies is also something possible of attainment. From reason alone it is possible to build up an understanding of what is meant by peace that goes beyond absence of war to the substance of genuinely peaceable society. From faith comes the conviction that peace is a divine gift which we can receive only upon the terms on which it is offered, terms which require an appropriate response. [...] The testimonies of the religious traditions insist that peace has a price, and it begins with a personal discipline of peacefulness. But a peaceable future also has to be nurtured in the next generation, and a peaceable nation has to be built by many levels and types of social and political action.

Peacemaking requires many aspects of personal discipline and nurturing. It also requires much collaboration, patient negotiation, the employment of much

knowledge and of many skills. But at the heart of it all is the simple human faculty for compassion.<sup>150</sup>

## Conclusion

We have suggested a number of possible canonical and pastoral approaches that support the Church's doctrine and mission to evangelize polygamous societies. These have been organized under seven headings: the concept of evangelization, inculturation and the evangelization of cultures, evangelization in polygamous societies, communicating the good news, the diocesan pastoral plan, the apostolate of women and justice and peace. The implementation of these canonical and pastoral approaches requires the collaboration and commitment of all agents of evangelization. Although there are no sure-fire solutions to the problems of polygamy, a concerted and organized effort, particularly at the level of the diocese, can go a long way toward facilitating the conversion of polygamists to Christianity and at the same time upholding the Church's teaching on marriage.

Church law requires that people involved in a polygamous union are to regularize their marital situation before being admitted to the rite of election and sacramental initiation. Before laws can be accepted, there must be sufficient faith by which the person can trust that the Church's laws are just and applicable to oneself. This may require long years of first evangelization and evangelization before a person's faith ripens and matures. To facilitate the building of this faith foundation, the Church's teaching and laws must be applied with canonical equity, pastoral prudence and the

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<sup>150</sup> M.K. HELLWIG, *A Case for Peace in Reason and Faith*, Collegeville, MN, The Liturgical Press, 1992, pp. 104-105.

spirit of the Gospel in dealing with particular subjective situations, and always in harmony with the supreme law of the Church which is the salvation of souls (c. 1752).

Polygamy is rooted deeply in culture. A social institution in existence for many centuries, it cannot be abolished in just a few years, decades or perhaps even centuries. That fact being acknowledged, we are convinced that the pastoral and canonical approaches proposed in this chapter, while supporting the Church's stance on monogamy, can go a long way to facilitate its mission of evangelization and pastoral care of those living in polygamous unions. These approaches allow for a solid, multi-faceted formation and transformative experiences that can help inquirers and catechumens grow in faith, guiding and assisting them step by step from the grassroots so that they ultimately are prepared to make the necessary sacrifices to embrace the Good News and the Church of Christ, which subsists in the Catholic Church (c. 204, §2).

## GENERAL CONCLUSIONS

Polygamy poses a major problem to the Church's evangelizing mission. In many sub-Saharan African societies, it is a socially approved and respected system with deep cultural roots, but it is contrary to the Church's constant teaching and canonical norms. Many of the people in these societies accept their polygamous culture and wish to maintain it; it is their heritage and age-old tradition.<sup>1</sup> Polygamy, therefore, is a very challenging canonical and pastoral problem and an obstacle to the growth and vitality of the Church in sub-Saharan Africa. Our study examined this problem from anthropological, sociological, biblical, canonical, and pastoral perspectives. We attempted to deal directly with these problems and shed light on some disputed issues, both canonical and pastoral. Finally, we sought to develop some strategies that are consistent with both the Church's teaching on the practice of polygamy and the pastoral care of people living in polygamous societies. It is to be hoped that these strategies may be of assistance to the Church in its ministry of evangelization.

Chapter one drew upon anthropological and sociological studies to understand the cultural roots of polygamy as practiced in sub-Saharan African societies: its origin, prevalence, positive and negative effects on family life of the sub-Saharan peoples, and also the civil law on polygamy. It is not easy to harmonize polygamous culture and faith because there is always some tension between them. However, beyond the inevitable tensions that arise when a polygamous culture is stretched to express and embrace Catholic faith, a more positive outcome can occur as, for example, when polygamists

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<sup>1</sup> Cf. F. GEORGE, *The Difference God Makes: A Catholic Vision of Faith, Communion and Culture*, New York, The Crossroad Publishing Company, 2009, p. 26.

who wish to become Catholics come to recognize the negative elements in their own culture and work to diminish or eradicate them.

Despite the tension between culture and faith, polygamous societies can change, as witnessed in some regions where the practice of polygamy has largely or entirely died out and monogamy is now the rule. For this to occur, however, sufficient motivation is necessary, because “culture change comes only as an expression of a need felt by individuals within a society. People do not change their behavior unless they feel a need to do so.”<sup>2</sup> Factors that can bring about change in polygamous culture include contact with people of different cultures, widespread acceptance of Christianity, and social development.

Chapter two dealt with Church teachings on marriage and polygamy. These teachings are rooted in Scripture and the great Tradition as consistently taught by councils, popes, and most Catholic theologians and canonists. Church doctrine on the nature and ends of marriage, sacramental marriage, and the essential elements and properties of marriage yield the coherent conclusion that the practice of polygamy is contrary to what the Church believes is the nature of marriage as willed by the Creator.

Although it is rooted in the culture of the people, polygamy has never been recommended or approved by the Catholic Church. Some Protestant denominations accept polygamy as legitimate or at least tolerate it, but the Catholic Church has been firm and consistent in its opposition to the practice, leaving no room for doubts or exceptions. The New Testament, papal teachings, the councils of Lyons II and Trent and

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<sup>2</sup> D.W. KIETZMAN and W.A. SMALLEY, “The Missionary’s Role in Culture Change,” in W.A. SMALLEY (ed.), *Readings in Missionary Anthropology II*, South Pasadena, CA, William Carey Library, 1978, pp. 526-527.

other pertinent sources, especially the Code of Canon Law, as well as noted theologians and canonists, all witness to the Church's teaching that marriage is by nature monogamous and that Christ raised this natural institution to a sacrament in marriages between two baptized persons. Marriage is a lifelong union which fosters the wellbeing of the spouses and the procreation and education of the children (c. 1055, §1). The practice of polygamy is contrary to the essential properties and the ends of marriage, especially the property of unity which requires a monogamous marriage characterized by fidelity to one's spouse who should be one's sole sexual partner. No one may validly consent to marry with a contrary intention.

The Church's canon law on marriage flows from these doctrines. Chapter three looked at the canonical norms related to marital unity in general and polygamous marriages in particular. Canon law provides various means for assisting polygamous spouses to regularize their marital situation. First, we briefly treated the Pauline privilege, which is the dissolution by law of a non-sacramental marriage under specific conditions. This privilege can be applied in some cases of polygamous marriages. For example, if the first wife of a polygamist is baptized but, thereafter, the unbaptized man refuses to maintain a monogamous relationship with her, she would have cause to invoke the Pauline privilege. Similarly, if the polygamous man converts and the first, unbaptized wife departs, he could use the privilege validly to marry another.

Canon 1148, whose origins date back to apostolic constitutions from the sixteenth century, specifically concerns polygamous converts. According to Church teaching, a polygamist is validly married only to his first wife. However, if he finds it difficult to remain with the first wife, the canon allows him to marry one of the other wives of his

choosing after the others have been dismissed.<sup>3</sup> The phrase “dismissal of the others” (*ceteris dimissis*) has been explained by canonists to mean that the convert and the other wives can no longer have conjugal relations. It does not mean that they cannot form part of the larger household, especially if they are elderly or sick. Therefore, to prevent them from being exposed to penury or dishonour, they can form part of the household provided that the proximate danger of sin and scandal are removed.<sup>4</sup> Canon 1149, also dating back to papal law in the sixteenth century, applies to a convert who cannot restore cohabitation with a non-baptized spouse by reason of captivity or persecution. Such a person may validly marry another, even if the other party was subsequently baptized. This canon applies also to the case of a polygamous convert.

The third chapter focused additionally on the dissolution of the marriage bond in favour of the faith, the presumption of the law in favour of the faith and the nullity of marriage on the ground of an exclusion of marital unity or fidelity due to simulation or determining error. The overriding conclusion of the chapter is that the Church’s law can

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<sup>3</sup> The dismissal of the other wives is a particular practical and pastoral concern. When a husband separates from his second or third wife, her prospects of another marriage may be extremely limited. If she returns to her village, she may not be seen as a desirable marriage partner. If she drifts into a city, she may be subject to various forms of exploitation or abuse. Church leaders try to insist that the husband not simply cut his “extra” wives loose but feel some ongoing responsibility to them, especially if child care is involved. See J.L. ALLEN, *The Future of the Church: How Ten Trends are Revolutionizing the Catholic Church*, New York, Doubleday, 2009, p. 35.

<sup>4</sup> ABATE, “La Costituzione del matrimonio nel nuovo Codice di diritto canonico,” p. 362; GIROTTI, “La procedura per lo scioglimento del matrimonio nella fattispecie del ‘privilegio paolino’,” p. 171.

This pastoral solution is far from ideal, however. For example, Cardinal Peter Turkson of Ghana made the following argument at the 2005 Synod of Bishops in the Vatican: “You can’t say to a man, ‘let the others go and stay with the first wife.’ There’s a question of justice. You can ask the man to provide for her ongoing security, setting up a small business for her, for example. But then there’s still her need for a sexual partner. You can’t just say to everyone they should be celibate.... You don’t want to expose them to prostitution and so on.” As quoted in ALLEN, *The Future of Church*, p. 35.

be seen to have a pastoral purpose in that it is directed to facilitating the conversion to Christianity of persons who are in polygamous unions while upholding the Church's doctrine on the unity of marriage.

Chapter four proposes possible canonical and pastoral approaches that support the Church's doctrine and mission to evangelize polygamous societies today. These approaches try to harmonize Church teachings with the needs of the faithful in polygamous cultures. We explained briefly the concept of evangelization, the meaning of inculturation and evangelization of cultures and explored how existing canonical structures in both the universal law and in particular churches (dioceses) may be of service in supporting Church doctrine on marital unity and its mission of evangelization. These approaches are in conformity with the faith and the law of the Church and can certainly be practically applied in the process of evangelizing polygamous societies. Polygamous societies have the right to be evangelized, and it is the obligation of the Church to evangelize them. This ministry, which needs evangelization personnel who are well trained and committed, involves all agents of the Church and, indeed, all the Catholic faithful.

Although in sub-Saharan Africa there are many areas that have been partially evangelized, there are areas that still wait for a first/primary evangelization. Some of the families living in those areas are in polygamous unions. Their evangelization begins with the preparatory phase of evangelization. This is a community responsibility, an apostolate which requires dedication and testimony to the Gospel. This stage is a necessary step in first/primary evangelization and it cannot be separated from it. During this phase, the polygamous families are helped to discover God in their cultural and

religious traditions in the hope that they may express the desire to embrace the Catholic faith. The seed of faith is sown during this stage. It is born and nurtured and gains momentum and, gradually, conversion to Christianity becomes desirable. Primary evangelization is followed by a period of pre-catechumenate to help those who show the true desire to follow Christ so that they may be received as catechumens. Formal admission to the catechumenate then marks the point where the juridic status of the catechumen is acquired with the rights and obligations entailed by it. While persons involved in polygamous unions may be admitted to the catechumenate, they are to regularize their marital situation before their admission to the rite of election and sacramental initiation. Polygamists in danger of death can be admitted to the sacraments of initiation provided they have some knowledge of the principal truths of the faith, they manifest the intention to receive baptism and they promise to observe the requirements of the Christian religion (c. 865, §2).

To achieve the aim of communicating the Good News to polygamous societies, there is a crucial need for united pastoral action. The diocesan pastoral council can plan and coordinate activities in order to meet the pastoral needs in polygamous families. The presbyteral council and priests' meetings at the diocesan or deanery levels, where programs, policies, and principles are shared and discussed by priests, may be an effective means to foster solidarity in pastoral action towards polygamists. The development and growth of small Christian communities should be key priorities of a pastoral plan for communicating the message of salvation to polygamous societies from the grassroots. Social communication systems play a key role in evangelizing polygamous families primarily by raising their awareness and enabling them to discern

positive and negative elements in their culture. The use of the various means of communications in an open, honest, and positive way can create good public relations, which facilitates the work of evangelization in polygamous societies, promotes critical self-awareness, helps the people to recognize their rights and gives them insight so that they can discern the good and evil influences of their culture. Various forms of dialogue can play a key role in the evangelization of polygamous families. This goal can be achieved by listening to the people in polygamous societies, immersing oneself within their culture, attempting to understand their values and thereby little by little planting the seeds of the Christian faith on fertile soil.

Furthermore, the diocesan pastoral plan can coordinate the evangelization and catechesis of polygamous families and play a key role in developing strategies and structures to foster the apostolate of evangelization which incorporate justice and peace into its model and then applying this model to every family member. It can also develop strategies and structures to foster catechetical instruction which should emphasize, among other pastoral needs, the meaning and importance of the sacraments in the Christian life.

The apostolate of women can significantly assist women to become conscious of their dignity and rights and at the same time to fight against maltreatment and practices that oppress them. The special needs of girls, such as the fundamental right to attend school and to pursue their own vocation in life, should also be taken into consideration. The formation of Catholic women's groups and associations can help women and girls protect their rights under the traditional laws and customs. Polygamy, though deeply rooted in culture, is often maintained and accelerated by poverty. The most affected

people are poor women and girls. Therefore, education for development and self-reliance must be considered in parallel with the work of evangelization, aiming to free the victims of polygamy from poverty through self-sufficiency. The Church can assist them in different ways to achieve this goal, for example, by helping them form development groups, decide on the programs and implement these programs through the support of appropriate social agencies.

The conversion to Christianity of polygamists is complicated by deeply rooted cultural values that in some respects run contrary to Catholic doctrine, so there is a need for “pastoral prudence” in implementing all these approaches. Priests and other agents of evangelization should be sympathetic to couples living in these situations and not be too quick to insist that their marital unions be regularized, even while they are catechumens, lest greater harm occur to their nascent faith. Such pastoral prudence requires a thorough knowledge of the customs of the people as well as a careful application of canonical norms in keeping with the circumstances of people and places. It also demands a respect and concern for the other wives, making efforts to avoid any injustice to the dismissed wives and their children.

Religious conversion does not come at once but requires maturation in faith. Faith ripens and matures not merely by enforcing laws but more fundamentally by spiritual guidance, pastoral care, and participation in the faith-life of the Christian community. Surely, it is the obligation of priests and all other pastoral ministers to respectfully teach polygamous families about Christian marriage and other doctrines as well as the polygamists’ fundamental responsibility towards previous wives and their moral obligations to their children who were born by those wives. In doing so, however, agents

of evangelization must be gentle and sensitive to the personal and cultural realities of polygamous families. Otherwise they may undercut the very possibility of conversion to and growth in the faith, and the inquirer or catechumen will be lost to the fold. In this regard, canonists can be instrumental in reminding Church authorities, pastoral ministers and other agents of evangelization that the Church's teaching and canon law must be applied pastorally without causing harm to others, and that this is demanded by the very purpose and ultimate objective of canon law, the *salus animarum*, which is, indeed, the "supreme law" of the Church (c. 1752).

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Prosper Baltazar Lyimo was born on 20 August 1964. After completing his primary and secondary education, he did his philosophical studies at Kibosho Major Seminary in Moshi, Kilimanjaro Region, from 1990-1992. He did his theological studies at Saint Paul Senior Seminary, Kipalapala, Tabora, from 1992-1997. At the completion of his theological studies he was awarded Baccalaureate Degree in Theology. He was ordained a priest on 4 July 1997 for the Catholic Archdiocese of Arusha, Tanzania. After his priestly ordination he was appointed as teacher and formator at the Diocesan Junior Seminary (Arusha Catholic Seminary) at Oldonyosambu from 1997-2000. Then he was appointed acting General Secretary of the Archdiocese of Arusha and personal Secretary to the Archbishop of Arusha on July 2000. He served in different pastoral and development assignments, particularly in the Archdiocesan Chancery Office, parishes and Church institutions. In 2004, the Most Rev. Josaphat Louis LEBULU, Archbishop of Arusha Archdiocese, sent him to Rome, Italy, to study canon law. He received the Licentiate in Canon Law from Urbaniana University in 2007. After studies in Rome, he returned to Arusha Archdiocese and was reappointed as acting Archdiocesan General Secretary. He began his doctoral studies in canon law at Saint Paul University, Ottawa, Canada, in the Fall of 2008.