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SAINT PAUL UNIVERSITY

YAWO RESISTANCE TO CHRISTIAN MARRIAGE?
POSSIBILITIES OF A LOCAL THEOLOGY OF MARRIAGE

A DISSERTATION
Submitted to the Faculty of Theology
of Saint Paul University
in Partial Fulfillment of the Requirements
for the Degree of Doctor of Sacred Theology

BY

REV. THOMAS PETER KAPITO, B.D. (London), S.T.L., DIPL.SOC.



Thomas P. Kapito, Ottawa, Canada, 1989



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UNIVERSITÉ D'OTTAWA
UNIVERSITY OF OTTAWA

TO

MY FATHER AND MOTHER

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THE AUTHOR

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INTRODUCTION

1. THE PROBLEM

One major reason why African converts find themselves involved in matrimonial problems is the teaching on the absolute inseparability of contract and sacrament. These problems are heightened by the Church practice of the canonical form in the celebration of the sacramental marriage. By this practice, marriage is more or less a momentary event. On the other hand, the African marriage is not an event but rather a long process often lasting a number of years. This progressivity of the African marriage seems to be so ingrained in their culture that, on their conversion into Christianity, they find it so hard to align themselves with the instantaneous celebration of marriage dictated by the canonical form. As a result of this, problems begin, for the authorities of the Church do not consider the African converts' marriages celebrated with the progressive form as valid. As a matter of fact, they are regarded simply as sinful, so that the African converts who have celebrated their marriage in the customary way are debarred from the reception of sacraments. The problems arising from the entire situation gains prominence especially in view of the number of African converts who opt for the celebration of marriage with the progressive form prior to the employment of the

canonical form. They often constitute a great majority of all marriages celebrated in a given parish. In this way, the problems operate for a great reduction of the number of communicants among the marriageable Christians. Fortunately, a great number of those who commence their marriage with the progressive form often manage, as the expression goes, to regularize its marriages at a later date.

While some have the capacity of celebrating their marriage in church after, perhaps, a number of years' postponement, many others wind up by abandoning the practice of the Christian religion altogether, frustrated by their situation as excommunicated members of the Church, i.e., barred from the sacraments. There are also those who, perhaps, not on account of the progressive marriage but for some other reasons, decide to cease their Church membership and yet marry with progressive form. In view of the fact that the ruling of the Church demands that marriages of all baptized persons be sacramental and since this sacramentality seems to be effected through the employment of no other form except the canonical form, it implies that all these people are incapacitated from ever forming a valid marriage at any time in their lives as long as they remain, as the description goes, lapsed Christians. These, therefore, are even in a worse condition than those converts who simply postpone the canonical marriage.

The question that is posed in the whole matter is whether the resistance to the practice of the Church, in this regard, which the African Christians are mounting is directed towards the gospel as such. Is it not the case that the whole question is, in the final analysis, a cultural problem? And if it is in fact a cultural problem, what can be done to resolve it? On the supposition that the problem is indeed cultural, then its solution would seem to reside in the process of inculturation.

Fortunately, there is in the Church, today more than ever before, the recognition of the fact that the task of evangelization is necessarily connected with inculturation as far as possible. While this is true of all places, the problem of inculturation seems more acute in the mission lands where very little in this regard appears to have been done. Evangelizers, therefore, especially those not belonging to the lands of the evangelized would have to take cognizance of the fact that the good news of salvation which they bring to the evangelized may already be embodied, to a certain measure, in the evangelizers' own culture. The possibility of inculturation is derived from the understanding that culture is not necessarily opposed to the gospel. Culture is not, therefore, an evil in itself in its entirety. That being the case, the evangelizers would also have to realize that the process of

inculturation through which the gospel has gone in their countries of origin would most probably also have to occur in the countries of the people they intend to evangelize. As a matter of fact, it would be the evangelizers' most sacred responsibility to allow the occurrence of inculturation among the new converts to Christianity. This is why the identification of the cultural features which the evangelizers have incorporated into the gospel becomes of paramount importance in order to avoid the attachment of immutability to doctrines that by the very nature of things would demand mutability. It therefore appears that the problem with which this dissertation is concerned is in essence the problem of the possibility of inculturation and the purpose is to find a way whereby this possibility could, at least in one aspect of marriage, be translated into a reality.

2. METHODOLOGY

In this dissertation, therefore, we intend to employ the methodology which consists in a dynamic dialectical interaction among the gospel, the Church tradition and culture. Involved in this interaction is the movement back and forth among the various aspects of the gospel message, Church tradition and culture. This process could also be called inculturation through which local theology is

generated. Thus, inculturation could be described as the insertion of the Church into culture, or perhaps better still, it could be defined as the incorporation of culture into the gospel. Implied in such an incorporation is, of course, the compatability of the cultural elements with the gospel message.

From the fact that we are basing ourselves mainly on the Yawo people, it becomes necessary that we make a brief historical description of this tribe and of the introduction of Christianity into Malawi where the Yawo under discussion are found. In view of the fact that the Yawo are mentioned specifically with reference to marriage, the analysis of the reality of marriage as is experienced in their culture seems also necessary for the purpose of hopefully presenting a good picture of the Yawo's world view as far as this reality is concerned. The analysis is hoped to uncover an area of resistance when the reality of marriage as lived by the Yawo comes into contact with some aspects of the concept of marriage introduced by the missionaries whose local theology is in effect the traditional theology of the Church. In so far as the area of resistance is similar to that experienced also by the majority of the rest of the African tribes and in so far as the African local magisterium seem to have together discussed the matter, we deem it appropriate that we find out how far their awareness of the problem has gone. After

all these explorations, it will be our responsibility to attempt the search for the possibility for the construction of a local theology of marriage which could, perhaps, be viable in the African context.

3. THE OUTLINE OF THE DISSERTATION

CHAPTER ONE is a brief historical note. It describes who the Yawo people are; how through their long association with the Arabs by reason of trade they became involved in slave trade and acquired the Arabs' religion, Islam or muhammedanism; and how they entered Malawi from their original home. A description is also made of the introduction of Christianity into Malawi. It states that while the Protestants were the first to introduce Christianity into Malawi, it was the White Fathers, as far as the Catholicism is concerned, who initiated the work of evangelization there, but they were soon followed by the Montfort Fathers.

CHAPTER TWO embarks upon the analysis of the reality of marriage according to the Yawo's world view. The discussion shows that the Yawo society is matrilineal, uxorilocal and matrilocal, founded on the most important kinship relationship between the sister and the brother who eventually becomes the maternal uncle to the sister's children. The kinship relationship between the maternal

uncle and the sister's children is another feature with its own importance in the Yawo society. The sisters and their eldest brother form the nucleus and basis of the Yawo village community. The sisters create a sorority-group under the brother's charge, and their marriages come under the brother's guardianship. This function is by no manner of means surrendered to a stranger such as the husband who is accepted into the village merely as a worker in the sense of a begetter of children for the increase of the sorority-group. The Yawo marriage comes into being through a long dynamic process. We suggest that there are three main stages in the Yawo progressive marriage. We have decided to call the first stage the phase of acceptability in which the marriage is formally sanctioned by the guardians and the rest of the community with the result that the partners commence cohabitation even prior to the ratification ceremony. The second stage is what we have called the phase of ratification when the formalization that occurred in the first stage now undergoes its ritualization. The ceremony of the phase of ratification signifies the unification of the two sorority-groups of the partners' origin. The last stage has been designated the phase of establishment which occurs once a sufficient number of offspring have been born in the marriage. It must be added that the African progressive marriage is potentially polygamous for a host of reasons.

There is a number of important features of the Yawo progressive marriage which when confronted with the traditional theology or the missionary local theology become areas of resistance. After the exploration of the reality of marriage in the Yawo context, CHAPTER THREE assumes the responsibility of identifying one problem area. It is shown that the very progressivity of the Yawo marriage already constitutes a problem area, in that the traditional theology regards the first stage or the phase of acceptability as nothing less than concubinage, despite the fact that the people themselves recognize it as a valid procedure for the commencement of marriage in earnest. The Yawo progressive marriage is not, therefore, accepted as a sacrament, which the marriages of baptized persons are supposed to be, on the grounds that the canonical form has not been employed in the marriage's formation. In short, the progressive marriage is believed to go counter to the teaching on the absolute inseparability of contract and sacrament. On the other hand this chapter attempts to show that the problem may simply be a cultural rather than an evangelical one, in view of the fact that the separability of contract and sacrament seems to have been taught by a considerable number of theologians in the Church and that it has not always been the case that the canonical form was employed in the formation of Christian marriage.

CHAPTER FOUR aims at discovering whether the local African magisterium of Malawi and the African local magisterium in general together with their theologians have been able to identify the problem of the progressivity of the African marriage and, if so, what action has been taken to wrestle with the situation. It goes without saying that the problem could scarcely escape the magisterium's notice. As for the question of their identification, it may be affirmed that the majority of the episcopal conferences seem to indicate that they have been able to identify it and have taken action to address it, albeit only by way of statements and recommendations. For instance, most bishops seem to recognize the validity of the progressive marriage. They resent such designations as concubinage as applied to the African progressive marriage, even when they are entered into by Christians. Many bishops seem to believe in the possibility of converting the Christians' marriages entered into with the progressive form into sacramental marriages. A good number of other bishops seem to consider the sacramentality of these marriages as already present, regardless of the fact that the canonical form has not been employed.

After attempting to demonstrate the probability of the culturality of the conflict experienced between the African progressive marriage and the Christian marriage,

and having sounded the mind of the African local magisterium, in CHAPTER FIVE, we try to search for the possibility of an African local theology of marriage, at least in one of its aspects. A local theology is essentially the result of inculturation. But inculturation cannot be undertaken just for the sake of inculturation, in view of the fact that not all cultural elements can become factors in the process of its occurrence. Cultural elements fit for inculturation must measure up to the gospel message at least in its essence. Therefore, in this chapter, our first task will be the attempt to identify the gospel core with which culture is supposed to conform. Then, we will investigate the possible values of which the progressive marriage may be in possession. The presence of values in culture, however, does not guarantee the occurrence of inculturation. Its occurrence is also dependent upon the attitude of the evangelizers who can bring it about. We will therefore try to examine what these attitudes may be. In the case where there are favourable attitudes towards culture, the prospects for the occurrence of inculturation are bright with the attendant hopefully good results. On the other hand, where the attitudes are unfavourable, inculturation seems to stand no chance of occurring and that with the attendant consequences.

CHAPTER ONE

A HISTORICAL NOTE

A. THE YAWO PEOPLE¹

1. Their Origin

The Yawo claim to have originated from a place between two rivers called Rovuma (Luuma) and Lujenda east of Lake Malawi in Mozambique.² Yohanna B. Abdallah, the native Yawo historian, states that the Yawo initially lived in a hill called Yawo. The name "Yawo" means a treeless hill on which only grass grew. With the increase in their numbers, they began to spread to the east and to the west, to the north and to the south of the hill, so that the people who lived on and around the hill were all Yawo.³ Apparently,

¹Prior to around 1973, the spelling of the name of the tribe was "Yao". Afterwards, the rules of orthography changed in an attempt at writing as pronounced. Thenceforward the name of the tribe is spelled "Yawo". Thus wherever I quote, I shall spell the name as it is found in the text, but I shall spell it "Yawo" when I employ it myself. The same applies to "Chewa" (alias Nyanja) formerly spelled "Cewa." On the other hand, "Nyasaland" is the pre-Independence name for Malawi.

²James Clyde Mitchell, The Yawo Village (Manchester: Manchester University Press, 1966), p. 22.

³Yohanna B. Abdallah, WaYao'we (We the Yawo People: My translation) (Blantyre and Lusaka: Publications Bureau, 1952), p. 5; G. Meredith Sanderson, A Dictionary of the Yao Language (Zomba: The Government Printer, 1954), s.v. cao.

they did not come under one leader but were divided into 10 groups named after the hills or locations in which they were living after they had scattered round Yawo hill. Thus, their names were Amasanninga who live on Masanninga hill, Amachinga who lived in a hill called Machinga, Amangochi who were in Mangochi hill, Wanjese (Wachisi) who lived in Njese hill, Amalambo, those who lived mwilambo i.e. in the plains, Wambemba who lived in Mbemba hill, Amakale who lived in a location called Makale, Wamkula who lived in Mkula hill, Achimbango (Wamwela) who lived in Chingoli Mbango hill, and finally Achingoli who lived in Chingoli hill along Lujenda River.⁴

2. The Yawo's Entrance into Malawi

In view of the fact that the Yawo had dispersed into various other countries apart from Malawi and that they came into contact with different peoples, the Yawo's name is found pronounced differently depending on the nationality of the people with whom they came into contact or the people who spoke about them. George Peter Murdock lists the following as different versions derived from the name "Yawo." Thus, the Yawo are variously called "Achawa,

⁴ Abdallah, WaYao'we, p. 8.

Adjao, Adsawa, Adsowa, Ajawa, Ayo, Hiao, Mudsau, Mujano, Mujoa, Myao, Veiao, Wahaiao, Waiyau, Wayao."⁵

In any case, not all the ten groups of the Yawo people entered Malawi. Rather, only four groups are said to have gained entrance to Malawi. These are the Amasaninga, Amachinga, the Amangochi and the Wachisi.⁶ Historians place the date for their entrance into Malawi between the years 1830 and 1870.⁷ Different authors give different reasons for dispersion of the Yawo people and their entrance into Malawi. G. Meredith thinks that "Invasion by the Amakua across the Lujenda, circa 1850, started a series of migrations, northwards into what is now Tanganyika (Tanzania) Territory and southwards into the upper 'Shire' valley and the uplands west of Lake Chilwa (now part of Nyasaland i.e. Malawi)."⁸ On the other hand Abdallah

⁵George Peter Murdock, Africa: Its People and Their Culture History (New York, Toronto, London: McGraw-Hill Book Company, 1959, p. 295.

⁶Mitchell, The Yao Village, p. 22.

⁷The New Encyclopedia Britannica, Macropedia vol. 11 (Chicago: William Benton, Publisher, 1984), p. 360, s.v. Malawi; Sanderson, A Dictionary of the Yao Language, "Preface," no page. Audrey Lawson, "Outline of the Relationship System of the Nyanja and Yao Tribes in South Nyasaland," African Studies 8 (1949), p. 180.

⁸Sanderson, A Dictionary of the Yao Language, "Preface," no page.

affirms that the dispersion of the Yawo people commenced long before the attack by the Amakuwa. He gives internal dissensions as the reason why the Yawo dispersed.⁹ While Abdallah recognizes the occurrence of the Amakuwa invasion, he states that the attack was directed towards one group of the Yawo, namely the Amachinga.¹⁰ E.A. Alpers appears to agree with Abdallah when he writes:

Rather the centre of dispersal was somewhere in the heart of Yao country in northern Mozambique and keyed on the Machinga Yao, who now predominate around the south end of the lake (Malawi). These Yao, so the various sources tell us, were attacked from the east by the Lolo, or Makua-Lomwe people, who were in the throes of a severe famine and were, in any case, great enemies of the Yao.¹¹

James Clyde Mitchell believes that "many of the first immigrants came into the country peacefully and in family groups (mbumba)."¹² In the same vein, J.G. Pike and G.T. Rimmington state that "The first Yao incursions into Malawi

⁹ Abdallah, WaYao'we, p. 7.

¹⁰ Ibid., p. 38.

¹¹ E.A. Alpers, "The Yao in Malawi: The Importance of Local Research," The Early History of Malawi, ed. Bridglal Pachai (London: Longman Group Ltd., 1972), p. 170.

¹² Mitchell, The Yao Village, p. 25.

were probably peaceful."¹³ All this appears to indicate that it is a precarious exercise to attempt to assign one cause to the dispersion of the various groups which constituted the Yawo tribe. It is, therefore, better to admit with Mitchell that "The exact cause of the scattering of tribes from their original home is not clear."¹⁴ Equally unclear are the exact dates of their dispersion.

On arrival in Malawi, the different locations in which the four groups established themselves were as follows. 1) The Achisi Yawo mainly under chief Katuli settled in Mangochi District. They are one of the smallest of the four groups. 2) Another small group is that of the Amasaninga Yawo who moved from the Masaninga hill and by conquest came to an area around Fort Maguire where they established themselves under chief Makanjira. A portion of this group is also found in Dowa District.¹⁵ 3) Of the third group Mitchell writes: "The Amangoche Yao are of much greater importance and at present constitute about

¹³Ibid., p. 24. J.G. Pike and G.T. Rimmington, Malawi: A Geographical Study (London: Oxford University Press, 1965), p. 126.

¹⁴Mitchell, The Yao Village, p. 24.

¹⁵Ibid., p. 25.

half of the Yao population of the territory."¹⁶ They established themselves in Zomba district under chief Mlumbe and chief Chikowi, in Blantyre district under chief Kapeni, in Chiradzulu district, and in Mulanje District under chief Matipwiri. 4) The Amachinga Yawo are another important group that settled in Malawi. These are the Yawo who had been routed from their original home by the Amakuwa who used guns in their invasion. This was before the Amachinga knew how to use guns. In their flight from the Amakuwa, the Amachinga in turn became invaders of their fellow Amangochi Yawo. It would seem that it is partly as a result of this invasion that the Amangochi are in the districts of the Shire Highlands mentioned above. On the other hand, the Amachinga settled mostly in Mangochi District, the former home of the Amangochi Yawo, under chiefs Nkata, Jalasi, Mponda, Kalembo, Nsamala, Nyambi, Kawinga, Liwonde, and in Zomba district under chiefs Malemia and Mtumanje.¹⁷ Despite the fact that the original inhabitants of the area were the Nyanja (Chewa), they had somehow or other been "almost completely displaced by the Yao in all areas, except in Liwonde's along the Shire river, and in Kawinga's along Lake Shirwa in the section

¹⁶Ibid.

¹⁷Ibid.

under Sub-Native Authority Mposa."¹⁸ The fact that a great majority of the chiefs in southern Malawi were Yawo seems to indicate that they were the dominating tribe of the time in these areas.

3. The Yawo and the Slave Trade

Even long before their dispersion from their original home, the Yawo appear to have been great traders. They conducted their trade mainly with the Arabs who are said to have colonized the east coast of Africa as early as A.D. 700. By 1498 Vasco da Gama found out that the Arabs had already established themselves all along the east coast, and it is believed that in their travelling expeditions into central Africa they passed through Yawo territory which was conveniently situated on the route to the interior.¹⁹ It is also believed that the Yawo had been in contact with the Arabs for at least 200 years before the arrival of the Europeans in Malawi.²⁰ Abdallah reports that prior to their engagements in slave trade, the Yawo

¹⁸Mitchell, "The Yao of Southern Nyasaland," Seven Tribes of British Central Africa, eds. Elizabeth Colson and Max Gluckman (Manchester: Manchester University Press, 1959), p. 297.

¹⁹Ibid., p. 304.

²⁰Ibid., p. 305.

travelled to the Indian Ocean to barter tobacco, hoes and hides in exchange for calico, salt and beads from the Arabs.²¹ After trade had been conducted for some time, the Arabs persuaded the Yawo to bring ivory and slaves from their country, reassuring them that these two items would render them wealthy in no time and that they would also obtain guns and gunpowder which the Yawo needed in their wars with their enemies, the Nyanja (Chewa). On their return from the Indian Ocean, the Yawo sold to the Nyanja (Chewa) whatever they brought from the Arabs, demanding that they be paid in slaves or ivory instead of the usual cattle.²²

When the Yawo had realized the profitability of the two commodities, they now concentrated on ivory and slave trade,²³ and not long afterwards they engaged themselves solely in slave trade. Whereas at first the Nyanja (Chewa) sold their fellow people on their own accord, later on, the Yawo resorted to raids on the Nyanja (Chewa) for the acquisition of the much wanted slaves. In this regard the Encyclopedia Britannica states: "To the east of Lake

²¹ Abdallah, WaYao'we, p. 30.

²² Ibid., pp. 32-33.

²³ Ibid., p. 33.

Nyasa, the Yawo - keen traders from the 17th century - moved from ivory trading to slave raiding, obtaining firearms from the Arabs, subjugating the Chewa agriculturalists and building up powerful polities under new commercial and military leaders."²⁴ Attracted by the goods and slaves brought by the Yawo but dissatisfied by the quantities and numbers the Yawo were able to bring them, the Arabs decided to travel to the Yawo homeland themselves in the hope of obtaining greater quantities of various commodities and greater numbers of slaves.²⁵ While the Arabs, on arrival in the Yawo country, may have conducted their own slaving forays, they depended much more upon the slaves the Yawo provided them in exchange for the calico and other commodities than upon their own raiding.²⁶ Otherwise, the Arabs would join Yawo invasions while they established themselves in the courts of the most powerful chiefs.²⁷

²⁴Encyclopedia Britannica: Macropedia vol. 17, (Chicago: Hemingway Benton, Publisher, 1984), p. 282.

²⁵Abdallah, WaYao'we, p. 35.

²⁶A.J. Hanna, The Beginnings of Nyasaland and Northern Rhodesia 1859-1895 (London: Oxford University Press, 1956), p. 7.

²⁷Pike and Rimmington, Malawi: A Geographical Study, p. 126.

Of the foreigners who engaged in slave trade in the Yawo country, apart from the Arabs, were the Portuguese who, like the Arabs, relied mainly on the willingness of the Africans to sell them slaves rather than on the raids which the Portuguese themselves might have carried out.²⁸ In Malawi, of the natives who engaged in slavery, apart from the Yawo, were the Ngoni. However "the Ngoni were not party to the slave trade in the same way as the Yawo, but they subjected many of the defeated to the status of the domestic slave."²⁹ Although the Yawo or the Ngoni could enslave their own tribesmen, the main victims of slavery in Malawi appear to be the Nyanja (Chewa).

4. The Beginning of Muhammedanism Among the Yawo

While the Arabs with whom the Yawo associated for a long time were Muhammedan by religion, the Yawo, on their part, had their own traditional religion. The Yawo never used churches for prayer in their traditional religion. However Abdallah mentions of a sacred tree called Msolo under which prayers and sacrifices to God were offered.

²⁸A.J. Hanna, The Beginnings of Nyasaland and Northern Rhodesia, p. 7.

²⁹Pike and Rimmington, Malawi: A Geographical Study, p. 127.

About this tree, G. Meredith Sanderson writes: "It is said to shed its leaves only at night and is regarded as a particularly favourable site for offerings or oblations to the spirits."³⁰ This particular tree was selected precisely because of this strange behaviour, for while other trees were seen to shed their leaves during the day, this tree alone was noticed to shed its leaves during the night after people had swept underneath it the previous day.³¹ The Yawo believe that spirits of the dead can communicate with the living during the night in dreams as to what either they or God want done on the one hand, or what they or God intend to do on earth, on the other. The shedding of leaves during the night by Msolo tree was probably regarded as a kind of communication by the spirits of the dead or by God, indicating at least that under it was the divine presence or the presence of the spirits, where people could come to communicate with God or the spirits in prayer or sacrifices. "For it is a tree of dreams which sheds its leaves only during the night."³² From the day the Yawo experienced the strange behaviour of Msolo tree onwards, it became a sacred tree under which

³⁰Sanderson, A Dictionary of the Yao Language, p. 181, s.v. msolo.

³¹Abdallah, WaYao'we, p. 23.

³²Ibid.

sacrifices to the spirits and to God could be offered by spreading flour under it. As to the order of the service under the Msolo tree, Abdallah writes:

On arrival under the Msolo tree, people would salute, clap their hands and then pray. In their prayer they would first mention the reason for their coming or what they wanted. Then they would invoke those people who, through death, had gone first to God. Finally they would invoke God. (For all Yawo people recognize that God is the parent of all peoples and of all things; and therefore a Yawo person never prays without invoking God).³³

In the unavailability of Msolo tree, people would spread flour over a grave or over the ruins of a dead person's house.³⁴ The spreading of flour over a grave or over the ruins of a dead person's house and especially the long litany of the names of the dead ancestors³⁵ or of those "who had gone first to God," recited during the sacrifice, may give the impression of ancestor worship. Nevertheless, the ancestors seem to be invoked as intercessors before God just as a Christian would invoke the name of a saint as an intermediary between God and the Christian. For, as we have seen, "all Yawo people

³³Ibid., p. 21-22. [My translation.]

³⁴Ibid., p. 21.

³⁵Ibid., p. 22-23.

recognize that God is the parent of all peoples and of all things."

However, later on in their history, many Yawo people became Muhammedan or Islam. It is not clear as to the exact date when the Yawo embraced Muhammedanism. In other words, did the Yawo begin to practice Muhammedanism prior or posterior to their entrance into Malawi? The Encyclopedia Britannica seems to indicate that the Yawo's conversion into Muhammedanism occurred only posterior to their entrance into Malawi. For the Encyclopedia Britannica states that "traders returning from the coast in the 1870s and 1880s brought Islam to the Yao of the Shire Highlands."³⁶ On the other hand, G. Meredith Sanderson seems to suggest that the Yawo had already embraced Muhammedanism prior to their advent to Malawi. Sanderson gives the long association with the Arabs by the Yawo as the reason why the latter were converted to Muhammedanism. Sanderson states:

An enterprising and virile people, the Wayawo had been trading with the Coast Arabs, especially with those settled near Lindi, for at least 200 years before these migrations began and they had eventually established a regular traffic in slaves, obtaining their victims (mostly Anyanja)

³⁶Encyclopedia Britannica: Macropedia vol. 11, p. 360, s.v. Malawi.

by barter as well as by raiding. Owing to this long association with Arabs the tribe³⁷ is still predominantly Muhammedan in religion.

It could be presumed that such a long association with the Arabs could not fail to exert some influence of a religious type on the Yawo even previous to their migrations.

In any case, on the arrival of the first Christian missionaries in Malawi, Muhammedanism was the religion of the Yawo. "Not all Yao are Muslims, of course, but the Yao have been pre-eminently identified as a people for whom Islam is synonymous with being Yao."³⁸ Abdallah observes that had it not been for the Arabs and the Swahili, the Yawo might have been converted to Christianity. But such was not the case in so far as by this time Muhammedanism had already established itself among the Yawo.³⁹ As a matter of fact, by this time, the Yawo hated Christianity and education alike on the grounds that education and Christianity were introduced into the country by missionaries who demanded the Yawo's abandonment of the

³⁷Sanderson, A Dictionary of the Yao Language, "Preface," no page.

³⁸Alpers, "The Yao in Malawi," p. 172.

³⁹Abdallah, WaYao'we, p. 50.

slave trade,⁴⁰ which had become a great source of wealth for them. Because the Yawo, especially those in the North of Southern Malawi, were prejudiced against education introduced by the missionaries, they became backward in their way of life.⁴¹ But they adhered all the more to Muhammedanism in so far as "they regarded it as the most amenable way of modernizing their societies, especially of acquiring literacy for their people."⁴²

The adherence to Muhammedanism by the Yawo does not appear to have influenced their culture to any significant degree. In fact by its very nature, the culture of any society is almost impossible to obliterate. Not even Christianity, which is such a demanding religion, has been able to achieve a total suppression of people's cultures. The most it has been able to do is to exercise some modification of cultures. On the other hand Muhammedanism does not appear to be so demanding as Christianity. Thus Muhammedanism's influence on the Yawo's culture could only

⁴⁰K.J. McCracken, "Religion and Politics in Northern Ngoniland, 1881-1904," Early History of Malawi, ed. Bridglal Pachai (London: Longman Group Limited, 1972), p. 216.

⁴¹Pike and Rimmington, Malawi: A Geographical Study, p. 163.

⁴²Alpers, "The Yao in Malawi: The Importance of Local Research," p. 174.

be marginal, especially when it is realized that some of the Arabs with whom the Yawo came into contact "differ in nothing from the Waiyau."⁴³ Apparently most of the things that might have been different do not seem to have been prohibited.

Such were the Yawo at the time when the missionaries came to introduce Christianity in Malawi. This leads us to the beginning of the missionaries' activities in Malawi.

B. THE INTRODUCTION OF CHRISTIANITY INTO MALAWI

1. The Introduction of the Protestant Church in Malawi

The Catholics were not the first to introduce Christianity into Malawi. In fact, Christianity was introduced in the 1860s by Dr. David Livingstone and by other Scottish missionaries who came to Malawi after his death in 1873."⁴⁴ Apparently, it was at this time that slave trade by the Yawo was at its height. Dr. Livingstone

⁴³H. Waller, The Last Journals of David Livingstone in Central Africa From 1865 Until His Death (London: John Murray, 1874), p. 78.

⁴⁴Encyclopedia Britannica: Macropedia vol. 11, p. 360, s.v. Malawi.

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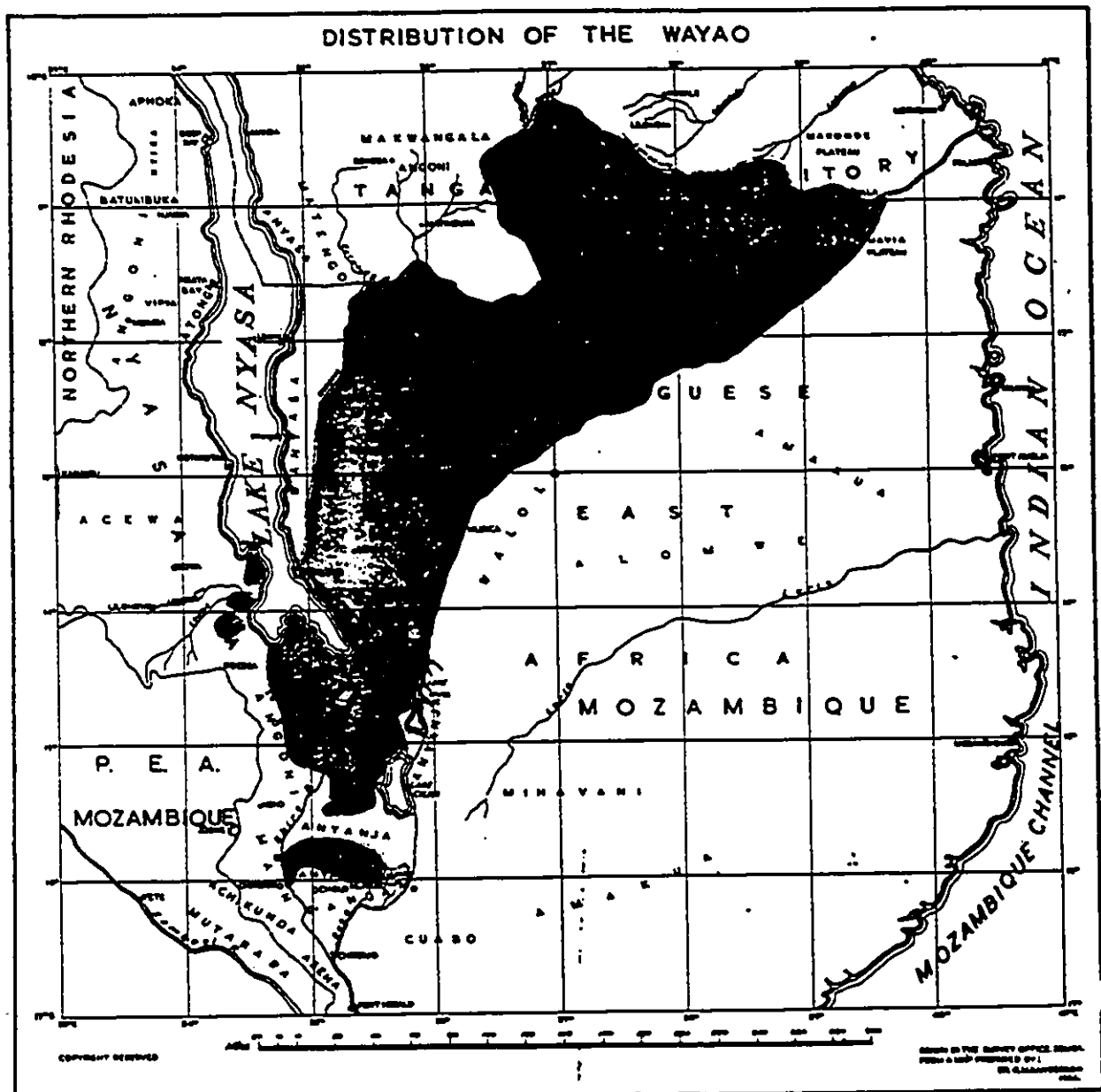
The map displays the following countries and regions: CANARY ISLANDS, MOROCCO, ALGERIA, TUNISIA, LIBYA, EGYPT, WESTERN SAHARA, MAURITANIA, MALI, NIGER, CHAD, SUDAN, ERYTREA, ETHIOPIA, SOMALIA, JIBOUTI, OGDEN, MALI DEMOCRATIC REP., SEYCHELLES, COMORO IS., MADAGASCAR, MAURITIUS, REUNION, SOUTH AFRICA, LESOTHO, SWAZILAND, BOTSWANA, NAMIBIA, ANGOLA, ZAMBIA, ZIMBABWE, TANZANIA, RWANDA, BURUNDI, UGANDA, KENYA, MALAWI, MOZAMBIQUE, CONGO, ZAIRES, GABON, GUINEA-BISSAU, GUINEA, SIERRA LEONE, LIBERIA, COAST, IVORY, GHANA, TOGO, BENIN, NIGERIA, CAMEROON, EQUATORIAL GUINEA, SAO TOME E PRINCIPE, CABINDA, LUANDA, WINDHOEK, GABORONE, PRETORIA, MASERU, CAPE TOWN, WAGERS BAY, KOLWABE, HARARE, BLANTYRE, MAPUTO, DAR ES SALAAM, ZANZIBAR, PAMBA, NAROB, ADDIS ABABA, JOBA, Khartoum, CARO, TRIPOLI, EL OAZAR (Algiers), NOUAKCHOTT, DAKAR, BANJUL, CONAKRY, MONROVIA, ABIDJAN, ACCRA, LAGOS, PORT HARCOURT, DOUALA, YAOUNDE, LIBREVILLE, KINSHASA, MAYOTTE, ANTANANARIVO, PORT LOUIS, ST. DENIS.

Surrounding bodies of water: MEDITERRANEAN SEA, RED SEA, ATLANTIC OCEAN, INDIAN OCEAN.

Inset maps: Cape Verde Islands, Seychelles.

Colin Legum ed., Africa, (New York and London: Africana Publishing Company, 1987), Frontispiece.

ILLUSTRATION II



G.M Sanderson, A Dictionary of the Yao Language, (Zomba: The Government Printer, 1954), Frontispiece.

who discovered Lake Malawi in 1859⁴⁵ was appalled by the manner in which the slave traders treated their victims and decided that something had to be done for the abolition of slave trade among the Yawo people. For the achievement of his goal he had recourse to the "famous formula of the three C's." That is to say, "Christianity, commerce, and civilization must all be introduced, for all were desperately needed."⁴⁶ Christianity would be introduced by missionaries, commerce by traders and civilization by some form of government. Dr. Livingstone's wish for a government seems to have been realized only long after his death, for it was only in 1891 that "the British established the Nyasaland Districts Protectorate, which was called the British Central Africa Protectorate from 1893 and Nyasaland from 1907."⁷ Dr. Livingstone's wish for the establishment of commerce was fulfilled in 1878 when "the African Lakes Company was sponsored by the Church of Scotland Mission, so that it could take over the trading part of their dealings with the Africans."⁴⁸ Of the "three

⁴⁵Grand Dictionnaire Encyclopédique Larousse vol. 6 (Paris: Libraire Larousse, 1984), s.v. Malawi.

⁴⁶Hanna, The Beginnings of Nyasaland and Northern Rhodesia, p. 9.

⁴⁷Encyclopedia Britannica: Macropedia vol. 11, p. 360, s.v. Malawi.

⁴⁸Mitchell, The Yao Village, p. 19.

C's" Christianity was the first to be realized. After his experiences in Malawi, Dr. Livingstone returned to England where he made an appeal to the Senate House at Cambridge University, on December 4, 1857. As a response to his appeal and to that of the Bishop of Cape Town in 1858 when he paid a visit to the University, an association called UMCA (Universities' Mission to Central Africa) was formed.⁴⁹ The association comprised four universities, namely Cambridge, Oxford, Durham and Dublin.⁵⁰ Charles Frederick MacKenzie was appointed as leader of the mission, accompanied by two clergy and three laymen. Having been consecrated bishop at Cape Town on January 1, 1861, he proceeded to Malawi and established a mission station at Magomero at the advice of Dr. Livingstone.⁵¹ Apparently the mission was not very successful. James Clyde Mitchell explains its fate in the following terms:

Livingstone had had no compunction in releasing slaves, and the U.M.C.A. followed his lead, and not only took in fugitives but actually carried out assaults on parties on slave-raiders. This was the time when the first of the Yao groups

⁴⁹Charles Henry Robinson, History of Christian Missions (Edinburgh: T & T Clark, 1915), p. 343. Robert Hall Glover, The Progress of World-Wide Missions (New York, London: Harper and Row Publishers, 1960), p. 292.

⁵⁰Hanna, The Beginnings of Nyasaland and Northern Rhodesia, p. 9.

⁵¹Robinson, History of Christian Missions, p. 343.

under Mpama and Kapeni were penetrating into the highlands. The indigenous Nyanja, whose political and military organization was very weak, ranged themselves around the Missionaries, and tried to use them against the Yao invaders. The situation soon developed into a struggle between the Missionaries and the Yao slavers, in which the Nyanja headmen played very little part. Disaster followed upon disaster, and eventually the Missionaries decided that it would be politic to withdraw from the highlands and allow the situation there to stabilize before they returned. In Britain, however, public opinion had been roused by their militant treatment of the slavers, and the Mission, after losing three of its members, including Bishop MacKenzie, through illness, was moved to Zanzibar in 1862.⁵²

Bishop MacKenzie's death occurred on January 31, 1862.⁵³ Some years had to pass before the UMCA successfully made another attempt. That was when Likoma mission at Likoma Island was founded.

In the meantime, missionaries of the church of Scotland established their mission in Blantyre in 1875 about two years after the death of Dr. Livingstone. Realizing the vastness of the area for evangelization, they decided to invite the Dutch Reformed Church missionaries from South Africa to share in the work of evangelizing the country. The Dutch reformed Church missionaries accepted

⁵²Mitchell, The Yao Village, p. 27.

⁵³Robinson, History of Christian Missions, p. 343.

the invitation and founded their mission at Mvera in 1889. The arrival of the latter missionaries was followed by several other missionary societies of various denominations. In order to prevent one society from evangelizing in an area in which another society was already evangelizing, Malawi was, by general agreement, divided amongst the different societies of missionaries. Thus, an area would be allotted to each society of missionaries as its area of influence, leaving no space for the Catholics who were to arrive later, in the process.⁵⁴ This arrangement obviously became a source of constant problems on the arrival of the Catholic missionaries.

2. The Introduction of the Catholic Church in Malawi

Catholicism was introduced into Malawi by the White Fathers in 1889. On July 31 of the same year, the area was declared an Apostolic Prefecture under Dupont.⁵⁵ A combination of events rendered the initial attempt rather unsuccessful. The White Father missionaries are reported to have encamped in an area of a Yawo chief called Mponda.

⁵⁴J. Bouniol, The White Fathers and Their Missions (London: Sands and Company, 1929), p. 262.

⁵⁵Annuario Pontificio 1983 (Vaticano: Libreria Vaticana, 1983), p. 322.

But the White Fathers fell victim to fever one after another. Furthermore, at this time the Nyanja (Chewa), "the original inhabitants were being gradually exterminated by the Yao, who were Muhammedanized slave traders...", while the Ngoni people made war on the Yawo. Over and above all this, the British and the Portuguese were on the point of war as a result of a dispute about their rights over the country.⁵⁶ For all these reasons, the White Fathers apparently abandoned their initial venture. The next attempt was made in 1896 when they founded a mission station at Kayambi in Bangweolo (Zambia). In 1897, February 12, the area was declared an Apostolic Vicariate of Nyasa, "Joseph Dupont becoming the first vicar."⁵⁷ This implies that the Apostolic Vicariate of Nyasa comprised the whole of what is now Malawi and Zambia.⁵⁸

⁵⁶Bouniol, The White Fathers and Their Missions (London: Sands and Company, 1929), p. 262.

⁵⁷C.P. Groves, The Planting of Christianity in Africa (London: Lutterworth Press, 1964), p. 233. Bernard de Vaulx, History of the Missions: From the Beginning to Benedict XV (1914) (London: Burns and Oates, 1961), p. 140. Joseph Schmidlin, Catholic Mission History (Techny, Illinois: Mission Press S.V.D., 1933), p. 656, footnote 50.

⁵⁸Bouniol, The White Fathers and Their Missions, p. 260-261.

Perceiving the vastness of the area that required evangelization, Bishop Dupont, in turn, came to the realization that the White Fathers would not be in a position to carry out the whole task alone. Accordingly, on August 17, 1900, Bishop Dupont went to the Mother-House of the Montfort Fathers at St. Laurent-sur-Sèvre Nantes, to appeal for assistance by way of personnel.⁵⁹ After some discussion on the matter, the Superior General of the Montfort Fathers, Father Maurille and Father Livinhac, head of the White Fathers as well as Bishop Dupont signed a contract on January 12, 1901 to the effect that the Montfort Fathers would immediately send three missionaries to staff a mission in the south of Nyasa Vicariate. The Montfort Fathers would also provide their own resources for its foundation and upkeep and would have to send half-yearly reports to Bishop Dupont regarding the mission's progress. On the other hand the White Fathers would stay out of the Shire area where the Montfort Fathers' mission was to be founded with the aim of raising the area to a separate vicariate in the future under the Montfort Fathers. The Missionaries selected for the first expedition were Pierre Bourget as leader of the group,

⁵⁹Ian Linden, Catholics, Peasants and Chewa Resistance in Nyasaland 1889-1939 (Berkeley: University of California Press, 1974), p. 44.

Antoine Winnen, a highly educated Dutchman with a gift for languages, and Auguste Prezeau, a French Father who had an invaluable advantage in Montfort circles of speaking English which he learned through spending some time at Kingston, Ontario.⁶⁰ The three missionaries arrived in Malawi in 1901 and founded a mission station at Nzama.⁶¹

Prior to sending the three Montfort missionaries, permission should have first been sought from the Propaganda, in that the creation of new missions by vicars Apostolic and the recruitment of different missionary societies into their areas was canonically illegal. But as a matter of fact, the required permission was not obtained through forgetfulness on the part of the Montfort Fathers and through illness on the part of Bishop Dupont. While the expedition of the three missionaries took place in May, it was only in June 1901 that Bishop Dupont was well enough to be able to inform Cardinal Ludochowski, the Prefect of the Propaganda. However, by then it was too late inasmuch as the news of the Montfort Missionaries' expedition had already reached Cardinal Ludochowski, and accordingly, he

⁶⁰Ibid.

⁶¹Ibid., p. 47.

insisted on their immediate recall.⁶² It was only a matter of good luck that the news of their recall did not reach the Montfort Missionaries prior to the successful appeasement of Cardinal Ludochowski by Jouet, the representative of the Montfort Fathers at the Vatican, who indicated to the Cardinal the enormous costs involved in the missionaries' return.⁶³ In the absence of a formal permission from the Propaganda, Bishop Dupont, probably unaware of Cardinal Ludochowski's appeasement, decided to resume his authority over the Shire area, an authority which he had ceded through the contract with the Montfort Fathers. According to Dupont's plan, therefore, the Montfort Fathers would have to be limited to Nzama, regardless of the fact that he would still permit the increase of their numbers in the future. Hence, he instructed his administrator, Father Guillemé to find a site for a mission station in Blantyre, in Shire area. To the surprise of Fathers Winnen and Prezeau at Nzama, who apparently did not know anything about the case of their possible recall, they learned from a newspaper that Father Guillemé had purchased land at Nguludi from Mr. W.P.

⁶²Ibid., p. 45.

⁶³Ibid., p. 49-50.

Martin.⁶⁴ In the meantime Cardinal Ludochowski died in July 1902 and was replaced by Cardinal Protector of the Montfort Fathers, Cardinal Gotti, as Prefect of the Propaganda. At his recommendation, the Shire area was declared an Apostolic Prefecture on December 3, 1903. Since the telegram bringing the news about the erection of the Shire Prefecture was lost on its way to Nzama, the Montfort Missionaries heard about the news only in January of the following year, 1904. Meanwhile Father Guillemé was at Nguludi waiting for the return of Bishop Dupont. On the other hand, the Montfort Fathers, having heard the news of the establishment of Shire Prefecture, went in June 1904 to claim Nguludi mission station from the White Fathers.⁶⁵ In this way, the new Apostolic Prefecture of Shire now consisted of two mission stations, namely Nzama and Nguludi apparently under Father Prezeau.

While all this was taking place on the Montfort Missionaries' side, new developments were also occurring on the White Fathers' side. In 1901, Father Guillemé, the administrator of the Bangweolo vicariate when Bishop Dupont was on sick leave in Europe, decided to find a site for a

⁶⁴Ibid., p. 50.

⁶⁵Ibid., p. 50-51.

mission station near Lake Malawi. Chiwamba, a place not distant from Mvera where the Dutch Reformed Church had founded their first mission station, was chosen as a suitable location for the White Fathers' first mission station in Malawi. In June 1902, Fathers Guyard and Perrot were sent to found a mission at Chiwamba.⁶⁶ The Dutch Reformed Church missionaries were not amused by this move of the White Fathers.⁶⁷ The Catholics were considered as interlopers. The Dutch Reformed Church's displeasure will be appreciated better, if it is recalled that the different Protestant denominations had divided Malawi, before the arrival of the Catholics, into various sections in which each denomination could consider as its area of influence. The White Fathers would not allow to be limited to any specific area in their work of evangelization and denied the charge of being interlopers by explaining that, as far as they were concerned, they were simply "continuing an almost unbroken tradition of Catholic mission activity on the Zambezi that had began in the sixteenth century." "They were, after all the representatives of the Church that had sent missionaries around the globe...for

⁶⁶Linden, Catholics, Peasants and Chewa Resistance in Nyasaland, p. 48.

⁶⁷Bouniol, The White Fathers and Their Missions, p. 263.

centuries."⁶⁸ Apparently, the same year of its foundation in 1902, Chiwamba had received reinforcements of missionaries from Europe so that they were able to split into two groups, one of which went to found another mission station at Mua, although the ultimate goal was the foundation of a mission station at Ntakataka. But the Ngoni people who inhabited the area were not ready for a mission in their midst at this point in time. It was only six years later in 1908 that the White Fathers were able to start a mission at Ntakataka. In the meantime Mua mission station became prosperous. It was at Mua that the White Sisters were about to make their first foundation in Malawi, and there too, the White Fathers were to build their junior seminary.⁶⁹ With further reinforcements of missionaries, the White Fathers were able to found yet another mission station at Kachebere in 1903. This mission is situated on the borders of Malawi and Zambia. Kachebere was also to become the abode of the future major seminary in Malawi in 1939. The White Fathers' mission at Chiwamba did not enjoy the same prosperity as Mua with the result that Chiwamba had to be abandoned in favour of a new

⁶⁸Linden, Catholics, Peasants and Chewa Resistance in Nyasaland, p. 2.

⁶⁹Bouniol, The White Fathers and Their Missions, p. 265.

promising foundation at Likuni. This occurred in the same year of 1903.⁷⁰ The next mission station seems to be Bembeke which was established in 1910. In 1911 Bishop Dupont had to resign through ill health and return to Europe. His resignation signalled the division of the vast Vicariate of Nyasa which at this time consisted of Zambia on the one hand and the central and northern regions of Malawi on the other. The former became Bangweolo Apostolic Vicariate under Bishop Larue, while the latter retained its name of Apostolic Vicariate of Nyasa under Bishop Guillemé.⁷¹ By now Nyasa Vicariate had five mission stations, Mua, Kachebere, Likuni, Ntakatake and Bembeke. It was at Mua and Kachebere that the first converts received baptism.⁷²

In Shire Apostolic Prefecture, five nuns, four French and one Arab, belonging to the Daughters of Wisdom arrived at Nzama in December 1904. Five more sisters arrived at Nguludi in September 1905.⁷³ The Montfort Fathers' third

⁷⁰Ibid.

⁷¹Ibid., p. 267-268. Linden, Catholics, Peasants and Chewa Resistance in Nyasaland, p. 72.

⁷²Bouniol, The White Fathers and Their Missions, p. 267.

⁷³Linden, Catholics, Peasants and Chewa Resistance in Nyasaland, p. 70.

mission station was founded at Neno in 1906. It was at Neno that oranges were planted in 1912 from orange pips imported from Madagascar. As a result, Neno became one of the richest and self-supporting mission stations of the Montfort Fathers. Neno is still famous for its oranges in the whole of Malawi to this day. The fourth mission station in Shire Apostolic Prefecture was founded at Utale by the future Bishop Ludovic Auneau.⁷⁴ At Utale Bishop Auneau spent his last years, there he died and was buried. But to come back, Shire Apostolic Prefecture was raised to a status of Apostolic Vicariate under Bishop Prezeau on April 14, 1908.⁷⁵ But Bishop Prezeau died in 1909.⁷⁶ He was succeeded by Bishop Auneau, who had to travel to Bangweolo in Zambia to be consecrated at the hands of Bishop Dupont, in 1910.⁷⁷ Bishop Auneau's first mission station as bishop was Nankhunda which was founded in 1912.⁷⁸ Nankhunda was to become the Montfort Fathers' junior seminary in 1925 after the mission station had been transferred to downtown Zomba in 1924. Blantyre was Bishop

⁷⁴Ibid., p. 71.

⁷⁵Annuario Pontificio, 1983, p. 87.

⁷⁶Linden, Catholics, Peasants and Chewa Resistance in Nyasaland, p. 71.

⁷⁷Ibid., p. 73.

⁷⁸Ibid.

Auneau's second mission station founded in 1913. The Bishop himself accompanied by Fathers Regent and Gimard assisted by 27 labourers encamped on the site where the future mission station was to abide.⁷⁹

Such was in brief the history of the introduction of Christianity into Malawi during the first decade, more or less, of Catholicism in the country. Apart from the many other difficulties the Catholic missionaries had to encounter in their work of evangelizing the Africans, the missionaries had to face the constant problem created by the principle of "the area of influence" established by the Protestants whereby one denomination could not evangelize in an area in which a different denomination was already evangelizing. The Catholic missionaries' refusal to abide by such limitations constantly brought the missionaries into a collision course with the Protestant missionaries of one denomination or another. For instance, the foundation of Nankhunda mission station which was in the Church of Scotland missionaries' area of influence provoked criticism from them. It was apparently in anticipation of greater resistance from the Protestants that Bishop Auneau himself had to be present at the foundation of Blantyre, which was,

⁷⁹ Ibid.

as may be recalled, the area where the missionaries of the Church of Scotland had founded their headquarters in 1875.⁸⁰ Similar problems were encountered by the White Fathers. Apart from Mua, Likuni and Kachebere, the White Fathers faced resistance from the Government in the foundation of subsequent mission stations. Despite the fact that the Government was seemingly not opposed to Catholic missions, it was under the influence of the Dutch Reformed Church missionaries to whom the Government seems to have constantly given in and to whom the Government's resistance was always traceable.⁸¹ It was only in 1925 that the Government partially permitted free competition throughout the country. This permission was officially declared in 1926. Mr. Green, Commissioner of the Central District publicly stated that there was nothing illegal in the use of schools by missionaries "as a means of propaganda, that is to say, to teach reading and writing in order to gather a group of natives together and lead on to preaching and catechizing."⁸² It must be pointed out, however, that despite the declaration of free competition, future history of Catholicism in Malawi seems to indicate

⁸⁰Ibid.

⁸¹Bouniol, The White Fathers and Their Missions, p. 267.

⁸²Ibid., p. 275.

the constant emergence of problems arising from the principle of "the area of influence."

As to how the White Fathers and the Montfort Fathers understood conversion, the following may be said. While, in the final analysis, the goal of evangelization was believed to be the salvation of the Africans, the two missionary societies seemed to have different views regarding the concept of conversion. For the White Fathers who were formed in the Jesuit spirituality, intellectual assent to the basic doctrines of Christianity seemed to assume primacy over anything else in the concept of conversion. The converts were supposed to have a solid foundation in the doctrine of the Christian faith. This understanding of the concept of conversion was reflected in the length of time required for the completion of the catechumenate. The White Fathers required that catechumens completed four years of instructions in Christian doctrine prior to the reception of baptism. However, the mere completion of the four years' catechumenate was not in itself sufficient. The candidates had to demonstrate, through examinations, that they had acquired the minimum knowledge of the basic doctrines of the Christian faith prior to their admission to baptism. The gravity of these examinations may be judged from this that, for instance, in 1909, of the 139 catechumens who had completed the required

four years' instructions only thirteen candidates passed the examinations.⁸³ On the other hand, the Montfort Fathers seem to have accorded primacy to personal assent to Christ in the concept of conversion. The Converts had somehow to manifest that they pledged a personal commitment to the person of Christ. The three years' catechumenate required by the Montfort Fathers prior to a candidate's admission to baptism seems to be a reflection of this understanding of the concept of conversion.⁸⁴

The following is briefly the manner in which the two vicariates of Nyasa, belonging to the White Fathers and Shire, belonging to the Montfort Fathers, developed into the present seven dioceses. The Vicariate of Nyasa was on May 8, 1947 divided into the Vicariate of Nyasa and the Apostolic Prefecture of Northern Nyasa.⁸⁵ The Vicariate of Nyasa was renamed the Vicariate of Likuni on July 12, 1951.⁸⁶ Part of Likuni Vicariate including two mission stations belonging to the future Zomba Vicariate became the

⁸³Linden, Catholics, Peasants and Chewa Resistance in Nyasaland, p. 54.

⁸⁴Ibid.

⁸⁵Annuario Pontificio, 1983, p. 395.

⁸⁶Ibid., p. 322.

Apostolic Vicariate of Dedza on April 29, 1956.⁸⁷ Likuni Vicariate was once again renamed and came to be known as the Apostolic Vicariate of Lilongwe on June 20, 1958.⁸⁸

As regards the Apostolic Prefecture of Shire, it was divided into two vicariates without any part retaining the name "Shire," in that one part was called the Apostolic Vicariate of Blantyre⁸⁹ and the other was known as the Apostolic Vicariate of Zomba.⁹⁰ This division occurred on May 15, 1952. On April 25, 1959, the Apostolic Vicariates of Blantyre, Dedza, Lilongwe and Zomba were raised to the status of dioceses,⁹¹ whereas the Apostolic Prefecture of Northern Nyasa became a diocese on June 6, 1961 and was called Mzuzu.⁹² Part of Blantyre Diocese became Chikwawa Diocese on March 22, 1965,⁹³ and part of Zomba Diocese became the Apostolic Prefecture of Fort Johnston on May 29, 1969, being renamed Mangochi and raised to the status of

⁸⁷Ibid., p. 175.

⁸⁸Ibid., p. 322.

⁸⁹Ibid., p. 87.

⁹⁰Ibid., p. 667.

⁹¹Ibid., pp. 87, 175, 322, 667.

⁹²Ibid., p. 395.

⁹³Ibid., p. 140.

diocese on September 17, 1973.⁹⁴ Blantyre, Dedza, Chikwawa, Lilongwe and Zomba are now under the African bishops while Mangochi is under an Italian bishop of the Montfort Fathers, and Mzuzu is under a Canadian bishop of the White Fathers. Thus there are seven dioceses in all in Malawi.

3. The Missionary Local Theology of Christian Marriage

The Yawo whose history we have attempted to describe above lived and still live in the area which was known as Shire Vicariate, belonging to the Montfort Missionaries. In order to be able to communicate with the people, the missionaries had to learn the language of the people. However, despite the fact that the Yawo appear to have enjoyed a pre-dominating position in the area at the time, the missionaries did not, by and large, employ Yawo as a medium for communication with the people. Probably, it was because Yawo is such a very difficult language compared, for instance, to Chewa. In fact Yawo never became the official language of the country to the regret of Frank, the Anglican Bishop of Nyasaland. In this regard Bishop Frank writes:

⁹⁴Ibid., p. 354.

Chiyao is one of the richest as well as one of the most musical languages in Central Africa, as the Yaos are one of its most virile and interesting tribes, and it is a matter for regret that it has not been recognized as one of the official languages of the Protectorate.⁹⁵

As a matter of fact, it was Chewa language, in the main, that the missionaries employed and that became the official language of the country. On the Shire Highlands, the Yawo, the Chewa, the Lomwe and the Ngoni constituted, by and large, the object of the missionaries' work of evangelization at that point in time.

On the other hand, the missionaries did not belong to one nationality. From the very beginning, there has been a mixture of nationalities among the Montfort Missionaries as well as among the White Fathers, for that matter. When we speak of a missionary local theology of marriage, we by no means imply the local theology of France or Italy or Holland or Germany, for instance. Local theologies are "theologies growing up as a response to the needs in certain contexts."⁹⁶ The context that is meant in our case

⁹⁵Frank, "Foreword," A Dictionary of the Yao Language by G. Meredith Sanderson (Zomba: The Government Printer, 1954), no page.

⁹⁶Robert J. Schreiter, Constructing Local Theologies (Maryknoll, New York: Orbis Books, 1985), p. 32.

is that of the western culture in that the traditional theology of marriage was constructed, apparently, as a response to the need which in the main occurred in the western culture as a whole. In this way, it could be called the local theology of the west despite the fact of its universalization. When this same theology of marriage is brought by missionaries to the mission lands, it is called the missionary local theology of Christian marriage. But more about this later.

For the time being, we will briefly discuss what seems to be some of the aspects of the missionary local theology of Christian marriage that may concern us here. The Yawo people, among other people, were taught that marriage between baptized persons was no longer a mere human reality but is also a sacrament. Such a marriage became absolutely indissoluble. For the baptized persons, the only valid marriage was the sacramental marriage. This sacramental marriage occurred at a particular moment through the employment of what is known as the canonical form. That is to say, at the moment of the marriage's occurrence, the presence of the priest as well as the presence of two witnesses were required. The absence of the canonical form compromised not only the sacramentality of the marriage but also its very validity in that the marriage contract and sacrament were absolutely inseparable. The sacramentality

of marriage applied both to the believing and to the unbelieving baptized persons. Thus, the only real marriage even for the unbelieving baptized persons had to be sacramental if it had to acquire validity. This implied the employment of the canonical form. While the faith of the couple was important, it was, however, not essential for the effectuation of the sacramental marriage. Such, in short, was the traditional theology of Christian marriage with which we are concerned here, a theology that became a missionary local theology by the simple fact that it was taught by the missionaries to the people in the mission lands. In fact it is a western local theology. To be sure, this is only one type of local theology. When Robert J. Schreiter begins to deal with the question of local theology he makes this observation:

The purpose of this investigation is a synthetic one. In other words, rather than a region-by-region or country-by-country approach, we shall focus upon issues and concerns that have become common among a number of geographical areas. An analysis⁹⁷ by region has already been taken up by others.

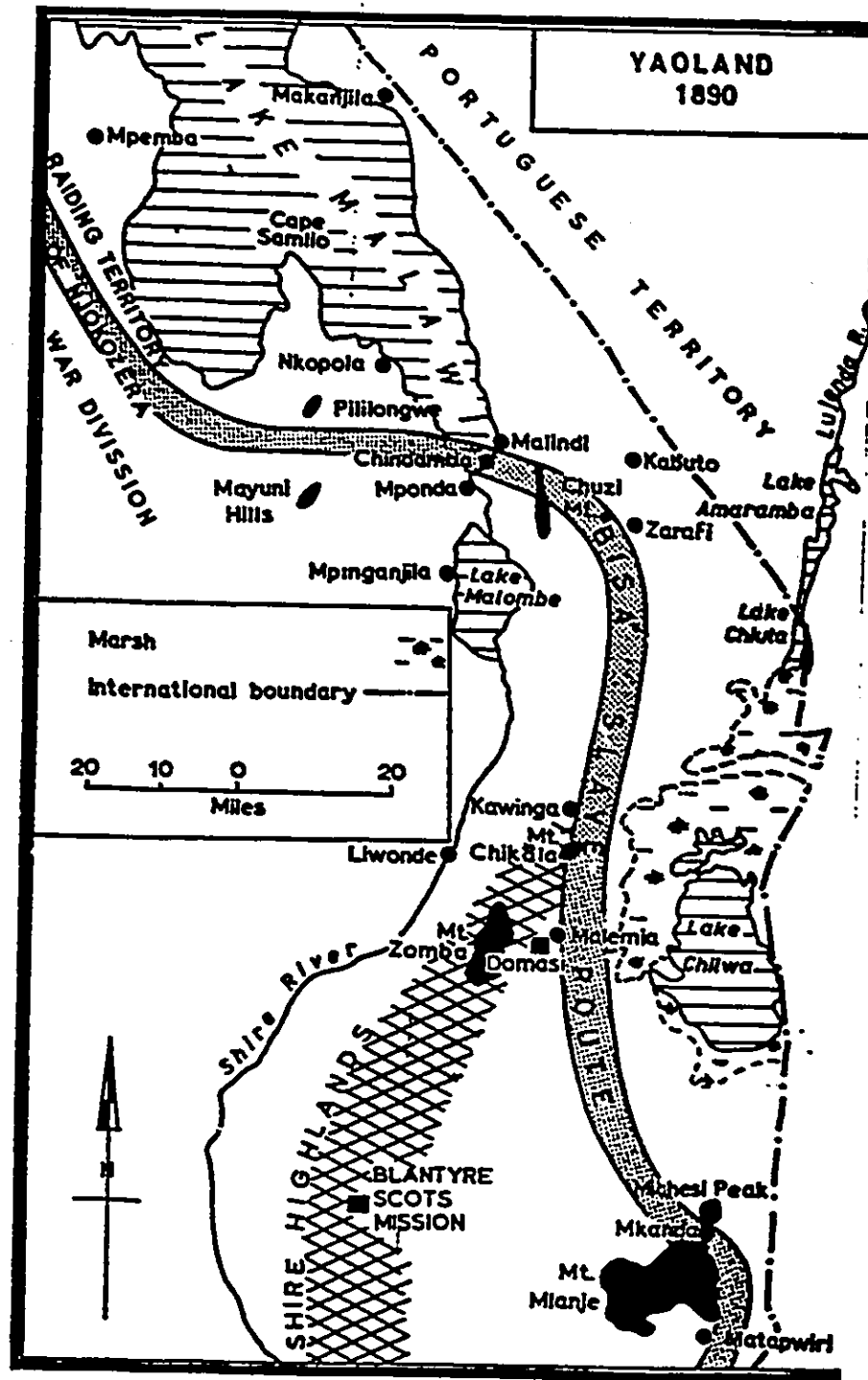
In our case, these geographical areas would be those that constitute the western culture as a whole. It is in

⁹⁷Ibid., p. 1.

this sense that the missionary local theology is meant to be understood in this work. We will have occasion to discuss this local theology again in greater detail at a later stage. But before we do so, we must examine the Yawo world view of the reality of marriage. It is to this task that our attention now turns.

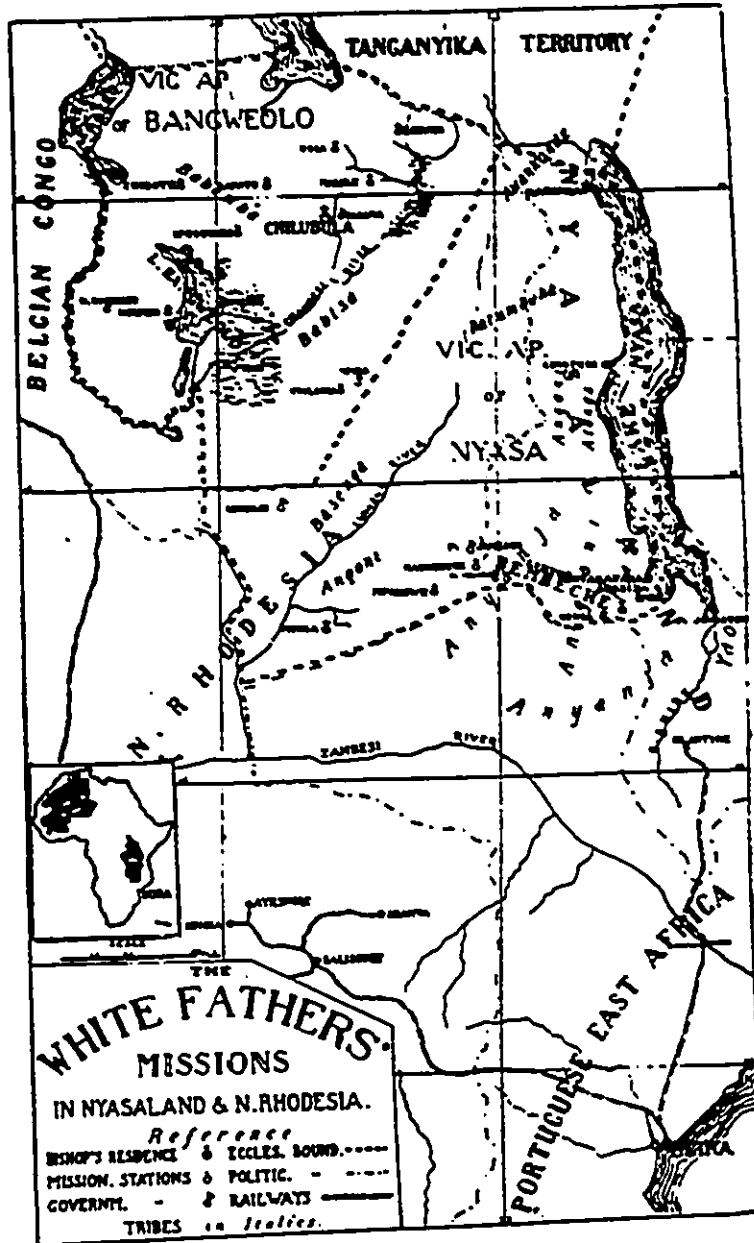
ILLUSTRATION III

THE WHITE FATHERS IN YAOLAND



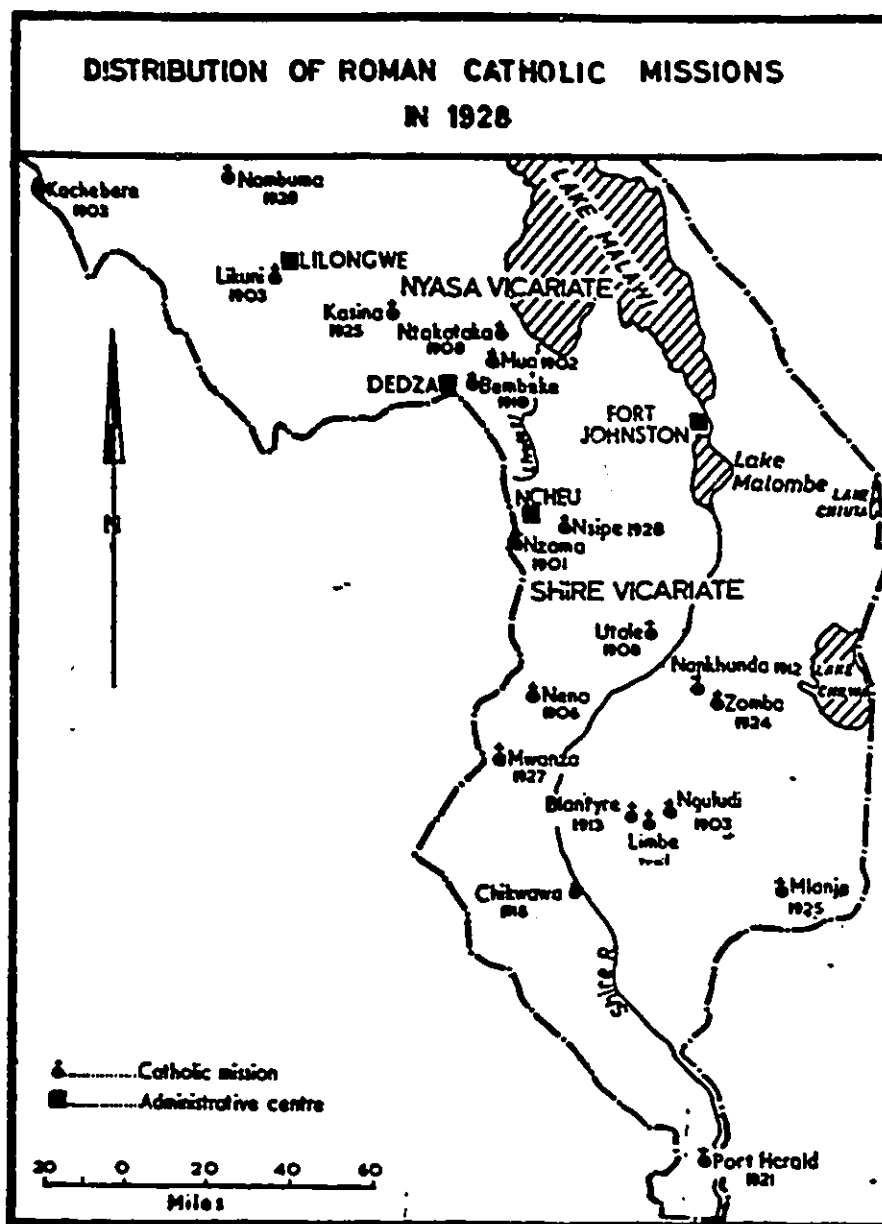
Ian Linden, *Catholics, Peasants and Chewa Resistance in Nyasaland*, Berkeley: University of California Press, 1974), p. 29.

ILLUSTRATION IV



J. Bouniol, The White Fathers and Their Missions, (London: Sands & Co., 1929), p. 272.

2



Ian Linden. Catholics, Peasants and Chewa Resistance (Berkeley: The University of California Press, 1974), p.151.

ILLUSTRATION VI

Malawi Catholic Dioceses

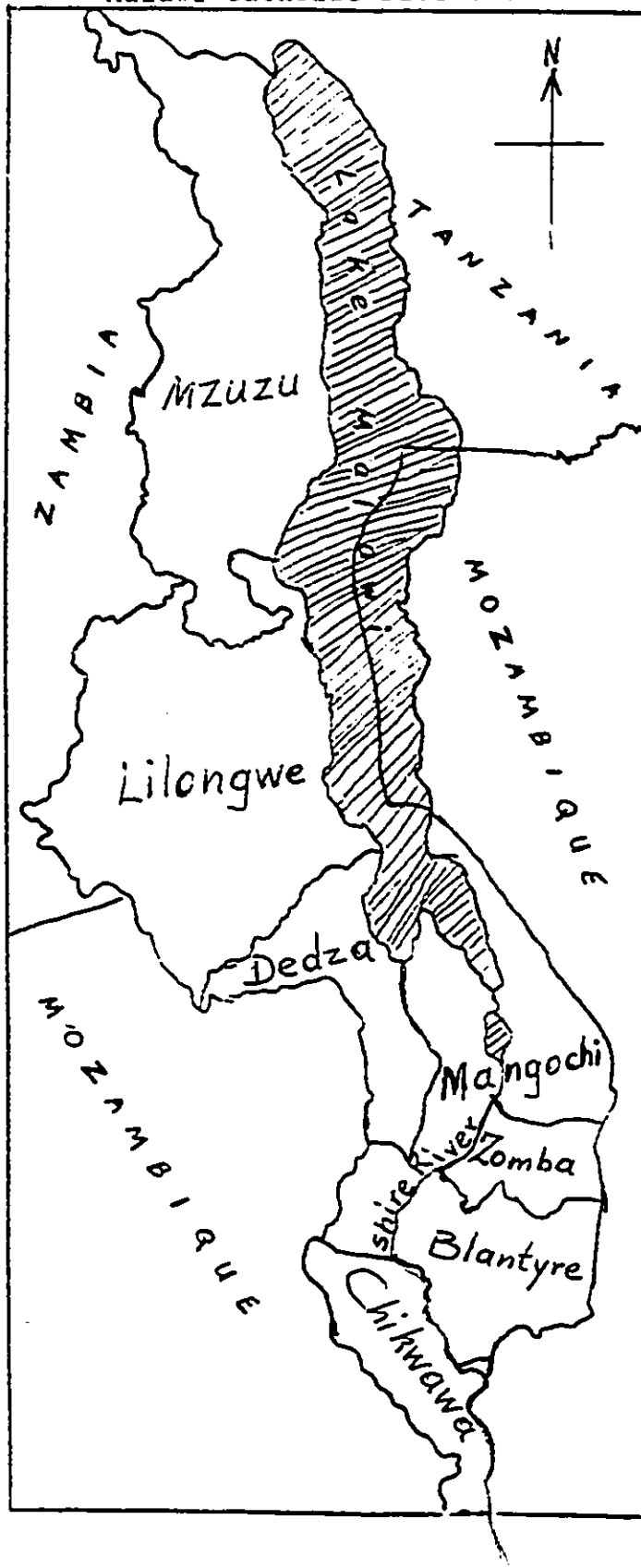


ILLUSTRATION VII
STATISTICS OF THE CATHOLIC CHURCH IN MALAWI, 1987*

	Blantyre	Chikwawa	Dedza	Lilongwe	Mangochi	Mzuzu	Zomba	Total
Dioceses	African	African	African	African	Missionary	Missionary	African	7
Ordinaries	9,161	7,676	4,250	24,025	11,385	20,000	3,232	7
Sq. Km.	1,657,000	485,000	690,360	2,220,700	752,000	789,000	665,000	--
Population	501,000	91,366	190,442	342,677	98,150	79,872	140,302	7,259,060
Catholics	44	12	14	24	13	11	13	1,443,809
Parishes	37	6	26	28	7	18	17	131
Diocesan Priests	5	--	3	--	1	2	1	139
Diocesan Priests Ordained	34	17	22	75	25	37	18	12
Missionary Sisters	33	9	25	37	22	20	22	228
Major Seminarians	67	18	103	89	29	48	26	168
Religious Men	187	38	76	135	40	94	37	380
Religious Women	181	74	110	272	169	150	56	607
Educational Institutions	15	28	29	165	37	28	13	1,012
Charitable Institutions	15,458	3,137	7,615	8,783	3,606	8,634	3,860	315
Baptisms								51,093

* From the Annuario Pontificio, 1987.

CHAPTER TWO

OPENING OF CULTURE: ANALYSIS OF THE REALITY OF
MARRIAGE AMONG THE YAWO PEOPLE

The marriage of the Yawo people is progressive in the sense that it is not a momentary event but rather a process. This implies that a true and valid marriage commences from immaturity to full maturity. At the stage of its immaturity, the marriage is as true and valid as it is when it arrives at its full maturity, just as a human being possesses a real humanity at the stage of its immaturity in its infancy as it does at the stage of its maturity in its adulthood. The Yawo customary marriage comprises three stages. We will attempt to give a brief description of each stage.

There are several ways whereby the commencement of marriage can occur. After a couple in their privacy have agreed to marry, the man goes to begin to live with the woman in her village in a hut that she uses. When the cohabitation comes to the notice of the elders, the latter enquire as to the purpose of the cohabitation. When the couple explain that it means marriage in earnest, then marriage negotiations between the elders of the woman and those of the man begin whereby the elders on the woman's side inform the elders of the man's side about the couple's marriage. During the negotiations the man is not chased

away from the woman's village but continues to live with the woman.

A second way for the commencement of marriage is like this. A man asks a woman to marry him. If the woman wants the man, she tells him to inform her elders of his intention to marry her. Thus, she does not make an explicit consent, but by the fact that she tells him to express his intention to her elders, the man understands her words as representing consent. After the man has expressed his intention to the woman's elders, the marriage negotiations between the elders of the two parties begin. On the completion of the negotiations, a day is fixed when the couple begin to cohabit in the village of the woman in a hut provided for them.

A third way is when a man, after agreeing with a woman to marry, goes to inform his own elders of his intention to marry a certain woman in a given village. His elders then go to the specified village to begin marriage negotiations with the elders of the intended woman. When the negotiations are finalized, the man is told by the woman's elders to come and commence cohabitation.

In all these ways, the couple's cohabitation is considered as the beginning of marriage in earnest. It

represents the first stage of the customary marriage. The man has not yet, at this point in time, built his own house but will build it some time later either in the course of the first stage or after the second stage of the process of the marriage. The Yawo do not seem to have a special rite for the first stage apart from the marriage negotiations. This first stage has no time limit in so far as it can last three or more years. One marriage will differ from another in this respect.

Then comes the second stage of the customary marriage. This is the stage and the only stage, as far as the Yawo are concerned, in which the rite of the marriage is performed. The rite consists in the exchange of food between the elders. That is, the food prepared by the woman's elders is eaten by the man's elders, while the food prepared by the man's elders is eaten by the woman's elders. If all the partners are present, this communion meal may be preceded or followed by exhortations from the elders as to what is necessary for the couple to enjoy a happy married life. While the rite may be important to the couple in that it represents a stage of marriage's process of maturation, it mainly concerns the elders of the couple rather than the partners themselves. Therefore if circumstances do not permit, it can be performed, for example, in the absence of the man.

The third and final stage comes when the elders feel that marriage has reached its full maturity. It is a stage which is subtle and therefore very difficult to pinpoint. Its arrival in one marriage will again tend to be different from that in another. Maturity may be considered to have been attained with the birth of the third child for one marriage, whereas in another marriage more children may be required. There is no special rite for this stage. Such is the process of the Yawo customary marriage, but more details about the whole process later. In the meantime, it will be necessary to explain some notions connected to this marriage.¹

A. MATRILINEALITY OF YAWO CULTURE

1. Similarity of Cultures

Let it be stated at the outset that while the discussion of this work focuses on the tribe of the Yawo

¹Cf. J. Bruwer, "Unkhoswe: The System of Guardianship in Chewa Matrilineal Society," African Studies 14 (1955), pp. 113-122. Audrey Lawson, "An Outline of the Relationship System of the Nyanja and the Yao Tribes in South Nyasaland," African Studies 8 (1949), pp. 180-190. James Clyde Mitchell, "Marriage, Matriliney and Social Structure Among the Yao of Southern Nyasaland," International Journal of Comparative Sociology 3 (1962), pp. 29-41. Idem, "The Yawo of Southern Nyasaland." Seven Tribes of British Central Africa, eds., Elizabeth Colson and Max Gluckman (London: Oxford University Press, 1959), pp. 292-353. Idem, The Yao Village (London: Oxford University Press, 1966).

people, it also affects other tribes whose membership including that of the Yawo constitute the great majority of the population of the whole of Malawi. It must also be pointed out that the Yawo are found in several other countries besides Malawi. However, the concern of this discussion is principally about the Yawo who live in the southern Malawi, much as it may be applied to other Yawo. The other predominant tribes found in this area, besides the Yawo, include the Nyanja (Chewa), the Lomwe and the Ngoni. These tribes will certainly be affected by this study on the grounds of the cultural similarities that exist between them and the Yawo. It is therefore obvious that the applicability of this work to so many people from so many tribes immensely enhances its importance and relevance, in that its completion can be expected to benefit such a great number of people in Malawi.

The Nyanja (Chewa) and the Lomwe have a greater cultural similarity to the Yawo than the Ngoni who tribally are patrilineal and virilocal. About the Lomwe James Clyde Mitchell writes:

Generally speaking, however, the Yao have come in as invaders, while most Nguru (Lomwe) have come in as immigrants. The Yawo have greater prestige both in the eyes of the Whites and in the general structure of the Chiefdoms. Many Nguru therefore, who have been in this area for some time, have to call themselves Yao if they are asked, especially by a White man. This is

especially true of the Mpotola people where they are living under Yao chiefs. The Mpotola are technically Nguru (Lomwe) but most have lost their own language and speak only Yao...The term Nguru is applied to a large group of people who call themselves Alomwe....Culturally and structurally they are similar to the Yao and the Nyanja (Chewa), practicing matrilineal descent and uxorilocal marriage,² and living in small groups of matrilineal kin.

Even greater similarity exists between the Yawo and the Chewa in that the similarity is not confined to customs and social structures but also more or less to language. Nevertheless, Nyanja (Chewa) and Yawo "languages, despite a common Bantu descent and much recent borrowing, remain as distinct as possible and are obviously not modern dialects of one more primitive tongue."³ The Yawo would suffer from the incomprehensibility of the Chewa language just as much as the Chewa would suffer from the incomprehensibility of the Yawo language. Mitchell writes:

²James Clyde Mitchell, The Yao Village (Manchester: Manchester University Press, 1966), p. 16; also in his article: "The Political Organization of the Yao of Southern Nyasaland," African Studies (1949), p. 150, Mitchell writes: "The Mpotola have lost whatever language they had in the past and now speak Yao and as far as I could see follow Yao usage and custom."

³Audrey Lawson, "An Outline of the Relationship System of the Nyanja and Yao Tribes in South Nyasaland," African Studies 8 (1949), p. 180.

The Nyanja (Chewa) were the original inhabitants in these areas, but have been almost completely displaced by the Yao, except in Liwonde along the Shire River and in Kawinga along the Lake Shirwa shores. Linguistically they are more akin to the Yawo. Culturally they appear to be similar to the Yao, and they have accepted certain Yao institutions such as the boys' initiation ceremonies (lupanda), and have been fitted into the social and political structure.⁴

Lawson mentions the similarity between the Yawo and the Chewa with regard to kinship relationship terms, stating that "in fact, Nyanja (Chewa) often prefer Yao terms to their own."⁵ He also finds similarity in their social structure which, he believes, facilitated their coexistence, "for they have intermarried and their customs so fused that one can now scarcely distinguish their ways of life and village organization."⁶ Nevertheless, we must affirm Mitchell's accuracy in this matter of intermarriage in his statement that it was not as widely practiced as might be expected,⁷ apparently because "the Yao came as conquerors."⁸ Despite the fact that the Yawo are exogamous, they did not often go outside their tribe for

⁴Mitchell, The Yao Village, p. 17.

⁵Lawson, African Studies 8 (1949), p. 180.

⁶Ibid.

⁷Mitchell, The Yao Village, p. 16.

⁸Mitchell, African Studies 8 (1949), p. 150.

marriage, rather they married other Yawo from different villages.⁹ Anyhow, their unwillingness to intermarry and to learn the language of the conquered caused a measure of their narrow-mindedness for quite some time.

Thus far, we have been talking of the similarity of the Yawo to the Chewa and to the Lomwe singly. Mitchell speaks about these tribes together, pointing out in the meantime, how they form the majority of the population of the area. He states:

This population is by no means homogenous, tribally or linguistically, but culturally the tribes are very similar. The Yao, Nguru (Lomwe) and Nyanja (Chewa), who comprise most of the population, live in villages under village headmen; marry uxorically; have similar practices and beliefs in sorcery and disease.¹⁰

As for the cultural similarity between the Yawo and the Ngoni, it can only be described as merely derivative. The Ngoni are culturally patrilineal and virilocal while the Yawo are matrilineal and uxorilocal. Nevertheless, by force of circumstances, "they have adopted Nyanja (Chewa)

⁹Yohanna B. Abdallah, WaYao'we (We the Yawo people: my translation) (Blantyre, Lusaka: Publications Bureau, 1952), p. 9.

¹⁰Mitchell, The Yao Village, p. 14.

ways and language."¹¹ By the fact that the Nyanja whose ways the Ngoni have adopted are themselves veritably culturally similar to the Yawo, by the same token, though only derivatively, the Ngoni are also culturally similar to the Yawo. Lawson confirms this cultural similarity in his statement that "Ngoni immigrants in this district are few, and their original patrilineal social system has largely succumbed to these earlier comers."¹²

2. Matrilineality, Uxorilocality and Matrilocality of the Yawo Society

Social anthropologists divide societies into matrilocal or uxoriocal and patrilocal or virilocal and neolocal, depending on the locality of the marriage residence of a couple. The marriage residence may be located at the husband's village and is known as patrilocal or virilocal; it may be at the wife's village and is called matrilocal or uxoriocal; or it may be neither at the husband's or wife's village but at a new locality altogether, in which case it is designated neolocal.

¹¹Ibid., p. 17.

¹²Lawson, African Studies 8 (1949), p. 180. While this work centres round the Yawo tribe, it will be almost impossible not to make, now and again, a passing reference to other African tribes either on the grounds of the similarity of their practices to those of the Yawo or in view of putting one Yawo practice or another in sharp relief.

Nevertheless, the imprecision of the terms patrilocal and matriloca1 has led anthropologists to the employment of the preferable terms virilocal and uxori1ocal on the ground that the husband and wife may not necessarily be father and mother.¹³ We, however, advocate the retention of the terms matriloca1 and patrilocal, in that they can still be usefully employed in anthropology. While the terms uxori1ocal and virilocal are employed to express marriage residence, the employment of the terms matriloca1 and patrilocal should be restricted to the residence of offspring. At any rate, this is how we are going to employ them in this work. Societies are also divided into patrilineal and matrilineal, depending on "the mode of reckoning descent" either from the father's side or from the mother's side.¹⁴

The Yawo people are characterized by their matrilineality and uxori1ocality in that when a Yawo man marries a Yawo woman, it is the man who goes to live with his wife at the wife's village, and descent is reckoned from the mother's side rather than from the father's side.

¹³G. M. Marwick, "The Modern Family in Social-Anthropological Perspective," African Studies 17 (1958), p. 147.

¹⁴Ibid., p. 143.

Matriliny does not necessarily involve matriarchy. "True matriarchy would consist in matriliney, ownership of property by the matrilineage, uxorilocality and the rule of women."¹⁵ Yawo society possesses matrilineality, ownership of property especially in the form of land, and uxoricity, but it is not the general rule that women are the leaders ruling their society, rather it is men who become leaders and wield authority in the society. Nonetheless, this does not entirely preclude the possibility for women becoming leaders and rulers of their villages, although it is a rare occurrence.¹⁶ Moreover, it must be emphasized that, despite the fact that men wield authority in Yawo society, women do exert an effective moral influence capable of neutralizing any existing male authority. In decision making where the vote of the members of the society is required, the vote of women carries more weight than that of men. In the choice of a chief or village headman, for instance, care has to be

¹⁵ Aylward Shorter, African Culture and the Christian Church: An Introduction to Social and Pastoral Anthropology (London: Geoffrey Chapman, 1973), p. 163.

¹⁶ Mitchell, "Marriage, Matriliney and Social Structure Among the Yao of Southern Nyasaland," International Journal of Comparative Sociology 3 (1962), pp. 28-41, p. 33; Shorter, African Culture and the Christian Church, p. 163; J.P. Bruwer, "Unkhoswe: The System of Guardianship in Cewa Matrilineal Society," African Studies 14 (1955), pp. 11-122, p. 116.

exercised in finding out what the women have voted for. If the future leader is to be an effective ruler, full compliance to the wishes of the women of the given society is a must, or the leader will find it very difficult to govern the community, which eventually may necessitate his resignation. In short, in a Yawo society, women are an effective power in the running of their community.

In contrast to the patrilineal society where the woman belongs to her father's lineage while her children do not, in the Yawo matrilineal society the man belongs to his mother's lineage whereas his children do not.¹⁷ Rather, "the children born of every marriage automatically belong to their mother's, not their father's descent group."¹⁸ A mother may have children by different fathers. One father may have been her husband who died, another may have been the husband from whom she divorced and yet another father may have been the man from whom she got the child through promiscuity. All these children remain with their mother. A genitor has no power of redeeming his child in the Yawo matrilineal society as is possible in patrilineal societies

¹⁷ A.R. Radcliffe-Brown, "Introduction," African Systems of Kinship and Marriage, eds. A.R. Radcliffe-Brown and Daryll Forde (London, New York, Toronto: Oxford University Press, 1967), pp. 1-85, p. 14.

¹⁸ Marwick, African Studies 17 (1958), p. 150.

where a man can redeem a child of his wife by another man so that it belongs to the redeeming father.¹⁹ To be sure, apart from a few exceptions, "as a general rule in human societies the child of promiscuity goes with its mother's group."²⁰ M.D.W. Jeffreys writes:

The point is, that early societies recognized that the biological nexus between mother and child created a powerful psychological bond that was fundamental to society. Until this basal bond was broken culturally by such an institution as that of lobolo, the child remained with its mother's group. Numerous examples follow of valid marriages on this basic psychological pattern, where, after marriage, the children remain with the mother's group unless the nexus is broken by the payment of lobolo.²¹

A child's matrilocality (here the terms matrilocality and patrilocality are employed in their strict sense implying the child's residence at the mother's or the

¹⁹Max Gluckman, "Kinship and Marriage Among the Lozi of Northern Rhodesia and the Zulu of Natal," African Systems of Kinship and Marriage, eds. A.R. Radcliffe-Brown and Daryll Forde (London, New York, Toronto: Oxford University Press, 1967), pp. 165-206, p. 170. Reference is made to the Lozi and Zulu tribes which are patrilineal in order to emphasize the matrilocality of Yawo people where the redemption of a child by its genitor is almost impossible. This is in contrast to the practice of redemption experienced among the people of these patrilineal societies.

²⁰M.D.W. Jeffreys, "Lobolo is Child-Price," African Studies 10 (1951), pp. 145-184, p. 152.

²¹Ibid.

father's locality) appears to be the most natural thing at least for the Africans, if not for people all the world over. As an infant, the child needs the care of the mother more than that of the father, and the mother seems to possess the natural dexterity in child care. Its matrilocality, at this point in time, is therefore more desirable than its patrilocality. When the child grows up, the continuance of its matrilocality, albeit no longer necessary, seems to follow in sympathy with the need it had as an infant. On this showing, a child's patrilocality or any other residence devised for the child, apart from its matrilocality, appears to be an artificial process of procuring a home for the child. In the African patrilineal societies, this artificial means for securing the child's patrilocality takes the form of a kind of payment variously called bride-price, child-price²² and so on. This payment is given to the people of the woman's group. Such a practice seems to be an acknowledgement of the unnaturalness of patrilocality so that its practice necessitates payment as a kind of compensation for its unnaturalness, while matrilocality, by reason of its naturalness, does not have to make such a compensation.

²²Ibid., p. 145.

In Africa the child when still young stays with the mother most of the time rather than with the father. It is interesting to note that this matrilocality of the child is not practiced only by matrilineal societies. An example can be taken from the Kpelle tribe. Just as the Tswana, though a patrilineal society themselves, practice a temporary uxoriolocality pending the birth of the first child,²³ by the same token, the Kpelle, who are also a patrilineal society, have the custom of a temporary matrilocality for the child. James L. Gibbs writes that "although the children remain identified with their father's kin-group, they live with their mother until the age of six or seven, and even later if they wish to do so."²⁴

²³Isaac Schapera, "Kinship and Marriage Among the Tswana," African Systems of Kinship and Marriage, eds. A.R. Radcliffe-Brown and Daryll Forde (London, New York, Toronto: Oxford University Press, 1967), p. 150. Reference is made to the Kpelle tribe and to the Tswana to emphasize the point that although these patrilineal tribes are normally known as tribes that do not practice uxoriolocality or matrilocality permanently, they still follow the Yawo practice of uxoriolocality and matrilocality at least temporarily.

²⁴James L. Gibbs, "Marital Instability Among Kpelle: Towards a Theory of Epainogamy," American Anthropologist 65 (1963), pp. 552-573, p. 565. The Kpelle are referred to here in order to show how the Yawo emphasize their matrilineality to the extent that even a child's nationality seems to be taken from the mother's side in contrast to the Kpelle patrilineal tribe where nationality is taken from the father's side.

In many patrilineal societies the child acquires the nationality of the father.²⁵ In the matrilineal society of the Yawo people, the child's nationality seems to be acquired from the mother's side. On the grounds that the child learns its language, among other things, from its mother, it seems to follow that it should belong to the tribe of its mother. Another point to take note of is that in virtue of its matrilocality in the Yawo society, a child does not become an orphan as a result of its father's death. As long as its mother is still alive, the child is not called an orphan, for the Yawo consider the death of the mother to be the sole cause of a child's orphancy regardless of whether or not the child's father is still alive.

3. The Yawo Extended Family in the Village

The Yawo live in a village. The village forms "the basic local unit as far as residence and social organization are concerned."²⁶ It is the "basic element of social structure."²⁷ Any member of the Yawo society belongs to a village somewhere, and a family also belongs

²⁵Radcliffe-Brown, "Introduction," p. 14.

²⁶Bruwer, African Studies 14 (1955), p. 114.

²⁷Gluckman, "The Village Headman in British Central Africa," Africa 19 (1949), pp. 90-94, p. 94.

to a village. The practice of neolocality whereby an individual person or an individual family decides to live in a given locality in total isolation from other relatives is foreign to the Yawo culture. In fact, the Yawo are said to have lived in villages for as long as they can remember, and they consider the village as the most important social unit. Mitchell writes:

From early records and from the tales told by old men who can still remember something of the pre-White days, we know that the people have always lived in villages, though their structure has probably changed since those days. The villages were far and away the most important social units within any of the chiefdoms. The village was and still is a key concept in Yao thought...it was the smallest group acting in the political field. At the same time, it was, and still is, the field in which kinship was most significant.²⁸

The composition of a village is not always the same everywhere in African societies. In some tribes such as the Nyakyusa, they can have villages composed of a group of boys of the same age. Monica Wilson in this connection states:

They are peculiar in that their villages consist not of kinsmen but of age-mates. Herd-boys of 10 or 11, who are the sons of neighbours, begin to build together at a little distance from their

²⁸Mitchell, The Yao Village, p. 2.

fathers. Gradually they are joined by younger boys, also from the village of their fathers, until the group covers an age-span of about five years; then the next set of boys is told to start a new village of its own. Most of these age-mates remain together all their lives. As they marry they bring their wives to the village and the children they beget live with them until the daughters marry, and the sons, in their turn, build new villages. Though the site of a village changes, the group survives until the death of its members.²⁹

Other tribes have different peculiarities. But the Yawo do not follow all these peculiarities. Among the Yawo, a village can only be made up of "lineages and families."³⁰ Perhaps the best definition of the Yawo village is that given by Mitchell who describes it as "a discrete cluster of huts occupied by a group of kinsmen who recognize their own identity against similar groups."³¹ The most important point that must be taken into consideration in the constitution of a Yawo village is the fact that it is not composed of any haphazard number of individual persons or

²⁹ Monica Wilson, "Nyakyusa Kinship," African Systems of Kinship and Marriage, eds. A.R. Radcliffe-Brown and Daryll Forde (London, New York, Toronto: Oxford University Press, 1967), pp. 111-139, p. 111. The Nyakyusa are referred to emphasize the point that the formation of a Yawo village is not made haphazardly, not even on the basis of age as the Nyakyusa do, rather, the Yawo village is composed by members who are kinsmen and kinswomen.

³⁰ Mitchell, The Yao Village, p. 3.

³¹ Ibid.

any indiscriminate number of families, rather a village in Yawo society is composed of kinsmen of one or more lineages, or at least such kinsmen would constitute the basis of the village in cases where strangers happen to join the village community. People who are in no way related to one another do not form a community that the Yawo would call a village just because these people live together. All members of a village community are somehow related to one another through consanguinity or affinity. Each member addresses the other by employing the proper kinship relationship term. Since the Yawo have the custom of avoiding addressing people by their proper name, the kinship relationship term provides a convenient alternative. By the same token the strangers who come to join the village community receive an artificial kinship relationship name by which they are addressed. Employment of teknonymy is also resorted to as a substitute for personal names: "a person is referred to as the father or the mother of his/her child, i.e., teknonymously."³² In their effort to avoid referring to persons by their personal names, the Yawo also use clan terms, albeit very seldom. Nevertheless, the employment of clan terms must be

³²D.N. Majumdar and T.N. Madan, Introduction to Social Anthropology (Bombay, London, New York: Asia Publishing House, 1961), pp. 105-106.

considered as a foreign importation introduced through the association of the Yawo people with the Chewa who have real clan terms; for as a matter of fact, the Yawo do not have real clan terms, as is correctly indicated by G. Meredith Sanderson in his encyclopedic Dictionary of the Yawo Language.³³

The village is literally the permanent home of each of the members of the community, especially the women. A man who goes out to a distant country in search for, say, work or leaves his village for the city to find work never considers the place of work as his home, no matter whether he has been working there for five, twenty or even fifty years. The people in the village refer to him as the man 'who is in the bush' regardless of whether the place of

³³G. Meredith Sanderson, A Dictionary of the Yao Language (Zomba: The Government Printer, 1954), p. 133, s.v. lukosyo. He states: "some Macinga clans - resulting from mixture with the Anyanja - describe themselves as Apili, Amwale, Ambewe and Asimbili." The true Yao clans are usually named after the hereditary title of their chief: e.g. Acinamataka, Acinamakanjila. Sub-tribes (e.g., the Amasaninga, Amachinga etc.) owe their names to their traditional birth places usually from some hill in the vicinity - Lisaninga, Mandimba or Macinga, Mangoce etc." Despite Sanderson's affirmation, these are not true clan terms. Their employment is designed to indicate the origin of a number of people as a group. Mitchell notes that some Yawo groups "do not have this set of clan terms at all." See Mitchell, "The Yao of Southern Nyasaland," Seven Tribes of British Central Africa, eds. Elizabeth Colson and Max Gluckman (Manchester: Manchester University Press, 1951), p. 314, n.1.

work is a town or city. It is only the village from where he originally came that he knows as his real home. It is in the village that a member has a feeling of belonging, of solidarity³⁴ and security not only from "foreign tribes, slavers, wild animals - but also sorcerers and the spirits of the bush."³⁵ Despite the fact that the Yawo practice shifting cultivation, villages tend to remain on the same location for as long as over fifty years.

By the fact that the Yawo society is matrilineal, it implies that the responsibility for the continuance of a village lies with its women membership. They are the permanent residents and the core of the village. Mitchell writes:

The social core of the simplest village is a group of women all of whom are able to trace their descent matrilineally from a single ancestress two or three generations removed from the present adult generation in the village. The husbands of these women in general have left their own matrilineal villages to marry into villages of their wives. The daughters of these women, when they marry, will bring other men into

³⁴E.E. Evans-Pritchard, "Kinship and the Local Community Among the Nuer," African Systems of Kinship and Marriage (London, New York, Toronto: Oxford University Press, 1967), pp. 361-391, p. 361. E.E. Evans-Pritchard is quoted in order to borrow the idea of solidarity found among the Nuer, in that it is also experienced among the Yawo.

³⁵Gluckman, Africa 19 (1949), p. 93.

the village while their sons will marry out into other villages. The men of the matrilineal group therefore are in general dispersed while the women form the core of a localized group.³⁶

Not only does the continuance of the village depend on women, but also its future size will depend on them. The more girls a village has the more husbands there will be and the greater the village will become. But much as the continuance of the village depends on women, its name is not derived from anyone of them, rather it assumes the name of the man who founded it and became its first leader. "Villages are known by the name of the founder and this name is inherited by the village headmen who are his heirs."³⁷ Now, it is the village that constitutes the extended family among the Yawo people, and is considered as more important social unit than the elementary family of father, mother and children in that their existence is precisely for the good of the extended family. Social anthropologists call this Yawo extended family the sorority. But more about this in the next section.

³⁶Mitchell, International Journal of Comparative Sociology 3 (1962), p. 33.

³⁷Mitchell, "The Yao of Southern Nyasaland," p. 338.

B. THE REALITY OF MARRIAGE AND KINSHIP

Among the Yawo people, the reality of marriage is responsible for the creation of a multifarious collection of kinship relationship terms which are assigned to each and every member of the wife's village and that of the husband. Thus, the determination of the sort of rights and duties to be apportioned to the different types of kinsmen and kinswomen is again the responsibility of marriage³⁸ insofar as these rights and duties depend upon the kinship relationship that a member of a community has to another. In a life of a people centered on the village community where everyone not only knows but also is somehow related to everyone else, it becomes necessary that one knows the kind of relationship that there exists between oneself and any other member of the community, so that one not only knows how to address the other member, in view of the fact that the employment of personal names is not always the polite thing to do, but also that one may be able to perform the duties expected from a member who stands in such and such relationship to another. With such a knowledge the joking or the avoidance relationships, for instance, can be properly observed. In fact, a full understanding of the social life of the Yawo people, whether it be of the economic, political or religious type,

³⁸Mitchell, International Journal of Comparative Study 3 (1962), p. 30.

necessitates the acquisition of "thorough knowledge of their system of kinship."³⁹

Since each member of a village community is related to all other members of the same village, and since in the Yawo matrilineal society, the members of the wives' village are, through marriage, related to each and every member of the husbands' villages, there would be required hundreds of kinship terms to accommodate every relationship. However, this problem has been facilitated by the introduction of what the social anthropologists call classificatory terms as opposed to what they call descriptive terms. Paul Bohannan says that "the scientific study of kinship began with Lewis H. Morgan."⁴⁰ Bohannan writes:

Morgan, in organizing his vast quantities of data, said that some kinship terms - and by extension, some terminological systems - are descriptive, whereas others are classificatory. In its purest form, a descriptive system uses only primary terms such as father, mother, son, daughter, husband, wife, and perhaps brother and sister. All other kin are described by combinations or juxtapositions of the primary terms. The classificatory system, on the other hand, is that in which several different types of

³⁹A.R. Radcliffe-Brown, "Introduction," p. 1.

⁴⁰Paul Bohannan, Social Anthropology (New York: Holt, Rinehart and Winston, 1963), p. 61.

kinsmen (by descriptive criteria) are lumped into single terminological categories.⁴¹

In a similar vein, D.N. Majumdar and T.N. Madan state:

The first significant contribution to the study of kinship terms was made by Morgan, who published his important conclusions as regards the study of kinship terms in the second half of the last century. Morgan studied kinship terms from all parts of the world and coined the still-used nomenclature for the two broad categories of kinship terms, viz. the classificatory and descriptive systems of kinship.

Under a classificatory system several people, lineal as well as collateral, and often even affinal, are all referred to by the same term of designation. The term classes them as similar. Such terms refer more to relationship rather than to kin. Against this, a descriptive term of designation describes the speaker's exact relation towards him/her whom he/she is referring to or addressing.⁴²

Bohannan seems to indicate that there are terms "such as father, mother, son, daughter, husband, wife, and perhaps brother and sister," which are purely descriptive. Nevertheless, terms that are purely descriptive are non-existent in Yawo societies. An individual may have several persons to whom he/she is related as his/her

⁴¹Ibid., p. 63.

⁴²D.N. Majumdar and T.N. Madan, An Introduction to Social Anthropology, p. 108.

fathers, mothers, as sons and daughters even those whom he/she did not beget, as husbands and wives though not necessarily married to them and as brothers and sisters, though not from the same parents, according to the Yawo system of relationships. Among the Yawo, relationship terms are always both descriptive and classificatory. In fact, Majumdar and Nadan write that "there is no place in the world where either the pure descriptive or the pure classificatory system of nomenclature is used."⁴³ The fact that the Yawo system of relationships is both descriptive and classificatory presents a problem of ambiguity. In order to articulate the exact relationship that is intended by the speaker, expressions such as my real father, my real mother, my real brother or my real sister, are employed. We will now discuss some of the most important kinship relationships connected with our subject.

1. Brother and Sister, and the Uncle

One of the most important kinship relationships in the Yawo society is certainly the relationship that exists between the brother and the sister. To be sure, through the classificatory system, the relationship of brother and sister may exist between a member of the wife's village and

⁴³Ibid.

the members of the husbands' villages: a boy, for instance, may have classificatory sisters in other villages and a girl may have classificatory brothers in other villages. On the other hand, a boy and a girl may have classificatory and descriptive brothers and sisters in their matrilineage. The most important relationship that is being referred to here is not that between boys or girls and their classificatory brothers and sisters in other villages, i.e., in foreign matrilineages, rather, we are referring to the brother and sister relationship of members of the same matrilineage, whether descriptive or classificatory. While the descriptive relationship between brother and sister is easily understood, the classificatory relationship may require some clarification.

My mother's descriptive sisters are also my mothers, i.e. my classificatory mothers in the same matrilineage, and their husbands are my classificatory fathers. The sons and daughters of these classificatory mothers and fathers are my classificatory brothers and sisters. The relationship between both my descriptive and classificatory sisters on the one hand and me on the other is of primordial importance among the Yawo, in that the brother and the sister, descriptive or classificatory but of the same matrilineage, are the founders or at least potential founders of a village. The formation of a village is not

achieved through a collection of indiscriminate individuals, rather, the brother and sister or sisters are the foundation of a Yawo village. We saw above that the village is named after the founder. Now we must add that since the Yawo matrilineality does not necessarily involve matriarchy and since the man is the usual leader of his community, the founder to whom we were alluding above was the brother, and not just any man. The brother and his sister or sisters with their children constitute the beginning of the extended family. The sister or sisters and their children constitute what social anthropologists call a sorority: a group of sisters and their children under the protection and guardianship of their brother.

The importance that the Yawo accord to the kinship relationship between the brother and the sister or sisters both descriptive and classificatory is such that it is greater than that accorded to the relationship between husband and wife. In the words of James L. Gibbs, "the sibling bond is more important than the conjugal one: for in a case of conflict the conjugal bond will be viewed as the more dispensable,"⁴⁴ whereas "the relationship between

⁴⁴Gibbs, American Anthropologist 65 (1963), p. 554; Cf. Meyer Fortes, "Kinship and Marriage Among the Ashanti," African Systems of Kinship and Marriage, eds. A.R. (Footnote Continued)

brother and sister in general is unassailable."⁴⁵ Especially in the past, the sister would not jeopardize her relationship with her brother in favour of her relationship to her husband, for the simple reason that the husband is a stranger, while the brother is a blood relative of the same matrilineage. The former is perishable, whereas the latter enjoys immutability. In case of divorce, the stranger will return to his village but she will remain without a guardian if she spoiled her relationship with her brother.

Mention has already been made to the effect that the brother's sister or sisters together with their children form the material for the constitution of what anthropologists call the sorority-group. This requires further clarification in view of the fact that different

(Footnote Continued)

Radcliffe and Daryll Forde (London, New York, Toronto: Oxford University Press, 1967), pp. 252-275, p. 275. Fortes writes: "Women, again, agree that in a crisis they will side with their brothers against their husbands." M.G. Marwick, African Studies 17 (1958), p. 153, writes: "The spouse of a matrilineage member (usually conceived of as a husband among the uxorial Cewa) is always some degree a stranger liable to be divorced and sent away if a conflict between him and his in-laws should arise." Radcliff-Brown, "Introduction," p. 27, states: "Women, again, agree that they will side with their brothers against their husbands." James L. Gibbs' statement concerning the Ashanti matrilineal tribe is borrowed in that it explains the custom which is found among the Yawo who are themselves a matrilineal tribe.

⁴⁵Mitchell, The Yao Village, p. 151.

authors have translated differently the Yawo name which stands for this group of people. The Yawo term for this important group is mbumba. Lawson, speaking of the Nyanja (Chewa) people, who have the similar custom of mbumba, refers to mbumba as a homestead,⁴⁶ apparently from the fact that this group usually stays together in one location. But homestead which refers to a place of residence does not adequately translate the mbumba concept. It cannot be translated by clan, in that clan seems to be wider than mbumba. Sometimes Lawson identifies mbumba with extended family.⁴⁷ While this may be correct to a degree, extended family is certainly ambiguous in that it may also be applied to the patrilineal societies, for we believe that mbumba is found only in matrilineal societies. Mitchell calls the brother under whose charge is the mbumba the warden,⁴⁸ a term which itself needs to be discussed. By implication, mbumba is being translated here by ward which the Webster Third New International Dictionary interprets, among other things, as "a person who is under guard, protection or surveillance."⁴⁹ The problem with this is

⁴⁶Lawson, African Studies 8 (1949), p. 181.

⁴⁷Ibid., pp. 185, 191.

⁴⁸Mitchell, "The Yao of Southern Nyasaland," p. 319.

⁴⁹Webster's Third New International Dictionary
(Footnote Continued)

that ward is any indiscriminate person under the protection of any indiscriminate guardian, whereas in mbumba we speak of blood related persons under the guardianship of a blood relative. Again Mitchell refers to mbumba as the "dependent women."⁵⁰ The difficulty with the term 'dependent women' is that all women in the Yao society must belong to one mbumba or another, and therefore by implication all women are dependent. On the other hand, to call mbumba 'dependent women' seems to imply that there are some women who are not dependent. In other words, they do not belong to any mbumba, which in no circumstance is it the case. At any rate, the best English term for mbumba is perhaps that offered by Mitchell when he translates it as 'sorority-group'. Nevertheless, this by no means suggests that this term yields the adequate equivalence of all the connotations present in the concept represented by the word mbumba. Mitchell himself takes cognizance of this inadequacy. He writes:

Because Yao marriage is usually matrilocal the women of the matrilineage group form the localized group whereas the men are dispersed. Therefore within any localized matrilineage group, groups of uterine sisters are differentiated from each other, but always in

(Footnote Continued)
(Springfield, Mass.: Meriam Webster Inc., 1981), s.v. ward.

⁵⁰ Mitchell, The Yao Village, p. 149.

reference to a man who is usually their eldest brother. It is around the relationship of a man to his sisters that these groups are organized, and to appreciate intre-lineage group relations the structure of the sibling groups must be understood. The Yao word mbumba, which I translate as sorority-group, embodies in particular this conception. The word mbumba is never used to refer to a single woman, though in the plural as acambumba it is used to mean merely two or more women. When used possessively in connection with a man, however, it means a group of women corporately organized around their relationships to him, this relationship almost always being that of brother to sister. Though the word 'sorority-group' may give the impression of meaning a group of women organized on a principle of sisterhood, I want to emphasize that, although the women in this case are corporately organized, they are organized around a principle of their common and like relationship to a single man. Of course, in actual fact there is little difference whether their unity is expressed as sisterhood or in relation to a common male leader.⁵¹

Mitchell presents here the elements that go to form what he calls sorority group, while recognizing the imprecision involved in the term, in that it gives the impression that the women are organized on the principle of sisterhood, whereas in fact their organization must be taken to be based on the principle of both their sisterhood and their common relationship to a single man who is usually the eldest brother. In the final analysis, it must be conceded that mbumba defies any English translation. But this is

⁵¹Mitchell, "The Yao of Southern Nyasaland," p. 316.

not at all surprising in view of the fact that it is a cultural feature which is absent from the western culture. In any case sorority-group is the best translation we have. Nevertheless, from now on use of both the English and the Yawo terms will be made simultaneously whenever the occasion arises.

To come back to the elements that constitute the sorority-group (mbumba), the questions may be asked as to the role the younger brothers play in its composition. Mitchell states that "a man's sorority group includes ideally his own uterine sisters and their female matrilineal descendants."⁵² What happens to the male descendants? Do they or do they not form part of the sorority-group (mbumba) on the grounds that they are male? Part of the answer may be gathered from Mitchell's statement that the elder brother "refers to the sorority-group as 'my sorority-group (mbumba janqu)', but his younger brothers must refer to it as 'our sorority-group (mbumba jetu)'."⁵³ However, in case of an offence committed by the younger brothers, their actions are the responsibility of their elder brother "in much the

⁵²Ibid., p. 317.

⁵³Ibid., p. 320; Mitchell, "The Yao of Southern Nyasaland," Africa 19 (1949), pp. 94-100, p. 96.

same way as he is for one of his sorority-group...."⁵⁴
Thus in one respect the younger brothers are identified with their elder brother, and in another they are identified with their sisters, their sorority-group (mbumba). As a matter of fact it can safely be affirmed that the younger brothers are part and parcel of the sorority-group (mbumba). To be taken into account is also the possibility for one to belong to several sorority-groups (mbumba). Mitchell writes:

The daughters of a man's sister, however, are also the sorority-group of his sister's son, so that theoretically any woman may at one moment belong to a number of sorority groups, her brother's, her mother's brother's, her mother's mother's brother's etc. But the effective one⁵⁵ is usually that of her brother if he is an adult.

The Yawo refer to the brother who is in charge of the sorority-group (mbumba) as the owner of the sorority-group (mbumba).⁵⁶ Mitchell translates this as 'warden'.⁵⁷ We prefer to translate it as 'guardian'. J. P. Bruwer employs the term guardian in reference to the brother's function

⁵⁴Mitchell, Africa 19 (1949), p. 96.

⁵⁵Mitchell, "The Yao of Southern Nyasaland," p. 317.

⁵⁶Mitchell, Africa 19 (1949), p. 95.

⁵⁷Mitchell, "The Yao of Southern Nyasaland," p. 319.

in the marriages of the members of his sorority-group (mbumba)⁵⁸ which in the western culture could also be translated as witness, albeit inadequately. In fact the Yawo employ a different term when they refer to the brother as a witness. For lack of a better English word, we prefer to use guardian for both functions of the brother, for as matter of fact, acting as a witness is only one of the many duties that the brother has towards his sorority-group (mbumba).

The problem now is to find out how 'the owner' or guardian of the sorority-group (mbumba) becomes such. Guardianship is normally hereditary. It is inherited from the uncle, that is to say, the maternal uncle. Here, what must be kept in mind is the fact that, among the Yawo, the maternal uncle is the only person who is called 'uncle'. Only the person who is related to my mother or my classificatory mothers as her or their brother is my uncle. When my mother has one or two sisters, they are also my mothers, i.e., my classificatory mothers, and their daughters and sons are my sisters and brothers. All of us, brothers and sisters from the three mothers call our mothers' brother our uncle. This means that all of us who

⁵⁸Bruwer, African Studies 14 (1955), p. 114.

are sons are potential heirs to our uncle's guardianship, for he is already the guardian of his sisters who are at the same time our mothers including us, their children. However, only one of us can actually assume the candidacy for the guardianship of the sorority-group (mbumba), for despite the fact that there are three mothers, their children normally constitute one sorority-group (mbumba) to be looked after by one guardian, 'the owner of the sorority-group'(mbumba). This is because the possibility of the candidacy of any of us depends on the rank of our mothers, which is reckoned through their birth. The first-born of our mothers takes precedence over the other two mothers, and by the same token all her children take precedence over the children of her two sisters. Suppose that my mother is the eldest sister and I am her eldest child, then it means that all of us, uterine brothers and sisters take precedence over the other classificatory brothers and sisters, and that regardless of their age for the simple reason that we were born of the eldest mother. Therefore my uterine brother who is younger in age than the classificatory brothers takes precedence over them all in social matters. This is true not only of sons but also of daughters. Lawson speaking of a girl from the eldest mother in relation to the girl's classificatory sisters states: "True, one or two actually older than her, but as daughters of her mother's sisters they are considered

younger."⁵⁹ The Yawo would speak of my uterine brothers and sisters and me as the ones who have suckled the eldest breast of the three mothers. The Yawo employ a phrase which Bruwer variously literally translates as 'the great breast' of 'the major breast',⁶⁰ apparently as opposed to 'small breast' or 'minor breast' which he does not use. On the other hand Mitchell, in his translation of the phrase, opposes the breasts in terms of largeness and smallness. He writes:

Usually matrilineage groups within a maximal matrilineage are arranged in an hierarchical system based upon the putative sibling rank of the ancestresses. One matrilineage group may be referred to as 'the large breast' (liwele lyalikulungwa) in contradistinction to the 'smaller breasts'. The importance of this

⁵⁹ Lawson, African Studies 8 (1949), p. 185; Radcliffe-Brown, "Introduction", p. 24, writes: "In the Kafir tribes of Transkei a son of a wife of inferior rank will apply to all the sons of the great wife (his half-brothers) the term used for 'elder brother' even when they are younger than himself. The two words therefore are better translated as 'senior brother' and 'junior brother'.

"In these same tribes (which have classificatory terminology), the sons of an older brother of the father must be called 'senior brother' irrespective of actual age, and those of the father's younger brother will be called 'junior brother'. Among the Yao, who have matrilineal descent, not only the sons of the older brother of the father but also those of the older sister of the mother, must be called 'senior brother' (Sanderson)."

⁶⁰ Bruwer, African Studies 8 (1949), p. 192.

arrangement of rank lies in the inheritance of status and rank.⁶¹

As may be clear from what we have said above, the Yawo do not rank their sorority-group in terms of greatness or largeness or majority as opposed to smallness or minority, rather the Yawo reckon the rank of the sorority-group in terms of the age of the mothers of the children who constitute the sorority-group (mbumba), that is, in terms of the mother's seniority or juniority. It is on this score that we prefer to translate the Yawo phrase as 'senior breast' or 'junior breast'. The Yawo also employ other phrases which may be translated as 'senior womb' and 'junior womb' to express the mothers' rank.

By now we should be in a position to identify the brother who is the proper candidate for the 'ownership' or the guardianship of the sorority-group (mbumba). In fact, it is the eldest son of the 'senior breast' or the 'senior womb', that is, of the eldest mother. He is the man who is in charge not only of his uterine brothers and sisters but

⁶¹Mitchell, "The Yao of Southern Nyasaland," p. 315. It will be observed that Mitchell here is rendering mbumba (sorority-group) as matrilineage. The latter does not render the precise significance of mbumba (sorority-group), because matrilineage is employed to show the line of descent and inheritance a tribe makes use of. Therefore, the term sorority-group which he has coined remains, for lack of a better term, the best rendering for mbumba.

also of his classificatory brothers and sisters, i.e., the children of the younger sisters of a mother, for all these brothers and sisters normally belong to one and the same sorority-group (mbumba). Nevertheless, in the absence of the eldest brother or his incapacity to perform his duties, the guardianship devolves upon his younger brother.⁶² The fact of being the eldest brother alone does not necessarily guarantee his guardianship of the sorority-group (mbumba). His position as the eldest brother must be accompanied by the necessary qualities of guardian.⁶³ If there are no sons in the 'senior womb', in the family of the eldest mother, then the eldest son of the next in rank of the sisters assumes the guardianship of the sorority-group (mbumba) until such time when a boy, a descendant of 'the senior womb' is born and takes over. However, the transition of the guardianship from the 'junior womb' to the original 'senior womb' can sometimes become a cause of dissension especially when the caretaker does not want to yield the guardianship to the rightful owner. This may lead to the division of the village. This shows that when

⁶²Ibid., p. 319.

⁶³Mitchell, "The Political Organization of the Yao of Southern Nyasaland," African Studies 8 (1949), pp. 141-159, p. 141. Mitchell states: "Ideally the succession should pass to the first born son of a man's eldest sister, but this is not always followed, for the personal qualities of the successor are most important."

there are dissensions between children of one sister and those of another, each woman in the sorority-group (mbumba) "becomes a point of cleavage" for "siblings tend to stand together and form groups of their own."⁶⁴ As a matter of fact, each sister's sons and daughters are a sorority-group (mbumba) in miniature.

We said that the guardianship of the sorority-group (mbumba) is hereditary. What must be taken into account is that the eldest brother is by customary law the guardian of his sorority-group (mbumba). However, the hereditary nature of the guardianship becomes more evident especially in the case where the supposed 'owner of the sorority-group (mbumba) is in the meantime younger than his sisters. In such circumstances, the young man's mother's brother, his maternal uncle, by virtue of the fact that this is also part and parcel of his sorority-group, meanwhile takes charge of the guardianship pending the time when the boy will be able to take over. Mitchell articulates this in the following manner:

As the boys in the family grow up they gradually assume the responsibility of their sisters and their mother's brothers relax their control. Small domestic disputes are referred first to the brothers and only later to the mother's brothers.

⁶⁴Mitchell, "The Yao of Southern Nyasaland," p. 318.

The mother's brothers as they grow older take less and less active part in regulating the affairs of their sisters' descendants. Their position becomes more that of referees and consultants than active participants in day-to-day domestic affairs. The situation of the mother's brother in the structure is well summed up by his Yao designation mkokowogona, which literally translated is 'the recumbent log'. An old person who is too old to walk about and pursue actively his structural duties is compared with a log which lies at the doorway. As the duties of the warden of a sorority-group are taken over by the younger men in the matrilineage group, so the older man is merely kept informed by each warden of the affairs that have taken place and only actively arbitrates in a case which is too difficult for his sister's son or sister's daughter's son to handle.⁶⁵

Among the Yawo, children do not acquire their inheritance from their father, rather is is from their maternal uncle that they can expect to inherit. In the event of the death of a maternal uncle who was also the headman of a village, the eldest son of his eldest sister 'eats his name', that is to say, the nephew assumes the name of his maternal uncle. Just as we become what we eat, so also the nephew by assuming (eating) the name of his maternal uncle becomes everything that the maternal uncle was: he becomes the village headman. It is obvious that the eldest son of the maternal uncle's sister is himself going to become the maternal uncle of the children of his sisters.

⁶⁵Ibid., p. 317.

Despite the fact that guardianship is inherited from the maternal uncle, what must be emphasized is that "a man achieves status and independence through his sorority-group."⁶⁶ He achieves his status through the sorority-group (mbumba) in that in order to become a guardian, he has to be accepted by his sisters. Even after being accepted, if the sisters are not in the meantime satisfied with the way he takes care of them, they will certainly switch their allegiance from him to a better candidate. If he tries to cling to his guardianship, the sorority-group (mbumba) will just ignore him. We have already mentioned the importance of women in the running of a village community and in the affairs of their daily life. The women that we were alluding to were not just any women, rather they were the sisters who form the sorority-group (mbumba) of a man. Through his sorority-group (mbumba) a man also achieves independence. As we have pointed out above, in a village community, although it is considered as one sorority-group (mbumba) under the village headman who possesses the overall guardianship, there will often be many other sorority-groups (mbumba) in miniature. Friction between any two of these sorority-groups (mbumba) may prompt one of the groups to decide to move away and start a

⁶⁶Ibid., p. 320.

new village in a new location. The brother of sisters of this group will become the effective guardian independent from the sorority-group (mbumba) of the village of origin. All this is accomplished through the cooperation of the sorority-group (mbumba).⁶⁷ The prestige of a man's status as guardian of his sorority depends on the number of persons who are under his charge.⁶⁸ The greater the number, the greater his prestige. This is why the brother likes to see that his sisters have as many children as possible, so that any marriage of his sisters which has no children is in danger of divorce in whose effectuation he will be more than willing to cooperate, if he does not initiate it.

Yawo society is matrilineal, which implies uxorilocality, but this does not entirely preclude the possibility of virilocality. In fact, there are cases where virilocality is a necessity. We now intend to identify the circumstance that necessitates this virilocality. We have seen that the maternal uncle is living in his own village executing his duties as the village headman and the overall guardian of the great

⁶⁷Ibid.

⁶⁸Ibid.

sorority-group (mbumba) of which the village is composed. In the event of the maternal uncle's death, it is the eldest son of his eldest sister that will 'eat his name', i.e., will inherit his name, which involves the assumption of his "social role."⁶⁹ As a matter of fact, "he also assumes the position of father towards the remaining children, who in fact are his cross-cousins."⁷⁰ Among the Yao there is a practice of 'positional succession'. "A man not only succeeds to his mother's brother's name but also to the position of the mother's brother in social structure as a whole."⁷¹ The implications are that he too will now become the village headman and the overall guardian of the great sorority-group (mbumba). It is obvious that since he belongs to a matrilineal society, he has married uxorically. This means that he is not living in his own village, i.e., in his mother's village. If that is the case, the execution of his duties as village headman and guardian of the sorority-group (mbumba) will be very

⁶⁹Mitchell, *The Yao Village*, p. 195. Jacques Maquet, *Africanity: The Cultural Unity of Black Africa*, trans. Joan R. Rayfield (New York: Oxford University Press, 1972), 172: "The relationship between a man and his sister's son, important throughout Africa, is a very special bond among the Yao, being the basis of the social organization of the village."

⁷⁰*Ibid.*

⁷¹*Ibid.*, p. 181.

difficult to realize, in that he would be living far away from the people who are under his charge.⁷² This problem, however, is solved by making an exception to the general customary law of uxorilocality, which gives to the village headman and overall guardian of his sorority-group (mbumba) the possibility of practicing virilocality. All the matrilineal societies in Malawi recognize this possibility of virilocality and the exception to the uxorilocality. Bruwer refers to a similar solution among the Chewa. He states:

This system is conditioned through a custom called citengwa by which a woman may be removed to the village or village section of her husband. This is more often the case if the₃ man is the senior guardian of his matrilineage.⁷³

At any rate, the guardian who intends to live with his wife among his own sorority-group (mbumba) does not just take the wife to his mother's village without notifying the guardian of the sorority-group (mbumba) of which the wife forms part, simply on the strength that he is the guardian in his village of origin. Therefore, prior to the transfer of the wife to his village, an express and official

⁷²Mitchell, International Journal of Comparative Sociology 3 (1962), p. 33.

⁷³Bruwer, African Studies 14 (1955), p. 115.

permission has to be received. In rare cases, this exception to uxorilocality is also extended to husbands who are not necessarily the actual guardians of their sorority-groups (mbumba). But the wife's people and, in particular, the guardians of the sorority-groups to which the wives belong are very reluctant to allow the transfer of their member to another village, especially when that member is a woman, the assurance of the continuance of the village. We must also remember that the largeness of the village community's membership contributes to the prestige of the guardian. Thus, the birth of a girl in a village signals the birth of more other members through her. Such a birth does not only augur well for the continuance of the village but also for the increase of the village community's membership, and consequently for the prestige of the guardian of the sorority-group (mbumba). Hence, the transfer of the wife of a commoner to his village, though sometimes possible, is looked upon with disfavour.⁷⁴

The problem with the virilocality practiced by members of a matrilineal society which is the result of the transfer of a woman member of another sorority-group (mbumba) is the introduction into the village of an exotic

⁷⁴Mitchell, The Yao Village, p. 184.

sorority-group (mbumba). The wife removed from the sorority-group (mbumba) to which she belonged does not now belong to the husband's sorority-group (mbumba) despite her removal. The children that she bears do not belong to the husband's sorority-group (mbumba) either. The mother and her children belong to the sorority-group (mbumba) from which the mother has been extirpated. In fact if she has daughters she will be founding a new matriline and a new sorority-group (mbumba), for when the daughters get married they will be bringing into the village husbands from other villages. Her eldest son will consider his sisters and their children as his sorority-group (mbumba).⁷⁵ Such sorority-groups (mbumba) can become many as each successor to the village headmanship brings in his wife who introduces her own matriline and sorority-group (mbumba), so that the composition of the matriline and sorority-groups (mbumba) of the man's village as a whole can in the end become very complex. While such may be the case in some villages, the problem is averted by other villages through the return of the foreign matriline to its village of origin at the death of the village headman who brought it into his village.

⁷⁵Ibid., p. 187.

The fact that the transferred wife does not belong to the husband's matrilineage and sorority-group (mbumba) and the fact that she can begin to found her own sorority-group (mbumba) in the village of the husband is a strong indication that a full transfer of the wife to the matrilineage of her husband does not occur. This implies that the wife's people and especially her guardian continue to regard her as one of their own and part of their matrilineage. That is why a return to her own village is always possible and her people will welcome her back. The only difference between her and her people, in the meantime, is that she is living at a distance and/or in a foreign matrilineage. If at the death of her husband, who brought her into his village in the first place, she does not begin to think of going back to her village of her own accord, her guardian has the right to come and demand her return and that of her children.

2. The Husband

Most adults belong to two families. An adult is first a member of the family in which he/she was born known by social anthropologists as "the family of origin or orientation."⁷⁶ It is the family which gives them their

⁷⁶Majumdar and Madan, An Introduction to Social
(Footnote Continued)

outlook in life.⁷⁷ Then there comes the family which they themselves set up after their own marriage. Social anthropologists call this "the family of procreation."⁷⁸ In a matrilineal society where marriages occur uxorilocally, the man leaves his village and comes to live in the village of the woman to form the family of procreation. Among the Yawo people, this whole state of a man's coming from one matrilineage and sorority-group (mbumba) for the purpose of creating the family of procreation in another village is expressed by a special term. This term is mkamwini. About this term Mitchell states: "Mkamwini thus cannot be translated into English without periphrasis and I translate it merely as husband."⁷⁹ The English word husband does not translate with precision all the connotations that the term mkamwini entails, and in fact the Yawo have another word which is the equivalent of the English term husband. Mkamwini as employed by the Yawo emphasizes the fact that a man is a stranger who is living in a foreign village simply because

(Footnote Continued)
Anthropology, p. 56; Marwick, African Studies 17 (1958), p. 141.

⁷⁷ Marwick, African Studies 17 (1958).

⁷⁸ Ibid.; Majumdar and Madan, An Introduction to Social Anthropology, p. 56.

⁷⁹ Mitchell, Yao Village, p. 183.

of marriage. The uxori-locality of the Yawo marriages has necessitated his coming to live in the wife's village without, however, being adopted into its matrilineage and sorority-group (mbumba). The man never ceases to be a member of the matrilineage of the village of origin and the family of orientation. The term also stresses the man's lack of authority with regard to the running of the affairs of the village. He cannot make any important decisions concerning important matters of the matrilineage, and cannot be entrusted with important duties that are connected with sorority-group (mbumba). The term husband (mkamwini) further denotes that the man is a special alien property who has to be treated with circumspection and not like a slave, because, in the case of trouble, the people of his matrilineage and especially the guardian of the sorority-group (mbumba) to which he belongs will see to it that justice is done to him and demand a high price for any injury done to their member. E.W. Chafulumira writes that husband (mkamwini) summarizes the point that the man is someone's special child who requires a very careful treatment.⁸⁰

⁸⁰E.W. Chafulumira, Mbiri ya Amang'anja (The History of the Amang'anja: my translation) (Zomba: Nyasaland Education Department, 1948), p. 23.

While the husband (mkamwini) comes to attach himself to a matrilineage that is not his own because he seeks the companionship of a wife, the people of the wife's matrilineage accept him especially as a begetter of children. The Yawo variously describe the husband's function as "billy goat" or "a chicken rooster" "whose duty is largely procreative."⁸¹ On this showing, he is recognized as an asset to the matrilineage; and this is expressed in the statement that despite the fact that a husband (mkamwini) is "unable to climb high in the village" no matter how rich he may become, "he is, nevertheless, an essential member of the village and the Yao say that it can succeed neither economically or physically without his aid."⁸² The statement will be appreciated better if we realize that the guardian or the sorority-group (mbumba) has the duty of clothing his sisters. If for one good reason or another they cannot work in their garden, it is the duty of the guardian to see that their gardens are cleared and, if they have no granaries where to store their harvest, he has to build them for his sisters. Similarly, if they happen to have no hut to live in, it is incumbent upon the guardian to build a decent hut for each one of

⁸¹Mitchell, The Yao Village, p. 184.

⁸²Ibid.

them, and so on. But when husbands (akamwini) come to marry his sisters, all this work devolves upon these men, and the guardian is relieved from most of his duties. In fact, if the guardian has many sisters to look after, besides his own family, it becomes almost impossible to meet all their needs alone. It is on these grounds that husbands (akamwini) are regarded as contributing to the economic success of the sorority-group (mbumba), of the matrilineage, of the whole village.

As begetters of children, husbands (akamwini) perform a task which contributes to the increase of the membership of the sorority-group (mbumba). Thus, they play a unique role which the guardians are in no position to play. If the children who are born are girls, then the prospects for the continuance of the matrilineage are bright. In the past when the Yawo were engaged in many wars with their neighbours,⁸³ the birth of many boys in the matrilineage

⁸³The following statements give an indication of the military achievements of the Yawo people in the early days of the history of the country: Mitchell, African Studies 8 (1949), p. 150, states: "In some areas there is a considerable proportion of non-Yao under Yao chiefs. The reason for this is that the Yao came into these areas as conquerors, either eliminating the indigenous Nyanja or allowing them to remain there in a subordinate position." A.J. Hanna, The Beginnings of Nyasaland and Northern Rhodesia 1859-95 (London: Oxford University Press, 1956), p. 7. quotes Lord Clarendon: "The process of depopulation
(Footnote Continued)

meant an increase in the number of fighting men. At any rate, any increase in the membership of the sorority-group (mbumba) enhances the prestige of the guardian and of the village headman, for the Yawo say that 'a village headman without people is no village headman'. This statement does not only express the necessity of having some people for the village headman to be a village headman, but it also essentially implies the necessity of a multiplicity of members under his charge for the village headman to deserve the name of headman at all.

(Footnote Continued)

goes on annually. The coast Arabs from Kilwa come up with plenty of ammunition and calico to the tribe called Waiyau or Ajawa, and say that they want slaves. Marauding parties immediately start off to the Mang'anja or Wa-nyassa villages, and having plenty of powder and guns, overpower and bring back the chief portion of the inhabitants." J.G. Pike and G.T. Rimmington, Malawi: A Geographical Study, (London: Oxford University Press, 1965), p. 126, state: "The period of peaceful penetration did not last long, for the relatively peaceful Mangoche Yao were followed by the more warlike Machinga Yao, who settled in force in the Fort Johnston area, pushing the Mangoche group southwards further into the Shire Highlands. The latter in their turn made war on the inhabitants of the new areas in which they settled, resulting in substantial changes in the human geography of large areas." Hanna, op. cit. again states of the Yawo: "Thenceforth the only outlet of their fighting energies was in the armed forces of their British rulers, and by the beginning of 1897 there were (sic) already providing the most efficient and reliable soldiers that could be recruited anywhere in the Protectorate." Along the same lines Mitchell, "The Yao of Southern Nyasaland," p. 311 quotes Sharpe: "In every fight they were well to the front and showed such sterling military qualities that it was decided to disband the Makuwa and replace them by Yao."

The husband holds, therefore, the ambivalent position whereby he may be despised by the members of the matrilineage, if he tries to meddle with the affairs of the matrilineage insofar as he is merely a stranger in the village; he is a man whose procreative function is highly appreciated; and he is treated with respect for fear of being involved in a serious trouble with the people of his matrilineage. The husband (mkamwini) finds himself in each of these conditions according to the proper circumstances. On his part, he has to reciprocate respect for each and every member of the matrilineage, adults and children alike, and prove himself a serviceable member to all. For the Yawo say, "you marry one, you marry all," suggesting that the husband (mkamwini) must not be satisfied only with the kindness, respect and love which he shows to his wife, rather he must learn to extend the same attitude to all the members of the sorority-group (mbumba). Failure in any of these attitudes to any of members of the matrilineage jeopardizes his marriage itself.

The husband in the sense of mkamwini, therefore, is in fact a social status which a man acquires by the fact that he has married in a matrilineal society. In this sense the wife does not refer to him as "my husband." To be sure, she can refer to him as a "husband" in the sense that he is a stranger who finds himself in the village by reason of

marriage just as she can employ the same term to any other man who finds himself in the village in the same capacity. But when she wants to refer to him as her husband in the western sense, she makes use of the proper Yawo term for it. Of course, the man who is in charge of the sorority-group (mbumba) will rightly refer to him as my husband (mkamwini), implying that the man is under his charge on the grounds that he has married his sister or the daughter of his sister. On the other hand, husbands who have married sisters refer to each other as my older brother and my younger brother.⁸⁴ Their rank does not depend on their ages but rather on the seniority or juniority of the sisters they have married. Thus a man who is older in age will be considered as junior to a younger man simply on the grounds that he has married a younger sister.

3. The Father and the Mother

In the course of time, the husband (mkamwini) will hopefully have some offspring from his marriage. Thus besides being a husband (mkamwini), he now becomes the father of his children. Nevertheless, his status as husband (mkamwini) will continue to be reflected even in

⁸⁴Mitchell, "The Yao of Southern Nyasaland," p. 329.

his relationship with his children. To be sure, the father has obligations towards his wife and children to fulfill. It is his duty to see that his wife and children are well fed. This means that he must work hard in the field which was assigned to him by his mother-in-law or by the man in charge of the sorority-group (mbumba). It is also incumbent on him to clothe his wife and children. Another important obligation which emerged during the colonial days was the payment of tax. Failure in this resulted in long terms of imprisonment especially if many years had passed without paying tax to the government. As a result his wife and children were deprived of his services during the time of his imprisonment.

The children, in their turn, help in the work of the family. Boys learn from their father how to build houses, how to make baskets, and other different arts. While the girls learn how to cook, how to pound maize and other women's work from their mother. But the children's great allegiance is to their mother and especially to their maternal uncle and not to their father, who is only a stranger in the village. The maternal uncle has the right to ask the children to live with him and work for him in the village of his residence. This request is almost invariably granted by their mother, i.e., his sister. After all, these children are the inheritors of their

maternal uncle's property. For they cannot, by customary law, inherit their father's most valuable property because it is their father's nephews and nieces who are the rightful inheritors of his property.

The father's status as a foreigner in the sorority-group (mbumba) is further articulated by the fact that he does not have the control of the most important events that concern his children. He would not, for instance, decide when his children should undergo the important ceremonies of initiation. It is their mother and their maternal uncle who decide and make the necessary arrangements. When the time of his children's marriage arrives, the father has no say in the matter. Everything comes under the control of the mother and the maternal uncle. In case of his children's falling sick, it is the duty of the mother and especially of the maternal uncle to consult diviners and to obtain the necessary medicinal herbs for their cure and not of the father as such. In the event of the death of any of his children, the father does not make the necessary funeral arrangements, for it is the maternal uncle's duty to make such arrangements. If the children commit a serious crime, it is not the father but the maternal uncle who is answerable before the court for the crimes of his nephews or nieces to the extent that even the responsibility for the payment of the fine ordered by

the court for these crimes falls on him. It is on these grounds that the maternal uncle and not the father has the right and duty to punish his nephews and nieces. The father dares not to take it upon himself to punish his children, rather he punishes his own nephews and nieces in his village of origin. In this regard, G.M. Marwick speaking of the Chewa people writes:

A Chewa man plays two distinct roles in relation to two groups of children. He is the friendly, indulgent playmate of his own children (or more strictly his wife's children since they are not his in our sense of possession); and he is the austere ⁸⁵disciplinarian of his sister's children.

The same author, in his book, Sorcery in Its Social Setting, gives the text of his informant which sums up the position of the father in his relation to his children in a matrilineal society. However, prior to reproducing the informant's text, we believe that it will be in order that we make the following remark for a better understanding of what he is talking about. It will be recalled that mention was made of the untranslatability of the term "husband" in the Yawo sense of mkamwini. Now in the following text, Marwick translates the term which must have been given in

⁸⁵Marwick, African Studies 17 (1958), p. 157.

the informant's local language by "son-in-law." The inadequacy of such a translation can be demonstrated in this that "son-in-law" is a term employed to express the relationship between the husband and his wife's parents and her classificatory parents. The point is that only the parents can refer to him as son-in-law, whereas the term husband (mkamwini) is a term expressing his social status in the village of his wife, and anyone can refer to him as husband (mkamwini) when the expression of his status is intended. Therefore, wherever in the text "son-in-law" is read we must understand it to mean husband (mkamwini). Having made this observation we reproduce the informant's text showing the husband's (mkamwini) inability to exercise any authority over his children by way of punishment. The informant states:

According to Cewa custom, the maternal uncle is the one with authority over the child; and his authority surpasses that of the child's father. True, his father has [some] authority, but it does not compare with that of the maternal uncle. Suppose that you have married at a village of unrelated people and that you have begotten children. Those children you cannot really control. If you beat your child, its maternal uncle asks you, 'Now, you, have you come here to beat children? You are a son-in-law who followed your wife [here]. Now, why do you beat children? If the child has done wrong, you should come to me, and I would compensate you for its action'. You [the son-in-law] can say nothing [to this] because he is the proprietor of the child. There is a saying of the elders, 'Here there is an aloe with its roots meeting underground', which means that your wife's people can meet secretly with

your wife and agree, 'Let us chase him away to his home village and let him stay there now'.⁸⁶
Thus you become ashamed and go home.

The message is loud and clear. The father possesses a limited authority over his children in a matrilineal society. In the event of the children's wrong-doing, the father must not take matters in his own hands, rather he should report the case to the proper authority, namely, the maternal uncle, who will reprimand the children or mete out to them the appropriate punishment or make the necessary compensations. The arrogation of such powers by the father over his children runs the risk, resulting in his removal from the village.

It is obvious that in matrilineal society children belong to their mother not only in the case of their father's death but also in the case of his removal from the marriage as described above. As Mitchell remarks:

There are no disputes about the custody of children, who always belong to the mother's group whether they are legitimate or not. This is

⁸⁶Marwick, Sorcery in Its Social Setting: A Study of the Northern Rhodesia Cewa, (Manchester: Manchester University Press, 1965), p. 180.

consistent with the view of the husband as a mere begetter of children.⁸⁷

The Yawo, like all tribes which employ the classificatory system, have classificatory counterparts for mother and father. We will now make a brief description of these relationships. It all comes down to this, that "the mother's sisters are 'mothers' and her brothers are 'male mothers'."⁸⁸ In fact there are some tribes which call the mother's brother simply 'mother'.⁸⁹ While the Yawo, among many other bantu tribes, do not literally call the mother's brother 'mother', they, however, use a compound term derived from words which carry the meaning of male mother. Incidentally, the male mother is the famous maternal uncle we have spoken so much about. The fact that the mother's sisters are also called mothers implies that their children are my brothers and sisters and not my cousins. It also indicates that the Yawo do not have the equivalent for 'aunt',⁹⁰ i.e., that the word for 'aunt' is just non-existent in their vocabulary. While the children of the mother's sisters are brothers, those of the mother's

⁸⁷Mitchell, The Yao Village, p. 163.

⁸⁸Gluckman, "Kinship and Marriage Among the Lozi of Northern Rhodesia and the Zulu of Natal," p. 170.

⁸⁹Radcliffe-Brown, "Introduction," p. 25.

⁹⁰Lawson, African Studies 8 (1949), p. 186.

brothers are called 'cousins'. Of all these children, it is the mother's children and the mother's sister's children who belong to the same sorority-group (mbumba). The children of the mother's brothers, my maternal uncles' children cannot form part of the sorority-group (mbumba), although the maternal uncles are themselves part of it.

If we now turn to the father's side, the relationships are such that "the father's brothers (real and classificatory) are 'fathers'."⁹¹ Their children are my brothers and sisters and not my cousins. On the other hand, the father's sisters are literally called "female fathers."⁹² But their children are not called by brothers and sisters, rather they are called 'cousins'. Thus the only cousins the Yawo have are what the westerners call cross-cousins, as parallel cousins are non-existent in the Yawo society. We can only mention in passing here that these cross-cousins are potential mates and they refer to one another as husbands and wives even if marriage does not actually occur. But more about this later. In the

⁹¹Gluckman, "Kinship and Marriage Among the Lozi of Northern Rhodesia and the Zulu of Natal," p. 170; Fortes "Kinship and Marriage Among the Ashanti," p. 267.

⁹²Lawson, African Studies 8 (1949), p. 187; Bruwer, African Studies 7 (1948), p. 186.

meantime, we will discuss the relationship between the grandparents and their grandchildren.

4. Grandparents and Grandchildren

The kinship relationship that exists between grandchildren and their grandparents has an interesting feature of its own. Mention has already been made of the fact that the first-born son inherits from his maternal uncle, his 'male-mother'. He eats his maternal uncle's name, i.e., he inherits his name whereby he becomes identified with the maternal uncle, assuming the social positions he held. In view of the fact that there are no female uncles, the question arises as to where the first-born daughters inherit from. The response to the question is that the first-born daughter 'eats' or inherits the name of her grandmother. Mitchell writes:

A daughter is usually identified with her mother's mother. A woman's daughter's daughter inherits her name, her position and her property in much the same way as a man succeeds his mother's brother. When this has taken place the terms of address of her parental generation are now reversed. In other words, her mother's brother instead of calling her, 'sister's child' (chipwa) calls her 'mother' (amawo). Sometimes the qualificative wamauja ('who has returned') is used to signify the difference. Her mother's mother's husband even before the succession has taken place calls her 'my wife', and I have

recorded one or two marriages ⁹³between a man and his wife's daughter's daughter.

Here again we have the case of positional succession with regard to the granddaughter just as is the case with regard to the nephew. When maternal grandmother dies, the first-born granddaughter, just prior to the burial rites, is made to 'eat' the name of her grandmother whereby she becomes everything that her grandmother was. As a matter of fact, the granddaughter is in many respects what her grandmother is even prior to the latter's death. The granddaughter's mother already calls her 'mother': she is recognized as the mother of her own mother in view of the fact that she is the rightful successor to the mother's mother. Since his sister calls her daughter 'mother', the maternal uncle too will call her mother though in fact she is only his niece. Even the father of the daughter calls her 'mother' in sympathy with his wife. Lawson relates what are supposed to be the reasons for this:

But why is the little girl called amai - that is, "mother?" First, says her mother, to teach the child the name she herself wishes to be called; second, to accustom her to the polite use of

⁹³Mitchell, The Yao Village, p. 175; Lawson, African Studies 8 (1949), p. 181; Referring to a similar custom among the Nyanja Lawson writes: "The Nyanja child, on the other hand, belong primarily to its mother's group; a boy inherits social and political status from his mother's brother, and a girl from her maternal grandmother."

titles rather than personal names; third, because she must consider her mother's heir⁹⁴ a child of her womb - as her potential mother!

The identification of the granddaughter with her grandmother makes her the sister of her own grandmother and a potential wife to the grandfather. Accordingly, the grandsons are also brothers to the maternal grandmother and brother-in-law to their maternal grandfather with the result that there is a joking relationship between the latter and his grandchildren and an avoidance relationship between the maternal grandmother and her grandchildren. The opposite is true on the father's side. The paternal grandmother calls the grandson 'my husband' and the granddaughter is her sister-in-law, while the paternal grandfather calls the grandson 'brother' or friend and the granddaughter 'sister'. Thus, on the mother's side, the granddaughter is the co-wife of the grandfather,⁹⁵ while on the father's side, the grandson is the co-husband of the paternal grandmother. The "maternal grandmother and the paternal grandfather are classed together as 'brother' and

⁹⁴Lawson, African Studies 8 (1949), p. 185.

⁹⁵Bruwer, African Studies 14 (1955), p. 116, states: "A grandfather (on mother's side) may in fact call his granddaughter mkazanga (my wife) whereas the grandmother will call her mkazimzanga (my co-wife). The granddaughter will reciprocate with the term mwamunanga (my husband) and mkazimzanga (my co-wife)."

'sister'," and similarly the maternal grandfather and the paternal grandmother are classed together as 'cousins',⁹⁶ or brothers-in-law.

What we are witnessing here is that in the Yawo society, as well as in many other matrilineal societies, the matrilineage is reduced into two generations only. "Alternate generations are merged in kinship terminology and in behaviour. A man's sister's daughter, for example, is called 'mother', and her daughter (his granddaughter) (sic) in turn becomes 'sister'."⁹⁷ The latter is the recurrence of his uterine sister, i.e., 'the returning sister'. This makes for the possibility for the granddaughter to address her grandparents "as if they were members of her own generation."⁹⁸ On the female side, therefore, the inheritance system operates by alternate generations whereby the first generation adopts the third generation and when the latter "grows up and bears children this fourth generation will be adopted by the second."⁹⁹ Whereas the proximate generations are related to each other

⁹⁶ Lawson, African Studies 8 (1949), p. 188.

⁹⁷ Mitchell, The Yao Village, p. 136.

⁹⁸ Lawson, African Studies 8 (1949), p. 188.

⁹⁹ Ibid., p. 186.

in the mode of superordination and subordination, the alternate generations, i.e, grandparents and grandchildren, are related to each other in the mode of friendly and near but imaginary equality. In the words of A.R. Radcliffe-Brown:

There is therefore discoverable in African societies, as in many other societies in various parts of the world, a special structure based on relations of generation. Between two proximate generations the relation is normally one of essential inequality, authority, and protective care on the one side, respect and dependence on the other. But between two generations of grandparents and grandchildren the relation is a contrasting one of friendly familiarity and near equality. The contrast between the two kinds of relation is itself ¹⁰⁰ an important part of the structural system....

Aylward Shorter believes that "the terminological merging of alternate generations" is the result of "a belief in some form of reincarnation." Be that as it may, it certainly is a "means of expressing solidarity of the extended family"¹⁰¹ and guarantees the immortality of the grandmother whose life and existence now find their continuation in the life and existence of the granddaughter.

¹⁰⁰Radcliffe-Brown, "Introduction," p. 30.

¹⁰¹Shorter, African Culture and the Christian Church, 165.

In recognition of the fact that the first-born granddaughter is the person in whom the continuance of the grandmother's life and existence is assured after her death, of the fact that this granddaughter is the one who is going to 'eat' (inherit) her name, and of the fact that the granddaughter is the one who will hold her position even as far as becoming wife to her husband, the grandmother rightfully names the first-born granddaughter at birth just as the first-born boy of the sister is named by his maternal uncle. In fact, this very naming is not only an indication of the adoption of her granddaughter into her generation, but also an indication that she is claiming the granddaughter as her heir.¹⁰²

Before closing this discussion on grandparents, we wish to say a few words about their authority in the affairs of the village. Reference has already been made to the power of women in the running of the village community despite the fact that the ruling powers are wielded by men. Now we must point out that of all women "the maternal grandmother holds a special position as she is the female head of the domestic group and this gives her great influence in bringing up children." Grandmothers are

¹⁰²Lawson, African Studies 8 (1949), p. 182.

"prototypes of persons and institutions commanding reverence and submission to the norms of tradition" for they are guardians "of morals and harmony" in the village community. While major cases are referred to the maternal uncle, the maternal grandmothers have the power "to reprimand and punish their grandchildren for minor acts of disobedience and impropriety."¹⁰³ Nevertheless, it must be emphasized that the grandmothers' powers are not confined to minor cases. They also exert great influence in major cases. Their opinion and sanction on important events are often given, if not sought.¹⁰⁴ When they have strong feelings about an important event and their opinion is opposed by the actual rulers, they can exercise their influence so as to render the ruling powers ineffective. The reason why the apparently decrepit ancients are capable of exercising such powerful influence over their children and grandchildren is, in the words of Hilda Kuper, partly

¹⁰³Fortes, "Kinship and Marriage Among the Ashanti," p. 276. Here Fortes' words by which he expresses the function of the grandmother among the Ashanti are borrowed in so far as they express what also happens among the Yawo.

¹⁰⁴Lawson, African Studies 8 (1949), p. 181, writes: "Family authority is divided between the oldest woman in the homestead, who is grandmother, (Ambuye) par excellence, and his eldest brother, (or if he is dead, his heir, normally the eldest son of the eldest daughter). This man, the owner of the homestead (mwimbumba) is considered the ultimate head of the family, but he takes advice from the female ambuye."

because "they are nearest to the ancestors and essential officiators in all domestic rituals"¹⁰⁵ or at least in many of the domestic rituals. The allegiance children have to their mother rather than to their father is already the beginning of the mother's influence over her children, so that when she becomes a grandmother there is no cessation on the part of the children in experiencing the pull of allegiance towards their mother, if anything it increases. On the other hand, as the children grow up, the daughters, most probably, experience this pull more than the sons. This makes for the solidarity of the women in village community, who, after all, constitute the permanent membership of the village.

Thus far we have been discussing mainly about the authority of the grandmother. But what about the grandfather? Does he have any authority at all in the affairs of the village? We shall recall that the

¹⁰⁵Hilda Kuper, "Kinship Among the Swazi," African Systems of Kinship and Marriage, eds. A.R. Radcliffe-Brown and Daryll Forde (London, New York, Toronto: Oxford University Press, 1967), p. 105. The communitarian characteristic of the Yawo extends even to the dead ancestors. These are revered people because they are believed to be near God, and they are often used as intermediaries when requests are made to him. Grandmothers too, especially when they are old are revered because they are believed to be in proximity to the dead ancestors. We have loaned Hilda Kuper's words in so far as they express this idea.

grandfather is basically a husband (mkamwini), living uxorilocally in a foreign village where he was accepted as the begetter of children. Our discussion on the husband (mkamwini) gave the impression of the insecurity he experiences in the foreign sorority-group (mbumba). Nevertheless, matters are not all that bad especially when he has grown to become a grandfather. Marwick states:

The insecurity of the spouses of matrilineage members should not be exaggerated. Some marriages are stable, and the 'foreign' spouse achieves an important status in the village community. Notable here is the position of the son-in-law who has lived in the village for a very long time and has gained the approval and affection of the matrilineage into which he has married. He has been so long in the village that 'his home is here; he does not remember about (or long for) his [original] home'...he is charged with important duties, such as dispensing hospitality to travellers seeking shelter in the village, and assisting the headman in the choice of a new village site, and in the distribution of land for new gardens.¹⁰⁶

The grandfather's long stay in the foreign village is somewhat an indication of his good behaviour which has won the approval of the members of the village community who would have effected his immediate removal if the case had been different. This is why they can entrust him with some

¹⁰⁶Marwick, Sorcery in its Social Setting, p. 183. Note that Marwick employs the term 'son-in-law' in place of husband (mkamwini).

of the duties that are normally the preserve of the members of the sorority-group (mbumba). By virtue of his experience members of the village come to him for advice. In fact, "it is from the grandparents of both sexes that children learn family history, folklore, proverbs and other traditional lore."¹⁰⁷ However, since we are dealing with a matrilineal society, despite the grandfather's eventual acquisition of a measure of authority in the affairs of the village, his voice does not carry the same weight as that of his wife.¹⁰⁸

C. THE REALITY OF MARRIAGE AS A PROCESS

One of the most important features characteristic of the African marriage is the fact of its progressivity. Marriage is not something that occurs suddenly on a given day and at a fixed moment. On the contrary, the African marriage is considered and practiced as a process, requiring a long time prior to the attainment of its maturity. For a better understanding of the African marriage, therefore, the concept of marriage as an event or state must be excluded, rather marriage must be conceived

¹⁰⁷Fortes, "Kinship and Marriage Among the Ashanti," p. 276. Fortes' statement has been borrowed to express something that also takes place among the Yawo.

¹⁰⁸Lawson, African Studies 8 (1949), p. 182.

of as a "developing process."¹⁰⁹ This is why people of the western civilization find it very difficult when they try to identify the exact moment for the occurrence of the African marriage,¹¹⁰ and as a matter of fact such an attempt is itself an exercise in futility. It is true that marriage has a social nature, and that on these grounds, the sanction of society is normally required for the marriage's existence. But to go so far as to make a general affirmation to the effect that "this social sanction is achieved...by the marriage ceremony"¹¹¹ is certainly to assert more than is warranted. The error of many people of the western civilization is their failure to recognize the presence of a real marriage where the social sanction is present but where the marriage ceremony is absent. What must be taken into account is the fact that marriage ceremony is only one form in which the social sanction is manifested. In a marriage which is conceived of as a process, the presence of a true marriage without a formal ceremony must be recognized as a real possibility, at least for one if not more of its stages. While some

¹⁰⁹Radcliffe-Brown, "Introduction," p. 49.

¹¹⁰C. Dundas, Kilimanjaro and Its People, (London: 1924) quoted by Jeffreys in African Studies 10 (1951), p. 156.

¹¹¹Jeffreys, African Studies 10 (1951), p. 156.

African tribes may require a special ceremony for each of the possible stages, there are many other tribes where such is not the case. The performance of a marriage ceremony may take place only as a manifestation of societal sanction for one particular stage of the marriage process.

In this section, the discussion will focus on the identification of the various stages of the marriage process as far as the Yawo people are concerned. We believe that there are three stages in the Yawo progressive marriage which can easily be identified. We have chosen to call the first stage the phase of acceptability; the second, the phase of ratification; and the third and final stage, the phase of establishment. Through our reading of the works of various anthropologists and authors who have written about the Yawo or the people with a similar culture to this tribe and from personal experience, if we be permitted to mention it, of the customs of this tribe of which we are a member, we have come to the conclusion of the presence of the above mentioned three stages in the process of marriage as lived by the Yawo. We feel that the designations, phase of acceptability, phase of ratification and phase of establishment express better the idea behind the different stages. What must be pointed out, however, is the fact that no other anthropologist nor author has, as far as we can see, ever mentioned these three stages

together before as belonging to the reality of marriage as experienced by the Yawo people and that no anthropologist nor author has, to our knowledge, ever employed these three designations together before for the description of the process of the marriages of the tribe under discussion. We shall attempt to explore what is involved in each of these phases. It is to this task that we now turn.

1. The Phrase of Acceptability

- a. Marriage Negotiations

When a man wants to marry a certain woman, one of the ways is for the man to ask the woman directly. If she does not want the man she will immediately indicate her unwillingness, and the case will end there. But if she loves the man, she will, in place of directly responding in the affirmative herself, indicate her willingness to be married to the man by referring him to her brother or her maternal uncle where the man has to ask the woman's hand in marriage. Another way is for the man to go to his maternal uncle and inform him of his desire to marry a certain woman living in a specified village. The maternal uncle will then go to present the proposal to the woman's brother or maternal uncle, using a metaphorical language in the following terms: 'I have a cock in my village which is troubling me because it wants a hen living in your village here'. The woman's brother or maternal uncle would then

ask the man's maternal uncle to identify the cock and the hen. In both ways, after the proposal has been presented, a reply is never given the same day. Rather the man's maternal uncle is told to return to his village and expect a reply to his proposal to be given as soon as possible. The reason for not replying the same day is to give himself ample time for making consultations with the rest of the sorority-group (mbumba) as to the suitability of both the man and the sorority-group of his origin. It is in cases like this that the grandmother's advice is sought and taken because of her experience and knowledge in the history of the sorority-group (mbumba) to which the man belonged. Questions of the reputation of the sorority-group (mbumba) of the man's origin must be such that it receives the approval of the woman's group. They examine the question of the health of the candidate's sorority-group (mbumba); whether its members are known to have contracted leprosy, tuberculosis or other serious health problems; whether they are quarrelsome, pugnacious, brutal, dishonest and the like; or whether they are known to meddle with magic.¹¹² The qualities of the candidate himself are also scrutinized such as to whether he is an industrious person, a polite and serviceable man and the like. If after the

¹¹²E. Torday, "The Principles of Bantu Marriage," Africa 29 (1929), p. 266.

consultations, the reputation of the sorority- group (mbumba) and the candidate himself are found to be favourable, his maternal uncle is called to the woman's village to receive the response to the proposal he had made for his nephew, informing him that the people of the woman's group including the woman herself had agreed to the proposed marriage. The man is told to come to begin to live with his wife on a given day or as soon as he is ready. The couple are given a hut pending the day when the man will build his own.

In the first way, after making direct contacts with the woman he desires to marry and having been told to approach her brother or maternal uncle, the man does not do this himself but through his maternal uncle who conducts the marriage negotiations in the same way as he does in the second way. But there is yet another way in which the man does not contact his maternal uncle. He simply contacts the woman's brother or maternal uncle, and on the strength of the latter's acceptance the man goes to begin to live in the woman's village. Mitchell describes this in the following manner:

When he notices a likely girl, say at a feast, he makes discreet inquiries to find out her village, or he may ask the woman herself. Whether he approaches the woman with a direct proposal or whether he finds out from some other person the village from which she comes, he must next

approach her 'brother'. This is, of course, the warden of the sorority-group. It is proper that he should not reveal that he has already discussed the question of marriage with his bride-to-be. The warden tells the suitor to return at some other time so that he can consult the woman. When the man returns the warden is in a position to answer the proposal. Should she refuse, the warden has no power to force the woman to marry. If she agrees, the man starts to sleep with her in her hut, or if she has no hut, in some vacant hut or the kitchen of some hut. In the meantime he makes arrangements to build a hut of his own. After he has lived with the woman for some time the warden of the woman's sorority-group approaches him and asks him where his home is and the name of a person who can be approached about the marriage negotiations. The young husband then usually gives the name of his 'elder brother' or the warden of his sorority-group. Accordingly the woman's warden goes to that village to seek him out. There is a formalized approach in this matter. Usually the woman's warden will approach the man's warden and ask him whether anything has been lost from the village. The warden of the man either guessing what the visit is about, or possibly having been forewarned of the visit, mentions that a chicken cock has been lost. The woman's warden then replies that the cock is in her village and that he is looking for a hen. Thereupon arrangements are made¹¹³ for the solemnization of the marriage.

From the time that the man and the woman begin to live together, the man calls and knows the woman as his wife, just as the woman calls and knows the man as her husband. Similarly, the people of the woman's group as well as those of the man's group call and know the couple as husband and

¹¹³Mitchell, "The Yao of Southern Nyasaland," pp. 224-225.

wife, despite the fact that, at this stage, no ceremony has yet taken place. By reason of total ignorance or misunderstanding of the culture of the people, most social anthropologists as well as most missionaries have not been able to capture the significance of this first stage of the marriage of the Yawo people or of the many other tribes which have more or less the same custom as that of the Yawo people, that is, the custom of beginning to live together as husband and wife prior to any marriage ceremony, which will take place only after a certain period has elapsed. There is no fixed time for this period: one marriage may differ from every other marriage that has ever occurred. For some this period may last till the first pregnancy, for others, till the birth of the first child, and yet for others, till there are several children in the marriage, prior to the performance of the rite of marriage. This is true especially for the Africans who do not have ceremonies for each and every stage of the marriage.

b. The Name of the First Stage of the Yawo Marriage

The social anthropologists' and missionaries' misunderstanding of the first stage of the marriages of the Yawo people and those of many other African tribes has resulted in misnomers of various types. Many anthropologists erroneously believe that this first stage is nothing more than an engagement or a betrothal. Isaac

Schapera, for instance, speaks of a man who is supposed to have become engaged to a woman "and with the permission of her parents, lived with her in her hut. She went to his fields to help him plough, and stayed with him all the season."¹¹⁴ He further states that "an engaged couple may live together and even have children. But although commonly referred to as 'husband' and 'wife', they are not considered married" in that the wedding ceremonies have not yet taken place.¹¹⁵ What in fact Schapera is referring to here is the first stage of the African marriage. The fact that the permission to live together has been granted and they are "commonly referred to as 'husband' and 'wife'" is because they are considered as truly married. The denial of their having been married is simply a wrong interpretation. Lawson, on the other hand, writes: "Betrothal, however, is a gradual process whose culminating ceremony cannot take place until the marriage has been consummated."¹¹⁶ Lawson is right in affirming concerning the Nyanja and the Yawo people that the culminating ceremony of marriage occurs only after the consummation of marriage. But the consummation must not be understood as a single

¹¹⁴Isaac Schapera, Married Life in an African Tribe, (Evanston: Northwestern University, 1966), p. 70.

¹¹⁵*Ibid.*, p. 71.

¹¹⁶Lawson, African Studies 8 (1949), p. 187.

act. For the people he is referring to actually live together for a long time prior to the performance of the marriage rite. He is equally right when he refers to the impossibility for the occurrence of the "culminating ceremony" prior to the consummation of the marriage. The only error that Lawson makes is his failure to recognize that the period during which the consummation of the marriage is taking place is a stage of a true marriage, though only its first stage. E. Torday, in turn states that "among the Bantu betrothal is, as rule, a binding affair, which may even lead to pre-nuptial cohabitation."¹¹⁷ When the so-called betrothal goes as far as cohabitation, it is no longer betrothal. What Torday refers to "pre-nuptial cohabitation" is in fact the first stage of the Bantu marriage. All these social anthropologists seem to have the feeling of the presence of a stage of marriage prior to the performance of its proper rite, but have not quite captured its real identity. So they go back to their own culture and compare the African marriage with the marriage of their culture. The closest resemblance to their marriage they are able to arrive at is the engagement or betrothal: a stage which precedes that in which the marriage ceremony is performed. Thus they

¹¹⁷Torday, Africa 29 (1929), p. 271.

misname the African first stage of marriage 'an engagement', 'a betrothal'. The missionaries are very much aware of this first stage of the African marriage, and they simply call it 'a trial marriage',¹¹⁸ concubinage, irregular unions, illicit unions¹¹⁹ and so on.

We certainly do not subscribe to these terms as appropriate descriptions of the first stage of the African marriage in general and of the Yawo people in particular. We have therefore to look for a better term to describe this first stage. One might borrow the term coined by James L. Gibbs in his article "Marital Instability Among the Kpelle: Towards a Theory of Epainogamy" in the American Anthropologist where he compares societies in terms of their marital stability or instability.¹²⁰ The term we refer to is "Epainogamy." Gibbs describes it in the following terms:

In applying this polar concept to the analysis of marital stability the writer has coined the short-cut term epainogamy to refer to that

¹¹⁸Vincent Mulago, "Le Mariage chrétien en Afrique," Revue du clergé Africain 26 (1971), p. 49.

¹¹⁹Barthelemy Batantu, "Progressive Marriage and Admission to the Sacraments," African Ecclesiastical Review 23 (1981), p. 41.

¹²⁰Gibbs, American Anthropologist 65 (1963), pp. 552-273.

condition of marriage which is societally supported, praised and sanctioned - indeed, almost enforced.... Epainogamy is derived from the Greek verb epaineo - meaning "to praise, approve, or publicly sanction" and the stem - gamy, pertaining to marriage. An epainogamous society is one in which divorce is rare and marriage is stable. A non-epainogamous society is the obverse of this, one in which marriage is instable and divorce is common. These are obviously ideal polar types which do not exist in reality....¹²¹

The comparison of societies in terms of the stability or instability of their marriages is, as Gibbs himself is quite aware, more academic than real. It is difficult to affirm that in real life there are societies that can be qualified as enjoying stable marriages and others as having unstable marriages. It is for this reason that we are persuaded that the term epainogamy is more applicable to the first stage of the African marriage than to Gibbs' point of comparison, in that epainogamy means a stage of marriage or a "condition of marriage which is societally supported, praised, and sanctioned" even prior to the performance of the matrimonial rite. Culturally people would not approve a marriage into which a couple rushes by having the rite performed before they have stayed together for some time. People will regard such a course of action as simply preposterous or sheer madness. In fact the

¹²¹Ibid., p. 553.

elders will refuse to perform such an immediate rite. On the contrary, they will intentionally keep procrastinating the date for the performance of the rite in order to give the couple sufficient time to live together prior to its performance. It, therefore, seems fitting to describe the marriage as epainogamy during the period in which the couple live together with the approval and sanction of the people pending the day of its ritual sanction.

In less technical terms, we have called this first stage of the Yawo marriage, i.e., the period of simple public sanction without the rite, the phase of acceptability precisely because this period is recognized and accepted by the proper authorities in the matter and by the public as the right way of commencing married life. We will therefore discuss how the proper authorities in this regard manifest their approval of the marriage of the new couple. But before we broach the subject of sanction, we have to say a word about who these proper authorities are. As a matter of fact we have already spoken about them when we were discussing the question of marriage negotiations and earlier on when we were dealing with the subject of the sorority-group (mbumba). They are the brothers and the maternal uncles both on the man's and the woman's side. We have seen that when a man wants to marry a woman these people get involved early in the marriage negotiations. No

marriage can take place without the involvement or the help of these people. They are indispensable if marriage has to take place at all, even before the question of the matrimonial rite comes into the picture. They are known as angoswe, another term which defies adequate translation, as far as we can see. The closest equivalent in the western culture would be the witnesses of marriage. Western culture is very much concerned in this respect with people who can witness the event of marriage. Thus anyone who is intelligent enough with unimpaired use of reason can become the witness of a marriage. Not so with the Yawo. Rather than being concerned with the act of witnessing, the Yawo are concerned with the question of consenting to the marriage of the members of their sorority-group. Not anyone, therefore, can become ngoswe for a marriage of the Yawo people, not even when the marriage is being celebrated in church. The idea behind western culture seems to be a question of having someone to call upon to prove the occurrence of the marriage event when at a future date the event is being called into question. The idea behind the practice of the Yawo people, on the other hand, is to be able to have people who can, in the first place, agree on its occurrence and who can be called upon when at a future date the marriage is in difficulties. They are supposed to be available for as long as the married couple are alive. The angoswe must be blood relatives, and specifically they

must be the brothers or maternal uncles of the partners. In this sense witness does not render satisfactorily the idea behind ngoswe (sing.) and angoswe (plur.). Mitchell translates the term by "marriage sureties."¹²² This translation seems to express well the idea of the protection of the marriage. But sureties can be spoken of inanimate things whereas angoswe are human beings, and the term does not possess the idea of consanguinity, let alone of being brothers or maternal uncles. For lack of a better word, we prefer the term employed by J.P. Bruwer when he translates angoswe by "guardian."¹²³ Our preference is based on the fact that, besides expressing the idea of protection, it also has a personal dimension to it. Nevertheless, we realize its failure to express the idea of consanguinity, for anyone can be a guardian. Again, the term can be employed for other things apart from the guardianship of marriage, while angoswe is employed specifically of marriage.

c. The Phase of Acceptability of the Yawo Marriage Sanctioned by the People

Now how do these guardians (angoswe) sanction the epainogamy, the phase of acceptability of the Yawo

¹²²Mitchell, The Yao Village, p. 127.

¹²³Bruwer, African Studies 14 (1955), p. 114.

marriage? The fact that they come into the picture in the early stages to carry out the marriage negotiations, and the fact that they finally allow the couple to begin to live together are already good indications of their acceptance of the marriage. When the couple have lived for some time in their marriage and the woman becomes pregnant, the guardians (angoswe) from the woman's group are supposed to go and report the pregnancy to the guardians (angoswe) of the man's group, in order to inform them how the couple are faring in their marriage. For the possibility of having offspring in the marriage has a very significant dimension among the people. When the woman is about to bear her child, she is supposed to undergo an initiation ceremony for the first pregnancy. During this initiation ceremony, she is given the necessary instructions as to how to rear her child and is taught the relevant taboos for the welfare of the couple themselves and their child.¹²⁴ These instructions cannot be given by the people of the woman's side alone. So an invitation has to be extended by the guardians (angoswe) of the woman's group to the people of the man's group so that the instructions are given in the

¹²⁴Mitchell, The Yao Village, p. 57, writes: "Every woman who becomes pregnant for the first time must undergo this ceremony, during which she is instructed in childwelfare and childcare."

presence of the people of both sides.¹²⁵ Again, when the day of birth arrives, the guardians (angoswe) of the woman's side have to inform the people of the man's side, for this first birth must take place in the presence of the people of both sides. However, no woman who has not undergone this ceremony herself may attend it¹²⁶ nor be present at the birth of the child. The presence of the people from the man's side at the birth of the first child is considered as very important in that it is then that they believe they will ascertain the fatherhood of their member and the innocence of the woman bearing the child. Mitchell writes:

The concern of the interested kin-groups is shown in the child-birth procedure. Birth normally takes place in a hut in the presence of the older female relatives of the woman and the female representatives of the man. The husband's representatives are necessary because the Yao, like many other Central African peoples, believe that an adulterine child will not be born to the woman unless she confesses (kupaca) the name of the genitor. If she persists in concealing the identity of the genitor, they believe that she will die. The man's representatives are there-

¹²⁵Bruwer, African Studies 14 (1955), p. 121, states: "In regard to these ceremonies it is the duty of the two ankhoswe to notify the two matrilineages in connection with all matters and to arrange through senior guardians the necessary action."

¹²⁶Mitchell, The Yao Village, p. 134.

fore able to establish the child's paternity
from the birth-pang confessions of the woman.¹²⁷

While among the Swazi "difficult birth is sometimes attributed to the anger of his ancestors,"¹²⁸ the Yawo maintain that difficult birth is the result of adultery committed by the woman and that the whole difficulty will disappear through confession. An adulterine child is referred to by the Yawo as 'the child of the bush'. But the child of the marriage in the phase of acceptability, the epainogamy, is not so called because it is not considered as an adulterine child, it is not, to use the western language, illegitimate.

The fact that the people on the man's side and the woman's side have in concert conducted the marriage negotiations and allowed the couple to begin to live together, giving them a hut to live in is only the first way of their sanctioning of the marriage of the new couple. Secondly, the notification of the occurrence of the pregnancy and especially the issuance of an invitation by the people of the woman's side to the initiation ceremony

¹²⁷Mitchell, "An Estimate of Fertility in Some Yao Hamlets in Liwonde District of Southern Nyasaland," Africa 29 (1949), pp. 299-300.

¹²⁸Kuper, "Kinship Among the Swazi," p. 93.

of the first pregnancy and the participation in the ceremony by the people of the man's side indicate the approval of the marriage by the people of both sides of the couple. Thirdly and more especially the presence of the people of the man's side at the birth of the first child of the marriage at the invitation of the people of the woman's side is a good sign of the recognition and acceptance of the marriage of the couple even prior to its ritual celebration. The phase of acceptability of the Yawo marriage is the first stage where a true marriage, according to the Yawo custom, finds its realization.

d. Rarity of Concubinage in Traditional Yawo Society

Adolf Berger states that concubinage "differs from marriage through the lack of *AFFECTIO MARITALIS* and of the honor matrimonii (the social dignity of a woman living with a man in a legitimate marriage)." For a real concubinage "is a permanent monogamous union of men and women not legally married."¹²⁹ Along the same line, Heinrich Flatten states that "concubinage is a habitual relation between two persons of the opposite sex with sexual intercourse like spouses, but without the appearance of marriage and without

¹²⁹Adolf Berger, Encyclopedic Dictionary of Roman Law (Philadelphia: The American Philosophical Society, 1953), p. 402.

matrimonial consent of marital affection."¹³⁰ People who live in concubinage do not have the intention of binding themselves insofar as one or both may decide to break the relationship at any time.¹³¹ Flatten explains that there is a great difference between concubinage and civil marriage in that in civil marriage a full and true matrimonial consent is many a time and often present. That being the case, he advises the avoidance of the employment of the term concubinage even when it is a question of civil marriage.¹³² On the basis of these definitions, there is no way in which the phase of acceptability of the Yawo marriage could be identified with concubinage, in view of the fact that at this first stage of the relationship the partners and the guardians already intend the creation of a true marriage. By the same token, the phase of acceptability of the marriage cannot be equated with "trial marriage." When the partners begin to live together with the approval of the guardians, their intention is not simply to try. They enter into their relationship with a

¹³⁰Heinrich Flatten, "De Matrimonio Civili Catholicorum", Periodia 67 (1978), p. 218, "Concubinatus est habitualis relatio inter duas personas diversi sexus cum commercio sexuali ad instar coniugum, sed absque specie matrimonii et absque consensu matrimoniali seu affectu maritali." [My translation].

¹³¹Ibid., p. 219.

¹³²Ibid.

serious intention of creating a family. If sometimes the marriage fails, it is not because they started their relationship with the idea of trying, rather it fails just in the same way as other marriages including the Christian marriage fail. Fortunately, these marriages proceed, in the majority of cases, to the next stage. This is demonstrated, as we shall again point out later on, by the fact that in some parishes from 75% to 95% of the marriages which began with the phase of acceptability wind up by being blessed in church. The phase of acceptability of marriage, the epainogamy, is never considered as reprehensible, wrong or sinful by the people, but simply as the way customary marriage must begin.

As a matter of fact, genuine concubinage where there is no intention of marriage is a very much dreaded practice among the Yawo. It is for this reason that the man in charge of the sorority-group (mbumba), the guardian, tells his sisters, "do not have intercourse in the bush because it will finish your children."¹³³ This means that such a conduct will result in the deaths of children. In fact it is believed that it can have fatal consequences on other

¹³³Mitchell, The Village, p. 151; John Gwengwe, Kukula ndi Mwambo, (Growing According to Culture: my translation) (Limbe: Malawi Publications, 1975), p. 115.

people as well, especially the old. The statement applies not only to sisters who are married but also to the unmarried. It applies not only to sexual intercourse in the bush but also to marriages which are not recognized by the people, marriages without guardians (angoswe). Now a genuine concubinage in a village is almost impossible. Because of the fear of the deaths we have just referred to, if a woman brings a man into the village without passing through the proper channels, people will want to know, as soon as this is discovered, whether the man intends true marriage or not. If he wants marriage it will be the responsibility of the guardian to inform the people on the man's side about their cock which is lost in his village, as we have discussed above in the second method of marriage negotiations. If the man does not intend marriage he will be chased away from the village before he can do more harm to the members of the sorority-group (mbumba). For this reason and for other reasons, as Mitchell observes, genuine concubinage tends to be regularized in the early stages of the Yawo marriage. He states:

This formalization of marriage is encouraged by Yao beliefs concerning the danger of sexual activity. This is based on the belief that sexually inactive people, particularly the very old or the very young, will contract a dread disease called ndaka if they come into contact with sexually active people. When new sexual activity is introduced into the village the sexually inactive must be protected with medicine against ndaka. A couple who do not regularize

their relationships by arranging their sureties to meet are likely to be named by a diviner as being responsible for the deaths of the young children and old people in the village.

These beliefs reinforce more pragmatic pressures to regularize the relationships between a couple. From a man's point of view the meeting of the marriage sureties establishes the legality of the marriage. This means that after the sureties have met and the man has been formally welcomed into the village his uxorial rights are secure. His claim for a compensation should some other man commit adultery with his wife, are then safeguarded, for the first point which the court will raise in such a case is whether the marriage sureties had met. A marriage without sureties, Yao elders told me, was merely friendship, and an action for compensation because of adultery under these circumstances was sure to fail in court.

From the woman's point of view there are both mystical and pragmatic difficulties in her position if the arrangement with the sureties is delayed. The mystical dangers she is exposed to arise partly out of the belief that promiscuous sexual intercourse may result in prolonged and difficult parturition and partly out of the knowledge that if her child falls ill she may find it difficult to get her husband's people to cooperate in the divination of the cause of the illness. Effective divination of a child's illness requires the cooperation of both its mother's and its father's people, and if the marriage is not properly established, there will be difficulties over the divination.¹³⁴

¹³⁴ Mitchell, International Journal of Comparative Sociology 3 (1962), pp. 36-37. In his The Yao Village, p. 112, Mitchell has this note on the mysteriously contracted disease called ndaka: "Briefly it is a disease characterized by oedema which affects those who are sexually inactive when they are suddenly brought into contact with a person or an object which he has touched, after having intercourse. The people most affected are the young and the old, i.e., those who cannot have sexual intercourse. Those who are capable of intercourse are
(Footnote Continued)

The whole question hinges upon whether or not the marriage has the approval of the guardians (angoswe). A marriage without the guardians (angoswe) is mere friendship. In practice, however, such a marriage would hardly take place in a traditional village, considering the innumerable and, as far as the Yawo are concerned, insurmountable problems it would involve. Moreover, strictly speaking, mere friendship is a relationship which is less than betrothal in view of the absence of the promise to marry. When the friendly relationship grows to become a betrothal, the couple still continue to be called friends but now there is an added element in the form of a promise to marry. Traditionally, both in mere friendship and in betrothal, guardians are not involved and no cohabitation would take place in the village. The people from the woman's group would not allow a man to live in their village for long without informing the people on the man's side. Apart from the fear of the mystical disease described above, they would risk being accused of kidnapping by the people of the man's group. Worse still, if the man died in the village before his people were officially informed of his stay in the woman's village, the people on the woman's side would be accused of murder by

(Footnote Continued)

expected to have ritual intercourse with a stranger and so fortify themselves against this dread disease."

the people of the man's group. This is why as soon as the man's presence in the village has been brought to the notice of the woman's guardians (angoswe), the latter hasten to inform their counterparts on the man's side. Thus, on the basis of all the reasons we have attempted to give in this section, it is abundantly clear that it would be difficult for a couple to live in genuine concubinage in a traditional village. On the other hand, we must emphasize that the phase of acceptability of the progressive marriage of the Yawo people is neither mere friendship nor simple betrothal nor concubinage nor mere trial marriage. The phase of acceptability is an epainogamy, a marriage in its first stage in which the guardians (angoswe) are actively involved and which is "societally supported, praised, and sanctioned."

An example where the practice of concubinage by a member of the Yawo society could be said to be possible is when a man goes out of the country in search for work. During the time of his stay in the foreign country, he may find a woman who will act as a wife. His intention is not to marry her, and so he does not inform his people about his marriage. The marriage does not therefore have guardians (angoswe). In some cases, it might even be that he has a real wife back in his own country and would not like his people to know about his concubinage. In this

case, the chances for affecting the young and the old with the mysterious disease are remote. In isolated cases of this nature, the possibility of genuine concubinage cannot entirely be ruled out.

Let us end this discussion by quoting an interesting definition given by Webster's Third New International Dictionary. It defines concubinage as "cohabitation of persons not legally married; esp.: a continued association between a man and a woman for such purpose, being under certain primitive systems a socially acceptable relation the offspring of which are neither bastards nor heirs of the male partner."¹³⁵ From what we have said above, the reader will by now realize that this is not in reality the definition of a genuine concubinage, rather it fits well into what we have described as epainogamy or the phase of acceptability. It is interesting to note that the dictionary correctly states that the offspring from the so-called concubinage are not called 'children of the bush' or bastards. This is precisely because the marriage is not regarded as concubinage by the people. As for the question of inheritance, the dictionary is referring to patrilineal

¹³⁵Webster's Third New International Dictionary (Springfield, Mass.: Meriam Webster Inc., 1981), s.v. concubinage.

societies where the child inherits from its father. In the matrilineal society of the Yawo, the privileges of inheritance for the offspring are by no means unfavourably affected. As a matter of fact, even if it were 'a child of the bush', its privileges of inheritance would remain intact.

e. The Question of Bride-Price

The discussion of bride-price, in this context, arises simply from the fact that there are some people who tend to believe that the usage of bride-price is a common feature among the people of the African continent. They affirm the necessity of some form of payment for the validity of marriage. L.J. Chimango states: "There is always some payment which is essential for a valid customary marriage. Various names for this are used, but it is always there."¹³⁶ We tend to hold the opposite view. While it is true that a great number of patrilineal societies have the custom of bride-price, the same cannot be affirmed of many, if not all, matrilineal societies, among which the Yawo society is one.

¹³⁶J.L. Chimango, "The Marriage Laws of Malawi," Seminar on Christian Marriage: 11th-15th November, 1974, p. 7, (unpublished).

With reference to the matrilineal society of the Chewa, Bruwer denies the dependence of the stability of marriage upon bride-price: "Marriage stability predominantly rests on the ritual significance of the agreement since the passing of valuable possessions as a customary subscription to a marriage is absent."¹³⁷ Marriage in a Chewa society "is characterized by the absence of valuable possessions passing from the wife receiving to the wife providing matrilineage." Any gifts that might be mutually given are merely "tokens of good will" and hardly possess any "legal significance."¹³⁸ Similarly, G.M. Marwick states that "among the Cewa there is no transfer of goods or cattle to balance the asymmetrical movement of the groom to the bride's matrilineage."¹³⁹ In fact some tribes of patrilineal societies envy the Chewa custom in which the payment of bride-price is not necessary for the validity of marriage, in view of the fact that nothing is lost in the event of divorce.¹⁴⁰ In the past, the Chewa demanded that the son-in-law render labour service to the parents-in-law as

¹³⁷Bruwer, African Studies 14 (1955), p. 122.

¹³⁸Ibid., p. 115.

¹³⁹Marwick, African Studies 17 (1958), p. 151.

¹⁴⁰Marwick, Sorcery in its Social Setting, p. 179.

part of the marriage negotiations. But this should not be interpreted as bride-price, rather it was a probationary period during which the man had to prove his ability to care for his future wife.¹⁴¹

As for the matrilineal society of the Yawo, Mitchell repeatedly affirms the absence of any bride-price as part of their marriage negotiations. He regards it as one of the most striking features of the customary marriage of the Yawo people "that the relationship between the two matrilineal groups involved is set up without the exchange of any bride-wealth or the performance of labour service by the young man."¹⁴² Despite the fact that "a few small gifts are usually made to a man's mother-in-law" which are not reclaimed in the event of divorce, "there is no marriage-payment" as such among the Yawo.¹⁴³ It is partly in this absence of marriage payments that the Yawo are "unlike the patrilineal peoples of Southern and Northern Africa."¹⁴⁴ In a similar vein, W.A. Norton writes: "I have

¹⁴¹Bruwer, African Studies 14 (1955), p. 115.

¹⁴²Mitchell, International Journal of Comparative Sociology 3 (1962), p. 35.

¹⁴³Mitchell, "The Yao of Southern Nyasaland," pp. 326-327.

¹⁴⁴Mitchell, The Yao Village, p. 163.

in my notebook an entry about the Yao, near Lake Nyassa, that they get their wives burre!" Further on he explains the Swahili term: "The burre! 'for nothing', represents the astonishment of scorn which so foolish a custom would excite among the non-Yao."¹⁴⁵ According to Yao custom, it is considered as a demonstration of courtesy always to bring some gift, such as a chicken or a goat, when you are paying a visit to someone. This is much more so when the purpose of your visit is to ask for a favour from the person you are visiting. So it is that if the people of the man's side bring some gift to the people of the woman's side during the marriage negotiations, they do so in order to abide by the custom, but it must not be interpreted as a payment. Such a gift is never reclaimed at the break-down of the marriage insofar as it is not a bride-price.

2. The Phase of Ratification

After the Yao progressive marriage has passed through the phase of acceptability, it now enters another phase which we have decided to call the phase of ratification. The phase of acceptability does not have any particular ceremony, apart from the criss-crossing movements of the

¹⁴⁵W.A. Norton, "Customs of Central and South Africa," Journal of the African Society 1914-1915 (reprint, 1963), p. 82.

guardians (angoswe) of the new couple for their meetings concerning the marriage negotiations. It is in the phase of ratification that the Yawo perform the rite of their customary marriage. Incidentally, it is also the phase which western social anthropologists as well as missionaries erroneously believe to be the beginning of a true marriage. But this gross error stems from the fact that they tend to judge the African marriage according to their cultural standards, ignoring the equally valid norms which the Africans have set for what they consider to be a true marriage. At any rate, in this subsection of the phase of ratification, we wish to discuss about this rite of the marriage and its significance in the society of the Yawo people.

a. The Marriage Rite

One would imagine that the most important part of the marriage ceremony would be the exchange of consent by the partners as is the case with the western marriage. To one's great surprise, one will find out that consent to marriage, important though it is, does not play the prominent part that is assigned to it by the western marriages. The Yawo believe that if, with all the numerous meetings by the guardians during the marriage negotiations as well as the fact that on this day people are gathered together to perform the rite of their marriage, these same

people are still not sure whether the couple wish to be married, so that it remains necessary that questions should be put to them to ascertain whether or not they wish to be married, then it is too late that the consent should be made on this day. This is not the day for extracting consent from the candidates. The time of the marriage negotiations was the proper time when the question of consent should have been settled. The Yawo would consider it literally ridiculous to begin to think of the question of consent at this eleventh hour in the process of the marriage.

If consent does not have a place in the marriage ritual, in what does the ceremony consist? To begin with, let it be pointed out that as a matter of fact the ceremony is not called the marriage ceremony, rather the Yawo call it 'the tying together, or the binding together, of the guardianship'. This takes place on the day when the guardians (angoswe) hold a ritualized meeting as opposed to the previous meetings for marriage negotiations where the performance of any rite was entirely absent. From the name of the ceremony, it is clear who constitute the main participants in the ceremony. While the partners in the marriage may take part in the ceremony, the main participants are the guardians (angoswe) from both the man's and the woman's side. Thus, before we answer the

question as to what the marriage ceremony consists in, a brief description of what these guardians (angoswe) are is in order.

All societies attach great importance to the institution of marriage, but the way by which this importance is shown differs from society to society. One way by which the Yawo people display the importance of marriage is by the number of guardians (angoswe) they assign to each marriage. There are two types of guardians (angoswe) for each marriage. Both the woman's side and the man's side provide a junior guardian (ngoswe), whom the Yawo call 'beater down of dew'. The image is derived from the man's "beating down the dew from the grass early in the morning as he is on his way to handle difficulties which have arisen in the marriage in which he is responsible."¹⁴⁶ These two junior guardians (angoswe) constitute the most active members of the whole group of guardians (angoswe) of any marriage. Then there are two senior guardians (angoswe), whom the Yawo refer to as the "log that lies at

¹⁴⁶Mitchell, International Journal of Comparative Sociology 3 (1963), p. 36; Idem, The Yao Village, p. 177: Mitchell states: "He is called mkupamame, beater down of dew. He is pictured as a young man, who is vigorous about his daily tasks and who is waiting before the dew has evaporated in the morning, at the door of couples who have difficulties. He is essentially the 'one who walks about'."

the doorway" or "the recumbent log."¹⁴⁷ One is provided by the man's side and the other by the woman's side. The image of a "recumbent log" is that "of a wise old man who cannot move around too easily, but who sits at the doorway of his hut ready to give advice and information" to the junior guardians.¹⁴⁸ These four people constitute the whole membership of the guardians (angoswe) each marriage in a Yawo society must have. The junior guardians (angoswe) are usually the brothers of each of the partners, while the senior guardians (angoswe) are the maternal uncles of each of the couple. These are the people who were involved in the marriage negotiations for the phase of acceptability. These are also the people who, together with their clients, the husband and wife of the new marriage, will be involved in the marriage ritual as the main participants.

On the day of the ceremony, these people gather together in the village of the new wife for the occasion. Mitchell describes the ceremony that takes place on this day in the following terms:

¹⁴⁷ Mitchell, The Yao Village, p. 177.

¹⁴⁸ Ibid.

At the marriage-witness ceremony, flour that has been especially pounded for the occasion is cooked into porridge by female relatives of both sides, one pot being prepared by each side. The man's group in addition brings a cockerel which is slaughtered and prepared as a relish and the bride's group kills and prepares a hen. When the food is ready it is formally exchanged, the bride's people eating the cockerel and the suitor's people eating the hen. This exchange of food symbolizes the exchange of the members of each group and this is often vocalized in a short speech made after the ceremony in which each first marriage-surety representing his kin-group proclaims that they have each gained a member. At the same time the couple is warned that all differences in their married life are to be referred to the marriage-sureties. After this ceremony the parties disperse to their villages....¹⁴⁹

The day for the performance of the marriage ceremony is not the day when the couple commence living together. By now, they may already have a child or more, or the wife may at least be pregnant, for the marriage already gained its formalization during the time of its negotiations.

¹⁴⁹Mitchell, "The Yao of Southern Nyasaland," p. 325; G. Meredith Sanderson, A Dictionary of the Yao Language, s.v. chingoswe, describes the marriage ceremony thus: "A ritual meal partaken by the senior ngoswe of both wife and husband, ratifying the marriage. There are two iselo of ugali, prepared respectively by women of the two clans (mawele) and each ngoswe provides a fowl for relish (the husband's, a cock; the wife's, a hen), each side eating the food of the other." Torday, Africa 29 (1929), pp. 272-273: "Among the Wayao the sponsors, ngoswe, of the bridegroom and the bride eat porridge ceremonially together and break the back of a fowl as the sign of the contract of marriage. In some parts the sponsors or sureties, of the husband kill a cock, while those of the bride kill a laying hen."

What occurs on the day of the marriage ceremony is simply the ritualization of that formalization. The ceremony ratifies the marriage not so much in the sense that it sanctions it, but rather in the sense that it confirms the marriage that has been in existence all along with the approval and sanction of society. In this sense, therefore, we do not believe that the Yawo marriage ceremony can be termed rite of passage¹⁵⁰ first, because the passage has already been made through the marriage negotiations, secondly, because the rite is not in fact, concerned with the bride and bridegroom, rather it is concerned with the guardians (angoswe) with their respective sorority-groups (mbumba). Since the ceremony is the ritualization of the prior formalization through the marriage negotiations, the statement made by Mitchell, the expert on the Yawo people, is rather confusing and requires clarification. Mitchell states:

These marriage-sureties come into the picture as soon as the couple decide to marry. They meet formally early in the negotiations and decide on a day on which the man may ceremonially come to eat his first meal with his wife's sureties, and so start living "officially" in the village.¹⁵¹

¹⁵⁰Jeffreys, African Studies 10 (1951), pp. 153-154.

¹⁵¹Mitchell, International Journal of Comparative Sociology 3 (1962), p. 36.

Mitchell is correct when he speaks of the guardians' (angoswe) early entrance into the marriage negotiations of their clients. The Yawo refer to this as 'the meeting of the guardians' (angoswe) or they would say, 'the guardians have or have not met'. This meeting is formal and therefore official. Mitchell, then immediately adds that they "decide on a day on which the man may ceremonially come to eat his first meal with his wife's sureties and so start living 'officially' in the village." From this one gains the impression that the decision is made at one of these meetings of the guardians (angoswe), which would be false. After the meeting of the guardians, the couple begin to live together already, and this cohabitation is official, though not ritualized. The ceremony of the communion meal taken by the guardians (angoswe) together with their clients occurs long after official cohabitation has commenced. Mitchell's confusion stems from his unawareness of the presence of the phase of acceptability in the marriage of the Yawo people, with the result that he has fused this phase with the phase of ratification to which the Yawo refer not as 'a meeting' but rather as 'the tying or binding together of the guardianship'. It is therefore equally incorrect to state that in the absence of the ceremony "the union is not looked upon as a legal marriage and no claim can be made by the husband against an

adulterer,"¹⁵² while it is true to affirm the absence of marriage in the absence of the guardians (angoswe). As for the possibility of a claim in the event of adultery, we can only respond by saying that if a claim is a possibility in the case of adultery by the betrothed and if the adultery is recognized as such in this case, how much more is the claim a possibility with regard to the phase of acceptability where the couple are officially and formally though not ritually married.

b. The Significance of the Yawo Rite of Marriage

Like the marriage ceremony of the Kpelle¹⁵³ the Yawo ceremony is characterized by its simplicity and brevity in contrast to other events such as the initiation ceremonies. It is a private affair which after it had taken place, very few people would know of its occurrence. It is not an event to which people are invited. During its occurrence, there are no songs, there are no dances, there are no festivities of any kind. The chief participants are the guardians, and not the marriage candidates despite the fact that the latter may apparently join in the taking of the meal. The main event of the ceremony is the taking of the

¹⁵²Mitchell, "The Yao of Southern Nyasaland," p. 326.

¹⁵³Gibbs, American Anthropologist 65 (1963), p. 563.

meal which is differentiated from other meals in the manner in which it is taken: the exchange of the two basket plates of food coming from each side, so that one group eats the food prepared by the other. The hen prepared by the woman's side is eaten by participants of the man's side, while the cock prepared by the man's side is eaten by the participants of the woman's side. The taking of the meal together is itself a sign of friendship between the participants. Thus, the sorority-groups (mbumba) of the man and the woman become friends through the guardians as their representatives.

The Yawo's concept of marriage is not merely the union between the husband and wife, but also between the husband and the wife's people on the one hand and on the other between the wife and the husband's people. Hence the Yawo saying, 'he who marries one marries all'. But even more especially, marriage is conceived of as the unification of the two sorority-groups (mbumba) expressed by anthropologists as extended families or clans or matrilineages etc. The marriage between the two individuals generates an alliance between their people. The unification of sorority-groups (mbumba) was a great advantage especially at a time when tribes regarded one another as potential

enemies,¹⁵⁴ in that one might decide to attack the other at any moment. But where sorority-groups (mbumba) are on friendly terms, marriage was also entered into by the respective members for the intensification of the already existing ties of friendship even through the practice of infant betrothal. Thus "a Yao woman hearing that some friend of hers is pregnant will arrange that if a girl be born, her son shall marry her friend's daughter."¹⁵⁵ Herein lies the distinct social advantage of exogamy in that it makes "people forge wide networks of alliance between different family and clan groups."¹⁵⁶

Just, as we become what we eat, so too those who eat the food from the woman's side become of the woman's group and those who eat the food from the man's side become of the man's group. The two groups become relatives. To be sure, the condition of being relatives began at the conclusion of the marriage negotiations when the man and woman were made husband and wife by the guardians (angoswe). But the marriage ceremony has the function of

¹⁵⁴René Luneau, "Les chemins de la noce," Spiritus 60 (1975), p. 232.

¹⁵⁵Torday, Africa 29 (1929), p. 281.

¹⁵⁶Shorter, African Culture and the Christian Church, p. 160.

ritualizing that condition. Thus, each member of the woman's sorority-group (mbumba) is related to each member of the man's sorority-group (mbumba). This implies that besides the fathers, mothers, brothers, sisters, uncles, grandfathers, grandmothers, etc. a member may have in his or her sorority-group (mbumba), he or she also has through marriage relatives of the same nomenclature in the other sorority-group (mbumba). However, these relationships through marriage do become unwieldy and confusing, coming as they do under the principle "that the relative of one's relative is one's relative."¹⁵⁷ At any rate, once the relationship has been acquired, it is sempiternal under the principle that "relationship-in-law does not rot."¹⁵⁸ This is true even in the case where the dissolution of the marriage has occurred: the relationships perdure. In the words of Monica Wilson, "the affinal relationship between their families" is never dissolved.¹⁵⁹ It is equally true

¹⁵⁷Gluckman, "Kinship and Marriage Among the Lozi of Northern Rhodesia and the Zulu of Natal," p. 188. Marriage among many African tribes unifies not only the spouses but also the extended families of the spouses, so that each member of one family is related to all the members of the other's family. We have loaned Gluckman's words expressing this idea with reference to the Lozi and the Zulu in so far as it also expresses what occurs among the Yawo.

¹⁵⁸Schapera, Married Life in an African Tribe, p. 301.

¹⁵⁹Wilson, "Nyakyusa Kinship," p. 123. Relationships created through marriage acquire sempiternity among many
(Footnote Continued)

in the case of the death of one of the partners. Avoidance relationships which existed before the divorce or the death of one or both partners continue just as do the joking relationships. Nothing is changed between the two sorority-groups (mbumba) through divorce or the death of the partners as far as their unification is concerned, although divorce may tend to diminish it. To be sure, the continuance of these affinal relationships has the advantage of preventing the revival of the prior potential hostilities. The enemies of one sorority-group (mbumba) remain the enemies of the other, and in the event of war one group will cooperate with the other against the common enemy. The cooperation which existed previous to the death of any of the spouses or to the dissolution of their marriage, in matters such as funerals, initiation ceremonies, ceremonies for the remembrance of the dead and other important events, is maintained.

c. Some Duties of the Guardians (angoswe)

After the ritualization of the assimilation of the man and his people into the people of the woman's group, on the one hand, and on the other, of the assimilation of the

(Footnote Continued)

African tribes. There are many ways this sempiternity is expressed. Wilson's words with respect to the Nyakyusa have been borrowed, in that they describe what also the Yawo experience.

woman and her people into the people of the man's group, there arrives the time for the instructions given to the couple. The man is told to be serviceable and respectful to the people in the wife's village, and that he must take care of his wife in all her needs, refraining from beating her. The wife in turn is told to respect her husband, giving him warm water for bathing. She is also told that 'a wife must not look at the face of her husband but at his belly', implying that a wife must possess the perspicacity of recognizing when a husband is hungry and prepare food for him accordingly. The couple are told to learn to settle their differences by themselves whenever possible instead of publicizing them needlessly. However, when this is not possible, they must refer the difficulties and differences in their married life to the guardians (angoswe). It is in this context, that it becomes necessary that we examine the duties of the guardians (angoswe) towards their clients.

By now the reader will realize that the persons who are in charge of the sorority-groups (mbumba) in Yawo society and those who take charge of the marriage of a member of their group are more or less the same. While the Yawo employ two different terms to refer to them in accordance with the two responsibilities, I have, for lack of a better term, referred to them in both responsibilities

as 'guardians', insofar as their responsibilities over marriages is simply a continuation of the responsibilities over the sorority-group (mbumba).¹⁶⁰ Just as the guardian in the sense of a man in charge of the sorority-group (mbumba) is the protector, defender, and helper in all matters social and juridical¹⁶¹ so too is the guardian in the sense of the man in charge of a marriage. Since the members of the sorority-group do not remain young for a long time, marriage is in fact "the most frequent context in which his duties to and responsibilities for his sorority-group emerge," beginning already from the marriage negotiations.¹⁶² A man's duties towards his sorority-group (mbumba) pure and simple emerge mainly when the smooth relations of the day to day life among his members themselves or between his members and those of other sorority-groups are disturbed. When any of his members appears in court his presence is necessary and the payment of the required fine there is his responsibility. The guardian as the man in charge of his sorority-group (mbumba) "has important duties in mourning ritual, for he has to be chief mourner at his sisters' or his sisters'

¹⁶⁰Mitchell, The Yao Village, pp. 176-177.

¹⁶¹Bruwer, African Studies 14 (1955), p. 119.

¹⁶²Mitchell, The Yao Village, p. 141.

children's deaths," and the provision for the necessary medicines for the ceremonial purification to end the mourning period is also his responsibility.¹⁶³

While it is true that there are many areas over and above those just mentioned above where a man has to fulfill his duties as the guardian of his sorority-group (mbumba), the occasions in which he is called upon to fulfill his duties as a guardian in the sense of the man in charge of the marriages of the members of his sorority-group (mbumba) are more frequent. We can only mention some. The most obvious case is when the couple disagree in their marriage. If the man is the supposed offender, the wife goes to report him to his guardian (ngoswe) and if the wife is supposed to be the offender, the man goes to report her to her guardian (ngoswe). Each of the couple goes to the guardian (ngoswe) of the other because he has the power to advise or reprimand his own member.¹⁶⁴ If the culprit is uncertain, then the junior guardians (angoswe) of both

¹⁶³Mitchell, "The Yao of Southern Nyasaland," pp. 319-320; I. Richards, "Some Types of Family Structure Amongst the Central Bantu," African Systems of Kinship and Marriage, eds. A.R. Radcliffe-Brown and Daryll Forde (London, New York, Toronto: Oxford University Press, 1967), p. 234.

¹⁶⁴Mitchell, International Journal of Comparative Sociology 3 (1962), p. 37.

sorority-groups (mbumba) together with their clients meet in the wife's village in an attempt to settle the couple's differences. Another important area in which the guardians (angoswe) are involved is when any member of the new family falls sick. The importance of their role in this respect cannot be overemphasized. In a society imbued with traditional beliefs and in which the use of the hospital is reduced to a minimum, the consultation of diviners is considered as the sole alternative method whereby the sick can be helped. The right persons for such consultations are none other than the guardians (angoswe), and they dare not refuse to perform this task without risking being accused of sorcery.¹⁶⁵ The Yawo also believe that most illnesses and certainly sudden illness are the result of the evil machinations of some close relative, who wishes the death of the victim so that the corpse may be enjoyed at a necrophagous feast with his fellow sorcerers,¹⁶⁶ or so that the repayment of the meat of another sorcerer in which he partook at a prior necrophagous feast may be made. Since sorcerers can be discovered only by a diviner, there arises the need to consult him when someone falls ill. Therefore the illness of a man, or woman or child in the

¹⁶⁵Mitchell, "The Yao of Southern Nyasaland," p. 327.

¹⁶⁶Ibid., p. 323.

family is reported by the junior guardian (ngoswe) of the woman to his counterpart on the man's side and they both discuss the possibility for the consultation of a diviner. The diviner will tell them the nature of the illness, its cause, i.e., the person who has bewitched the sick victim, and may provide or prescribe the proper medicine for it. The payment of the woman's and the child's prescription is the responsibility of the woman's guardian (ngoswe), while that of the man will be made by his guardian (ngoswe). We have already mentioned the duties of the guardian (ngoswe) towards the children of his sisters when we were discussing the relationship of the father to his children.

The duties of carrying out the marriage negotiations of his clients, of settling the differences of the clients as husband and wife, of looking after the welfare of the children of the sister or niece, and of consulting the diviners, can occupy most of the time of the guardian (ngoswe) inasmuch as many of these duties occur so often. These duties also show the total dependence of the couple upon their guardians, underscoring, at the same time, the point that man and wife remain full members of their respective sorority-groups (mbumba). Referring to the Chewa, Bruwer puts it this way:

The functioning qualities of the system of guardianship in marriage does not differ from

that within the matrilineage itself, and is indeed only a continual projection of the system within the matrilineal group. It stresses the inalienability of matrilineage members and furthermore clearly emphasizes the impossibility of total independence of a marriage unit as far as the two matrilineages of husband and wife are concerned. Neither husband nor wife can sever matrilineal ties through marriage, and they are never excluded as far as the unkhoswe institution within their corporate matrilineages is concerned. The husband still remains within the functioning orbit of his own matrilineage, whereas wife and children¹⁶⁷ come under the auspices of her own matrilineage.

3. The Phase of Establishment

a. Offspring as the Completion of Marriage

While the progressivity of African marriages has been sufficiently recognized by the anthropologists, the same sufficiency with regard to the achievement of the identification of their various stages cannot be affirmed. It is true that African marriages by no means follow the same pattern everywhere to allow of a safe generalization. However where an attempt at the identification of their specific stages has been made, the interpretation of these stages has at times been deplorably faulty. The case in point in respect of the Yawo marriage is the first stage of this marriage which we have called the phase of acceptability, whereas we have termed the marriage in this

¹⁶⁷ Bruwer, African Studies 14 (1955), p. 119.

phase epainogamy. The Yawo epainogamy has been given various names, all of a pejorative nature, which we have dismissed as mere misnomers arising from a misunderstanding of the people's culture.

While such is the case with respect to the identification of the various stages of African marriages, anthropologists have reached unanimity, to which we too might tolerably subscribe, on the question of offspring as the completion of marriage. Speaking of the Kgatla, Schapera states that "no marriage is considered really complete unless it produces offspring."¹⁶⁸ E.E. Evans-Pritchard says of the Nuer that despite the performance of the various ceremonies for the various stages of the marriage, "it is only when a man's bride has born him a child and tends his hearth that she becomes, in the Nuer sense, his wife."¹⁶⁹ Evans-Pritchard seems to believe that it is with the birth of the first-born child that the completion of the marriage is achieved. This is why everybody is in anxious expectation of its birth: while

¹⁶⁸Schapera, Married Life in an African Tribe, p. 106.

¹⁶⁹E.E. Evans-Pritchard, "Nuer Marriage Ceremonies," Africa 18 (1948), p. 40. Most African marriages attain their establishment through the birth of offspring. Evans-Pritchard's words describing Nuer's marriages have been borrowed in so far as they express what is also believed among the Yawo.

the husband and wife want a child, the wife's parents and kin wait for it because they cannot "dispose of the cattle of marriage till the first-born completes the union."¹⁷⁰ The same author says elsewhere that "the Nuer do not consider the union to be complete till a child has been born of it, even though spouses may continue to cohabit where the union proves to be unfruitful."¹⁷¹ Referring to the Lovedu, Eileen Jensen Krige writes that "only when a child is born is the union reckoned complete and the wife considered as belonging to the husband's lineage," whereas prior to the birth of the first child "a married woman lives in her own home village."¹⁷² Here too, the completion seems to be effectuated by the birth of the first-born child. Moreover, in this statement allusion appears to be made to a form of the phase of acceptability

¹⁷⁰Ibid.

¹⁷¹Evans-Pritchard, "Nuer Bride-Wealth," Africa 16 (1946), p. 247. Although the establishment of a marriage occurs with the birth of offspring, and although the marriage without offspring is liable to break up, there are other couples who decide to continue cohabitation despite the absence of offspring. This is true of the Yawo people. Evans-Pritchard's words referring to the Nuer have been borrowed to express this fact among the Yawo.

¹⁷²Eileen Jensen Krige, "Woman-Marriage with Reference to the Lovedu - Its Significance for the Definition of Marriage," Africa 44 (1974), p. 12. Eileen Jensen Krige's words regarding the establishment of marriage through the birth of offspring among the Lovedu are quoted in so far as they indicate how widespread among the Africans the practice is.

peculiar to the Lovedu during which the woman lives in her home village pending the birth of the first child when she will be in a position to live in the husband's village. Some form of cohabitation must be taking place, in the meantime, otherwise the birth of the child would not occur. In connection with the same idea of completion, Radcliffe-Brown has this to say:

A most important stage in the development of the marriage is the birth of the first child. It is through the children that the husband and wife are united and the two families¹⁷³ are also united by having descendants in common.

We feel somewhat comfortable with the concept of completion of marriage through offspring, insofar as it does not appear to attribute the validity of marriage to the birth of a child. In other words, it does not advocate the exclusion of the validity of marriage in the absence of offspring. The birth of offspring is occurring in a marriage that is already enjoying its validity. What the birth of offspring does is to corroborate the unity of the partners and that which has been created between the two sorority-groups (mbumba) or extended families. Another reason why the concept of completion can be espoused is

¹⁷³Radcliffe-Brown, "Introduction," p. 49.

that it recognizes the progressivity of marriage, because, while it does not introduce a new validity to the marriage, it does introduce a new dimension of growth, development and intensity into it.

The anthropologists whom we have quoted above also stress the importance of the first child. We do not intend to quarrel with the accuracy of their affirmation as we are not acquainted with tribes to which reference is being made. However, as far as the Yawo are concerned, the so-called completion does not occur simply with the birth of the first child. If anything, the birth of the first child is only the beginning of the completion but is not the full completion. It is the beginning of the completion in that it generates hope for the attainment of the completion. While it is certain that one birth does not constitute the completion of the Yawo marriage, it is difficult to say how many children would be required to attain completion. One can only hazard a guess for there is no fixed number for all marriages. In any case, where the required number of a particular marriage has been reached, one sometimes hears joyful comments of the brother of the wife made to her husband in the following terms: "this sorority-group (mbumba) is truly growing: you certainly have done a great job, brother-in-law. This marriage is indeed established. This sister of mine is now

truly yours, brother-in-law." The Yawo employ the term establishment in place of completion. Just as when a young tree which has been transplanted becomes established it is not easily felled and destroyed by the wind, so too when the marriage has reached establishment, it acquires stability. It is on this basis that we have preferred the term establishment to completion, and have accordingly called the last stage of the Yawo marriage the phase of establishment. It goes without saying that establishment is not attained through dead children. It is therefore the birth and presence of a number of children in a marriage that constitute establishment in Yawo society.

b. The Guardians (angoswe) and the Stability of the Yawo Marriage

The Yawo recognize the permanence of the institution of marriage. They are aware that marriage is not a temporary commitment which they can abandon at will. They know that once you have entered a married life you are supposed to remain in the marriage as long as possible. The Yawo are also aware of the difficulties that are involved in marriage and of the impossibility for the couple to always solve all their problems on their own. This is why they have placed marriage under the charge of guardians (angoswe). To ensure that the couple receive the help they need in their difficulties, the Yawo have provided two junior and two senior guardians (angoswe). If

the junior guardians (angoswe) cannot be contacted the senior guardians (angoswe) can be approached instead. Customary law sees to it that they do their duty and there are sanctions for failure to fulfil their responsibilities. The guardians (angoswe) are not, therefore, mere witnesses interested only in the event of the ceremony of marriage and not in the marriage itself, for marriage itself takes place in the day to day life of the couple. On the contrary, the Yawo provide guardians (angoswe) who are interested in the life of the marriage and who are prepared to protect, defend and foster it to the best of their ability. The Yawo believe that such interested people can be found from among the close relatives who will live with the couple during the time of their married life. They are the people to whom the couple will have easy access and can have recourse to in times of their marital difficulties.

The guardians (angoswe) have an interest in the stability of the marriage of their clients, especially those on the woman's side. Their caring attitude towards the marriages of the members of the sorority-group (mbumba) wins them prestige from the people of the surrounding area. By virtue of their prestige it will be easier to attract men to marry the women in his sorority-group (mbumba). Otherwise people fear to marry a woman whose guardian is

known to be uncaring. By having his women members married, the guardian of the sorority-group (mbumba) is relieved from some of his responsibilities towards his women members: he does not, for instance, have to build houses or granaries for them in that such responsibilities now devolve upon the women's husbands. The increase of members of the sorority-group (mbumba) through stable marriages is another advantage. In this connection the words of Thomas P. Doyle are apposite. He writes: "More often in primitive and ancient societies marital stability was based on the needs of the community, custom, religious taboos and political and economic considerations."¹⁷⁴ Thus, the Yawo marriage stability is derived from the custom of guardianship; from the economic advantage acquired through the husbands on whom the economic responsibility of the guardians (angoswe) has devolved; from the political power which the guardians (angoswe) gain by the increase of the membership of the sorority-group (mbumba) through the husbands. The same increase of membership, especially in the past, catered for the needs of the community to defend itself.

¹⁷⁴Thomas P. Doyle, "The Individual Right to Marry in the Context of the Common Good," Studia Canonica 13 (1979), p. 252.

With reference to religious taboos as a factor for the stabilization of marriages, an example from adultery might be cited. There is no doubt that adultery is one of the practices that disturb the stability of marriage in society. Among the Yawo, the punishment for adultery was death even in the case of the seduction of a betrothed girl.¹⁷⁵ While the practice was very reprehensible, the measures taken for its redress must have apparently been deemed to be too drastic. Probably it is this situation that led to the introduction of the taboo of the mysterious disease (ndaka) which we have been able to mention in a different context. Be that as it may, the Yawo now strongly believe that adultery committed by a husband when his wife is pregnant is fatal to the mother and child alike or will make her parturition difficult.¹⁷⁶ In order to save the mother and the child, the husband must confess his adultery after which the guardians must find a man who will perform a ritual intercourse with the husband's wife. This man is called 'a hyena' (fisi), who is paid for his services. If a woman commits adultery while her husband is

¹⁷⁵Torday, Africa 29 (1929), p. 256; Gwengwe, Kukula ndi Mwambo (Growing According to Culture), p. 123: "If a husband catches his wife in the act of adultery, he is authorized to kill both the man and the wife." [My translation].

¹⁷⁶Marwick, Sorcery in its Social Setting, p. 66.

on a journey where he is engaged in some hazardous undertaking such as hunting, or smelting iron, she will ruin the enterprise besides endangering her husband.¹⁷⁷ If the woman in that condition has intercourse with her husband as he returns home or puts salt in his food, the man will die of the mysterious disease,¹⁷⁸ unless he has previously taken some medication. If the woman commits adultery while she is pregnant, she is committing suicide with difficult parturition unless she confesses her adultery.¹⁷⁹

There is no doubt that the system of guardianship plays a major role in the stabilization of Yao marriages, and it is fortunate that western influence has not been able to abolish it. The stability of marriages would have been in a worse situation in the absence of the guardians (angoswe). While the internal means for the stability of marriage, namely, the love of the partners themselves is

¹⁷⁷Ibid., p. 67; James George Frazer, The Golden Bough (London, Toronto: MacMillan and Company Ltd., 1967), p. 31.

¹⁷⁸Marwick, Sorcery in its Social Setting, p. 67.

¹⁷⁹Ibid.; Torday, Africa 29 (1929), p. 283: "A Yao woman who misbehaved while her husband was on a journey was sure to cause his death; so would a woman who after committing adultery put salt into his food. It was, however, especially the life of the child which was endangered by the sin of either parent."

paramount, there are certain marital difficulties which, in the pattern of the Yawo society, necessitate the cooperation of the guardians (angoswe). We have seen that belief in taboos makes its own contribution to the stabilization of the Yawo marriages, yet even here the services of guardians (angoswe) are a necessity. But it must be added that the guardians (angoswe) do not function in isolation from the rest of the members of the sorority-group (mbumba). The rest of the members are also interested in the marriage of one of their group and they give the necessary advice wherever possible, apart from that of the grandmother. The guardian (ngoswe) can deputize some of his responsibilities to any competent member, who is only pleased to help. In fact, there are some functions in which the man in charge of the sorority-group (mbumba) may not participate, such as helping a woman during parturition or preparing food at a funeral and so on. In short, the whole sorority-group (mbumba) have to contribute something to the stability of the marriage of their member and those who refuse to cooperate are reprimanded or somehow punished.

We dare not make any comparisons between patrilineal and matrilineal or any other system as to which has more stable marriages than the other. In patrilineal societies, the bride-wealth system functions as the external

stabilizing factor,¹⁸⁰ whereas in the matrilineal societies the system of guardianship operates as its external stabilizing factor. Other societies utilize different means for the stabilization of their marriages. All these systems have their successes and their failures: each has a good percentage of stable marriages on the one hand, and on the other each has a sizeable percentage of divorces. It is on these grounds that we prefer to refrain from asserting the superiority of any one system to any other, as far as the stability of marriage is concerned.

c. The Dissolution of the Yawo Marriage

Despite the fact that the Yawo believe in its permanence, despite the provision of guardians (angoswe) for its support and despite the contribution to its stability made through the belief in taboos, the Yawo marriage by no means claims absolute indissolubility. The Yawo recognize that there can arise marital problems which are of such a nature as to warrant its termination. On the grounds of the multiplicity of such problems, it is impossible to furnish their exhaustive list. Nevertheless,

¹⁸⁰Wilson, "Nyakyusa Kinship," p. 133. The Nyakyusa who are patrilineal are referred to here in order to contrast the factors which contribute to the stability of marriage among the patrilineal societies and the matrilineal societies, like the Yawo.

a presentation of a few highlights in this regard will suffice.

Torday states that "among the Wa-Yao, 'actual adultery was in the old days very rare'...."¹⁸¹ Apparently this was the time when the penalty for such a misbehaviour was death. Although, when the penalty was reduced to the confession of the misbehaviour and the fear of the mysterious disease, many people observed the taboo for fear of making a mistake of coming into contact with the innocent party before the confession was made and medication taken, adultery may have now occurred with greater frequency than before. In such a case the innocent party would sue for divorce despite the possibility of preventing death through the confession and the taking of the proper medication, because the innocent party would fear that the guilty party might one day come into contact with the innocent party unwittingly prior to the medications.

While in some cases the belief in taboos contributed to the stability of marriage, in other cases it was conducive to its breakdown. For instance, the Yawo believe

¹⁸¹Torday, Africa 29 (1929), pp. 281-282.

that if intercourse takes place during certain events, certain harm would be caused to certain people. Thus, people are supposed to abstain from intercourse during the first three days of mourning the death of a member of the sorority-group (mbumba). It is only on the fourth day, after the performance of ritual purification, that sexual relations are resumed. "But the closest matrilineal relatives such as the mother and uterine siblings, remain continent for the remainder of the mourning period, which is about 36 days."¹⁸² The disregard of this taboo would result in the contracting of the mysterious fatal disease by the people with whom the culprit came into contact or in whose food the culprit put salt. The same is true when a member of the community is suffering from a very serious disease such as small-pox. The contact with the sick person by the culprit would cause death. During the pregnancy of a daughter, especially in the seventh month of pregnancy when the day of parturition is uncertain, the mother must abstain from intercourse, otherwise she will not be able to help in the delivery of the child. The non-observance of this taboo would result in the death of the child through her contact with it. When a child is on a journey, the parents who remain at home are not supposed

¹⁸²Mitchell, The Yao Village, p. 137.

to have intercourse for a stipulated time, otherwise some form of misfortune would befall the child. As long as a boy is away in the bush for the initiation ceremony which takes one or two months, the parents must abstain from inter- course, or his circumcision will not heal and he may eventually die.

There are hundreds of more taboos of this type. Those just described come under the principle of 'hotness' which we have had the occasion to mention when we were discussing the rarity of concubinage in the traditional Yawo society. Persons who have this 'hotness', i.e., who are sexually active affect those who have 'coldness', i.e., who are sexually inactive, like the old and the young. But apparently, in some cases, the 'hotness' itself renders other people 'cold' regardless of whether they are the young and the old or not, that is to say, even those who are not sexually inactive can become such through the sexual activity of another person. This 'hotness', which may be acquired through both legitimate and illegitimate sexual activity, produces its harmful effect through some form of contact which may be mystical or physical, such as by the simple touch, or through sexual intercourse or the putting of salt in the food which the 'cold' person happens

to eat.¹⁸³ In all these cases, the immediate result is the contracting of the mysterious disease which in turn invariably results in death unless the proper medication is taken in time.

Now the events in which married people are prohibited to have sexual intercourse can come in such a succession that just before the expiration of one period of continence another such event occurs. It is not unknown that such events come in succession sometimes for a period of one or two years, thus impeding the resumption of sexual relations in a given family or families. Schapera appears to be cynical when he plays down the people's observance of these taboos. He states: "All people are expected to refrain from sexual relations until they have 'cooled' down. It is difficult to say how faithfully the rule is observed in practice."¹⁸⁴ It is true that there may be some people who neglect the taboos. On the other hand, it must be realized that the people's belief in these taboos is genuine and their fear real, so that it can be affirmed that in many cases, if not in the majority of cases, the taboos are observed. This is especially true of the female sector of

¹⁸³Marwick, Sorcery in its Social Setting, p. 66.

¹⁸⁴Schapera, Married Life in an African Tribe, p. 197.

the community. Now the observance of such prohibitions for such a long time can become an insupportable burden on many men so that they decide to divorce their wives. In this sense, many taboos are an obstacle to the stability of marriages.

It will be recalled that mention has been made of the necessity of the guardians' (angoswe) presence at a divination seance. The reason for such seances is the discovery of a sorcerer who may have caused the illness or death or any other misfortune to a certain member of the community. The practice of consulting diviners stems from the belief that death or serious illness or misfortune are almost invariably the result of the machinations of a sorcerer or of a violator of taboos. In his Yawo text, Abdallah writes:

For as far as we, the Yawo are concerned, when a person gets sick or dies, we say that there is someone who has bewitched the victim: it is not for nothing. To be sure, we know that God has taken the person, but God merely permits, in fact there is someone who ¹⁸⁵has bewitched the victim. That is our mentality.

¹⁸⁵Abdallah, WaYao'we (We the Yawo People), p. 21. [My translation].

Now if the diviner, through his divination, charges a person of practicing sorcery on a victim, and if that person is married, the innocent party together with his or her guardians (angoswe) will sue for divorce.

Another important reason that could lead to the dissolution of marriage has to do with the question of infertility. Abdallah states that if a man who goes to marry in another sorority-group (mbumba) is found to be lazy or impotent, he is simply chased away.¹⁸⁶ A marriage that has no children is easily dissolved. Whenever infertility in a marriage becomes a problem for the partners, the guardians (angoswe) meet, discuss the question and declare: 'there is no longer any marriage here'. The question of infertility among the Yawo as well as among many other African tribes cannot be over-emphasized. We have just discussed that the phase of establishment of the Yawo marriage is effectuated by the birth and presence of offspring in the marriage. The absence of children in a marriage owing to the sterility of any of the partners, miscarriages, early death of children

¹⁸⁶ Ibid., p. 11; cf. R.E.S. Tanner, "The Relationship Between the Sexes in Coastal Islamic Society: Pangani District, Tanganyika," African Studies 21 (1962), p. 81: "The infertility of large number of coastal marriages must also be a factor in their instability."

jeopardizes the establishment of the marriage just as it does when there are not many or enough children in it. One child in a family is certainly not enough. Such an absence constitutes a sufficient ground for divorce as the marriage is not considered as having attained its establishment. Moreover, one of the reasons for the practice of the phase of acceptability is the ascertainment of the possibility of a fertile marriage.¹⁸⁷ It is precisely for this reason that the guardians (angoswe) cooperate in the effectuation of this phase. After all, an infertile marriage is not the cause for concern for the partners alone, the guardians (angoswe) too are interested in a fertile marriage because this is the sole means for the increase of the membership of the sorority-group (mbumba). As Mitchell observes, the wife and the guardians (angoswe) all want children but for different reasons. He writes:

The virility of the husband is of immediate concern to both the wife and her marriage sureties but for different reasons. From the wife's point of view it is through it that she can have children legally and without fear of mystical retributions. From the point of view of the sureties it is by the children he begets that the lineage group increases. If children do not appear reasonably soon after marriage both the wife and her sureties begin to be worried. Sooner or later this leads to gossip and then to the open broaching of the subject. At this stage the man's sureties are brought in and if the

¹⁸⁷ Mulago, Revue du Clergé Africain 26 (1971), p. 49.

infertility cannot be laid on either of the spouses directly the sureties will consult a diviner. It is no longer an affair between the couple alone but now involves their descent groups as well.¹⁸⁸

When the case has reached this height, the marriage can be said to be on a shaky ground. If conditions do not change for the better, whatever the outcome of the divination, the marriage is most probably going to end in divorce. In this case the purpose of the divination would simply be to identify the culprit, as far as their belief in the power of divination is concerned.

The absence of offspring as a reason for divorce is also used in a different way. A wife may sue for divorce on the grounds of desertion when her husband has been away in a foreign country as a labour migrant. Despite the fact that he writes letters and sends her money, he will still be accused of neglecting his wife in that his duties are wider than letters and money: "he is supposed to provide his wife with children." She might use one of two ways to get the attention of her husband's marriage guardians (angoswe). One way is for her to find a lover. This will incite her husband's guardians (angoswe) to sue the lover

¹⁸⁸Mitchell, International Journal of Comparative Sociology 3 (1962), p. 39.

for compensation on behalf of the absent husband while at the same time divorcing the wife on his behalf. The second way is to directly sue for divorce without the involvement of any lover. Because of the husband's desertion which will be regarded as his impotence the court will be persuaded to "sanction a divorce so that the woman may remarry and satisfy her natural desire for children."¹⁸⁹ Here divorce is obtained not because of desertion as such, but rather because of what desertion brings about, namely the absence of offspring or the infertility of the marriage through desertion.

Thus offspring are the establishment of marriage, so that a marriage without offspring can easily be dissolved. However, this does not imply the invalidity of the marriage. "Sterility does not necessarily invalidate the marriage."¹⁹⁰ There exist marriages in which there are no offspring, but they do not thereby lose their validity. The point is that a distinction must be made between the

¹⁸⁹Ibid., pp. 39-40; cf. Mitchell, Africa 19 (1949), p. 299: "Where a man is impotent, however, the woman may divorce him on this ground, though she usually takes a paramour and forces her husband to an action for damages which automatically leads to a divorce because it is the usual practice in these cases for the court to ask the woman if she wants to be divorced from her husband."

¹⁹⁰Jeffreys, African Studies 10 (1951), p. 170.

validity and the completion or rather the establishment of marriage. When the number of children by which the marriage attains its establishment is arrived at, it does not imply that previous to that number the marriage was invalid. It cannot, for instance, be affirmed that because for the Yawo one child does not constitute the establishment of the marriage, the marriage is in the meantime invalid and that cohabitation is meanwhile sinful. Even among tribes where one child constitutes the establishment of the marriage, it can not be affirmed that prior to the birth of that child the marriage was invalid and that cohabitation was during that time sinful. Such an affirmation would erroneously identify establishment with validity. There can be validity without establishment but there cannot be establishment without validity.

Therefore we agree with Aylward Shorter when, in reference to what we have called the phase of acceptability, he writes: "This process may be interrupted if the partners prove incompatible, or if the essential conditions such as fertility, appear not to be present." But we tend to disagree with him when in the next sentence he adds that "this interruption is not regarded as divorce or dissolution, but simply as the recognition that a marriage has been attempted but has not come into

existence."¹⁹¹ Here he seems to imply that the existence of the valid marriage is dependent on the presence of its fertility. Such a statement is an easy way out for Christians who believe in a metaphysical or absolute indissolubility of marriage, in that the way is left open towards its dissolution on the ground that the marriage is non-existent. Under the ruling of the 1917 Canon Law, it would come under the canon of an unfulfilled future condition. Since we are speaking of non-Christians, this principle could be applied by way of analogy especially when such people wanted to remarry after their conversion to Christianity. At any rate, as far as we are concerned, despite its infertility, the marriage in the phase of acceptability, is valid but not established, and the interruption is nothing less than divorce.

The marriage in the phase of acceptability for the Yawo, and the marriage prior to the first birth for other tribes whose marriages are established by the birth of the first-born child, cannot be reduced to non-marriages on the grounds that they are easily dissolved. The fact of their easy dissolution does not suggest the absence of their validity. It simply means that the marriage prior to its

¹⁹¹Shorter, African Culture and the Christian Church, p. 183.

establishment has a different way for its dissolution. The fact that a baby is killed with less force than an adult does not imply that the baby has not yet got real humanity. It only means that at this stage of its development this kind of force is sufficient for its destruction. By the same token a marriage prior to its establishment requires less force for its dissolution, without, however, implying the absence of its validity, whereas greater force will be required after its establishment.

Obviously, reasons for the dissolution of marriage in general are countless. Here an attempt has been made to present only some of the cultural reasons deemed sufficient for the dissolution of the Yawo marriage. Now we turn to the manner in which traditional marriage may be dissolved, in the sense of the agents required for the execution of divorce.

A customary marriage that has passed through the phase of ratification enjoys an intrinsic indissolubility whereby the partners are in no position on their own to carry out the dissolution of the marriage. However, it does not enjoy an extrinsic indissolubility in that the proper

authorities can effectuate its dissolution.¹⁹² It is interesting to note that the court, as far as the Yawo customary marriage is concerned, does not constitute the proper authority. It is true that "the court awards compensation to the aggrieved husband but does not end the marriage."¹⁹³ Rather, the proper authorities are the guardians (angoswe). When it has been decided that there is no other way except that the marriage should be dissolved, the guardians (angoswe) from both sides come together to perform the rite of the dissolution of marriage in the presence of their clients, the village headman and some members of the opposing sorority-groups (mbumba).¹⁹⁴ The rite is simple: it consists in the giving of some form of token. Divorce can be initiated either by the husband or his people on the one hand, or, on the other by the wife or her people. But regardless of the initiator of the divorce, the giving is done by the husband's guardians (angoswe).¹⁹⁵ The token given took the form of an arrow in

¹⁹²Hervé, Manuale Theologiae Dogmaticae, Vol. 4 (Paris: Breche et Pagis, 1936), p. 516, n.460.

¹⁹³Mitchell, International Journal of Comparative Sociology 3 (1962), p. 40.

¹⁹⁴Sanderson, A Dictionary of the Yao Language, p. 126, s.v. liwale.

¹⁹⁵Mitchell, International Journal of Comparative Sociology 3 (1962), p. 40.

the past, but now money may be used or even a simple straw in that the token is merely symbolical.¹⁹⁶ Despite the simplicity of the rite, it has great significance. No marriage can take place prior to its performance by the guardians (angoswe). The latter have the heavy responsibility to perform it in that failure to do so is believed to lead to the introduction of the mysterious disease. For the marriage which is entered into prior to the dissolution of the first one is adultery, and adultery, as we have seen, renders the culprit 'hot' and 'hotness' in turn, can cause death to innocent people. Thus, even the marriage which ends through the death of the wife cannot be considered as dissolved until the performance of the rite by the guardians (angoswe) has occurred.¹⁹⁷ The difference in the case of death is that there is an added ritual that must also be performed by a man invited by the guardians (angoswe). The rite consists in having intercourse with the widow. It is first performed onanistically outside the hut and then another intercourse inside the hut performed normally. A widow, after the death of her husband, is considered to be impure. This impurity is removed by the performance of this ritual intercourse by the man who is

¹⁹⁶Sanderson, A Dictionary of the Yao Language, p. 126, s.v. liwale.

¹⁹⁷Marwick, Sorcery in its Social Setting, p. 176.

again called 'a hyaena'.¹⁹⁸ Prior to these rites the woman could not marry without causing the death by the mysterious disease, because in this case too the new marriage would be adultery resulting in the condition of 'hotness' in her.

Just as the marriage in the phase of ratification occurred through the rite of ratification, so too, a rite is required for its dissolution. The rite of ratification concerned more with the guardians (angoswe) than with the partners themselves. By the same token, the rite of dissolution concerns more with the guardians (angoswe). The function of the rite of ratification, besides uniting the two sorority-groups (mbumba), was the bestowal upon the guardians (angoswe) of the responsibilities for the welfare of the marriage, whereas the function of the rite of dissolution is the removal of these responsibilities from the guardians without, however, destroying the unity between the two sorority-groups (mbumba), for, as we have pointed out, the kinship relationships created through marriage 'do not rot', i.e., do not end.

On the other hand, the dissolution of the marriage in the phase of acceptability comes about in a much simpler

¹⁹⁸Sanderson, A Dictionary of the Yao Language, p. 124, s.v. litunu.

way. The marriage came into existence without the requirement of any rite. Similarly, no rite is now required for its dissolution, in that the separation of the partners together with the agreement of the guardians suffice. Nevertheless, the simplicity of the dissolution of the marriage in the phase of acceptability must by no means be interpreted as an indication of the absence of a true marriage. The simple procedure is followed for its dissolution because it is the one that is fitting and proper in the circumstances.

D. THE REALITY OF YAWO MARRIAGE AND FERTILITY

In the subject of the Yawo marriage, the question of fertility is certainly one of its most important elements. It is, therefore, fitting that we dedicate this section to the discussion of its significance as far as the Yawo world view of marriage is concerned. We will examine the question of fertility under the following points: the purpose of marriage, reproduction and the Yawo society, and initiation ceremonies and offspring.

1. Offspring as the Purpose of Marriage

This is not the first time that we have discussed the question of offspring. We have just seen, for instance, that the phase of establishment of the Yawo marriage is attained through the birth and presence of offspring in the

marriage. We have also indicated that the absence of offspring can easily become a sufficient reason for divorce. At the basis of all this is the question of what the Yawo and many other Africans view as the purpose of marriage. As far as Africans are concerned the purpose of marriage is offspring. "An African marries because he wants children - liberorum quaerendorum gratia. The most important part of the value of a woman is her child-bearing capacity."¹⁹⁹ The same applies to the way a woman views a

¹⁹⁹Radcliffe-Brown, "Introduction," p. 51. Even in the western culture marriage seems to have sometimes been defined in terms of fertility. St. Augustine, "Contra Faustum, Lib. 19, c. 26," Patrologia Latina, ed. Jacques-Paul Migne (Paris: 1844-1864), vol. 42, col. 365: "Matrimonium quippe ex hoc appellatum est, quod non ob aliud debeat feminam nubere, quam ut mater fiat." Isidore of Seville, "Etymol., 8, 8, 19," Patrologia Latina, ed. Jacques-Paul Migne (Paris: 1844-1864), vol. 82, col. 366: "Matrimonium quasi matris munium, i.e., officium quod dat mulieribus esse matrem." The Catechism of the Council of Trent, trans. John A. McHugh and Charles J. Callan (Rockford: Tan Books and Publishers, 1982), p. 339: "The word matrimony is derived from the fact that the principal object which a female should propose to herself in marriage is to become a mother; or from the fact that to a mother it belongs to conceive, bring forth and train her offspring." Thomas Aquinas, Supplementum Summae Theologiae q. 44, a.1c: "Matrimony may also be resolved into matris munium, i.e. a mother's duty, since the duty of bringing up the children chiefly devolves on the women; or into matrem muniens, because it provides the mother with a protector and support in the person of her husband; or into matrem monens, as admonishing her not to leave her husband and take with another man; or into materia unius, because it is a joining together for the purpose of providing the matter of one offspring as though it were derived from monos and materia; or into matre and nato, as Isidore says (Etym. 9), because it makes a woman the mother of a child."

man: a man's value is to a great extent dependent upon his child-bearing capacity. In view of the fact that the woman's child-bearing period is limited, they tend to marry as early as possible so as to prolong their child-bearing period during which many children can be born. The majority of remarriages, too, occur during the women's child-bearing period. "Few marriages are contracted after child-bearing ceases."²⁰⁰ This is born out by the survey conducted by Mitchell among the Yawo women, demonstrating the high value they attach to reproduction. He writes:

These statistics, showing the early age of marriage, the early commencement of child-bearing, the high incidence of marriage among women, and the high rate of remarriage during the child-bearing period, all point to the high valuation of reproduction reflected in Yao culture. This is consistent with their social structure, where the major corporate groups are kinship groups and reproduction is the principal method of recruitment to the group. Furthermore, because the standard of living is almost at subsistence level, children do not entail the economic losses they do in Western society. On the other hand, they are expected to support their aged parents when they themselves are economically independent. In other words, there are few factors militating²⁰¹ against reproduction and many in favour of it.

²⁰⁰Mitchell, Africa 19 (1949), p. 298.

²⁰¹Ibid.

When a marriage takes place, the partners and all the people are looking forward to seeing offspring in the new marriage. While personal attraction and personal qualities are taken into very serious consideration, they are in the majority of cases "subordinate to the desire for offspring."²⁰² It is on this showing that "childlessness is regarded as a curse;"²⁰³ infertility "is looked upon as a great tragedy" which frequently becomes the topic for divination.²⁰⁴ Sometimes, as an alternative to the consultation of diviners, "childless women as well as their husbands wish to experiment with their fertility in another union or marriage."²⁰⁵ When childlessness is recognized beyond reasonable doubt to be the result of the wife's infertility, she, for the purpose of avoiding divorce, encourages her husband to marry a second wife.²⁰⁶ Thus

²⁰²Schapera, Married Life in an African Tribe, p. 281.

²⁰³Daniel I. Denga, "Childless and Marital Adjustment in Northern Nigeria," Journal of Marriage and Family 44 (1982), pp. 801-802. Daniel I. Denga's words are borrowed in so far as they also express the sensitivities of the Yawo people.

²⁰⁴Mitchell, International Journal of Comparative Sociology 3 (1962), p. 38.

²⁰⁵Denga, Journal of Marriage and Family 44 (1982), p. 799.

²⁰⁶*Ibid.*

infertility can sometimes become the cause of divorce and in other cases of polygamy.

From the fact that in matrilineal societies children do not belong to the father or to his people, but rather to the mother and her people, it must not be imagined that the intensity of the desire for offspring is experienced only by women and not by men and that men do not mind whether or not they are fertile on the grounds that their children will make no contribution to the increase of the membership of the sorority-group (mbumba) of their origin. On the contrary, men, too, do experience this intensity, because, apart from the fact of the children's matrilocality, their fertility is a matter of personal prestige and no man would like to be known as infertile.

The high esteem the Yawo have for reproduction apparently rules out the practice of abortion and contraception for the reduction of the number of their children. The Yawo do not simply want children but rather many children. Abdallah observes that the Yawo used to have a lot of children: "one woman would have sixteen or seventeen or even more."²⁰⁷ One of the few exceptions to

²⁰⁷ Abdallah, WaYao'we (We the Yawo People), p. 26. [My translation].

the use of contraceptives would be when women wanted to regulate the spacing of children or as Mitchell points out, in embarrassing pregnancies. He states that "abortifacients and contraceptives" are employed by married women "who wish to avoid pregnancies which would be embarrassing" as in the case of "a woman whose husband is a labour migrant."²⁰⁸ Otherwise, the Yawo believe that adulthood is attained through reproduction and childless couples "are treated in a patronizing way by those who have born children."²⁰⁹

2. Reproduction and the Yawo Society

Marriage in the Yawo society is not the concern of the couples alone but the community in which it occurs is also very much interested in it. By the same token, the Yawo do not regard reproduction to be for the satisfaction of the couple alone but also for the advantage of the community, for the advantage of the sorority-group (mbumba). Perhaps, the following paragraph by Mitchell summarizes better the relationship between reproduction and society among the Yawo. Mitchell writes:

²⁰⁸Mitchell, Africa 19 (1949), p. 299.

²⁰⁹Ibid.

But the woman's child-bearing is of wider consequence than her personal satisfaction. The children she bears perpetuate the lineage group to which she belongs and this is of immediate interest to her brothers involved in the struggle for power. The satisfaction of the woman's uxorial rights are at the same time a realization of her brothers' genetrical rights in her. The woman's sureties therefore are interested in more than the relationship between the spouses; it is through the marriage that the numerical increase of their matrilineal descent group is primarily achieved.²¹⁰

The man who derives the greatest advantage from the reproduction of the members of the sorority-group (mbumba) is the brother of the sister who is the guardian in the sense of the man who is in charge of the sorority-group (mbumba) and the guardian in the sense of the man who is in charge of the marriages of his sisters. This is so for the following reason. "A man's status in a Yao community depends on the number of persons that he controls."²¹¹ Again, a man's prestige is acquired through his ability to command a following. In practical terms, this means that a man who has a lot of sisters under his control will easily acquire a high prestige and enjoy an equally high status in the community. Because "once a man has managed to secure control of his sorority-group his most direct means of

²¹⁰Mitchell, International Journal of Comparative Sociology 3 (1962), p. 38.

²¹¹Mitchell, "The Yao of Southern Yasaland," p. 320.

building up a following is through the fecundity of his sisters and their daughters."²¹² The more sisters a man has, the more husbands will come to marry these sisters and the more children will hopefully be born. The end result is that the membership of the sorority-group (mbumba) will grow bigger than ever before. In this way his acquisition of prestige and status is assured. Although "in the past, a man could increase his status in the community by acquiring slaves,"²¹³ his sisters' powers of reproduction were the natural way for his advancement in the community. As a matter of fact today it has become the only way, but one that leads a man from being the guardian of the sorority-group (mbumba) to even a higher status of village headman,²¹⁴ because with a large membership of the sorority-group (mbumba) he can branch off from the main sorority-group (mbumba) and start a new village.

However, the guardian of the sorority-group (mbumba) is not the only person who benefits from the reproductive powers of the sisters and the sisters' daughters. The children born from them run the multifarious errands of the

²¹²Mitchell, International Journal of Comparative Sociology 3 (1962), p. 34.

²¹³Mitchell, Africa 19 (1949), p. 94.

²¹⁴Mitchell, The Yao Village, p. 152.

adults in the village, but most especially, they are asked to put salt in all food prepared by all the women in the village. We have mentioned that salt is dangerous when used by people who have 'hotness', i.e., who are sexually active. The practice of asking children to put salt in all food that requires it arose as a precaution against the mysterious disease which people with 'hotness' can easily cause in other people through the putting of salt in their food. Thus all adult members who are sexually active never put salt in the food they prepare for fear they might be doing so at an improper time and inadvertently cause the deadly mysterious disease. According to their belief, therefore, children are saviours of the village community in this respect. The birth of many boys, especially in the past when the danger of war was always imminent, meant that they would in time form the new recruits for the army to protect and defend the community. Even if they married in an alien village they tended to come back to defend their own village where they spent much of their time, anyway, owing to their matrilineality.²¹⁵ The birth of many girls in the village, on the other hand, meant the enlargement of the sorority-group (mbumba) and the assurance of the continuation of the group. Even illegitimate children, the

²¹⁵Mitchell, Africa 19 (1949), p. 296.

'children of the bush', render the same service to the community as any other child, and are by no means disadvantaged for being illegitimate or made to suffer for the misconduct of their mother. Thus if they are the first-born of their mother they enjoy all the privileges of a first-born child to inherit their maternal uncle's or grandmother's position in the case of a boy or girl respectively.²¹⁶

For all these reasons, reproduction is highly appreciated by the Yawo people to such an extent that any move towards its obstruction is strongly resisted. The Yawo prefer the dissolution of marriage rather than that the powers of reproduction of a wife are impeded from operating through the infertility of a husband. By the same token, in view of the fact that marriage is for the multiplication of the members of the sorority-group (mbumba), virilocality is strongly resisted²¹⁷ on the grounds that it is tantamount to the obstruction of reproduction. The Yawo feel that if virilocality is permitted, the enlargement of the sorority-group (mbumba)

²¹⁶Hillman, Polygamy Reconsidered: African Plural Marriage and the Christian Churches, (Maryknoll, New York: Orbis Books, 1975), p. 91.

²¹⁷Mitchell, The Yao Village, p. 144.

will be jeopardized, in that the children born of a virilocal marriage will settle in their father's village and forget that they belong to their mother's sorority-group (mbumba). We have seen that the exception to this rule is when a man succeeds to the village headmanship of his sorority-group (mbumba). Another possibility for the occurrence of virilocality is in cases where the "wives are past child-bearing,"²¹⁸ because in such cases there is no loss of the means for reproduction, apart from the loss of the one member.

3. Initiation Ceremonies and Reproduction

The idea of reproduction is inculcated upon children's minds right from the time they are very small. Boys and girls play husband and wife, and especially girls are taught how to carry dolls on their backs in imitation of their mothers who carry babies on their backs.²¹⁹ The girls will probably get their first lessons in sexual matters from their grandmothers, as mothers do not teach their daughters about sexual matters.²²⁰ However, formal education in child-bearing is emphasized in the various

²¹⁸Ibid., p. 184.

²¹⁹Abdallah, WaYao'we (We the Yawo People), p. 17.

²²⁰Lawson, African Studies 8 (1949), p. 182.

initiation ceremonies which boys and girls are supposed to attend.²²¹ As a matter of fact, these ceremonies are by and large formal preparations for marriage.²²²

Initiation ceremonies are of several kinds.²²³ However, boys undergo one initiation ceremony, while girls have at least three initiation ceremonies to undergo: the first takes place before puberty, the second for their first menstruation, and the third for their first pregnancy a short time prior to parturition. During these initiation ceremonies, boys and girls learn about the good manners of their culture. These initiation ceremonies are characterized by their total secrecy, in the sense that nothing that occurs during the period of the initiation ceremony is disclosed to the uninitiated. However, one never fails to recognize in the candidates' manners the drastic change which these ceremonies appear to have exercised upon the initiates in the short period ranging from four to eight weeks which they have spent in the bush where the initiation ceremonies are conducted. The

²²¹Mitchell, International Journal of Comparative Sociology 3 (1962), p. 38.

²²²Norton, Journal of the African Society, 1914-1915 (Reprint, 1963), p. 83.

²²³Mitchell, The Yao Village, p. 82; Sanderson, A Dictionary of the Yao Language, p. 275, s.v. unyago.

instructions they receive seem to transform them overnight into adults beyond recognition. This rapid and profound transformation is certainly one of the most remarkable features of the initiation ceremonies. The rapidity in the effectiveness of the instructions seems to excel by far that of the school, considering the length of time the latter takes. Can it be that the attachment of sanctions to each instruction, many of which are of a supernatural or mysterious type, is the cause of their rapid effectiveness? Whatever the reason, the initiation ceremonies exhibit the character of the veritable rites of passage.²²⁴ The rapid transformation in conjunction with the secrecy surrounding the whole initiation ceremony is itself a strong attraction to many possible candidates.

At any rate, besides the instructions on good manners, the other very important topic at the initiation ceremony concerns with marriage and reproduction. This topic is not one that can be discussed casually, and so the initiation ceremony seems to provide a convenient environment. There, boys and girls are taught about the male and female anatomy and how sexual intercourse is performed.²²⁵ In their first

²²⁴Marwick, Sorcery in its Social Setting, p. 236.

²²⁵Informant, 1974.

initiation ceremony,²²⁶ girls are informed of men's preference for a wide vagina inasmuch as a tight one results in painful penetration during sexual intercourse.²²⁷ The girls are, therefore, given lessons on the technique for the enlargement of their vagina.²²⁸ In this regard, Schapera writes:

For this reason many girls, from the age of about sixteen or so, practice systematic dilation of the vagina. They begin by pushing in the tip of the finger, and keep on doing so night after night, until the whole finger enters easily. First only the finger is used, but in time it may be reinforced by a covering of rags or the soft leaves of the mobudu tree, or sometimes two or three fingers are used simultaneously. This practice is so common that it can well be regarded as a standard custom. Its avowed object is to facilitate sexual intercourse.²²⁹

The girls are told that an enlarged vagina does not only facilitate penetration but also parturition, despite the fact that they attribute difficult parturition mainly to the misconduct of either partner in the marriage. In any case, the dilation of the vagina is performed for the sake of reproduction.

²²⁶Idem.

²²⁷Schapera, Married life in an African Tribe, p. 186.

²²⁸Informant, 1974.

²²⁹Schapera, Married Life in an African Tribe, p. 186.

The girls' second initiation ceremony is designed for instructions connected with menstruation. If this ceremony is done in common, it means that some girls will have menstruated at least once already while others will be expecting to in the near future. Their instructions are focussed on their personal hygiene. But the most important point they have to remember is the fact that with menstruation they now become 'hot', i.e. sexually active, and are likely to cause the deadly mysterious disease. This is the time they are told never to sleep with boys, and to put salt in food, as we have already pointed out. With menstruation, they have commenced a critical period of their life during which they can become responsible for the deaths of their own children and of other people especially if they are careless with their reproductive powers.

We have already discussed the third initiation ceremony. We can only add that this is the only ceremony which is done in the village in contrast to the others which are conducted in the bush, a distance away from the village. In virtue of the secrecy characteristic of these ceremonies, children are told to go out for a picknick so

that they do not see or hear what is happening at the ceremonies.²³⁰

The idea of reproduction inculcated upon boys and girls from childhood and through the various initiation ceremonies becomes "a matter of intense personal and social significance."²³¹ It is no wonder that when a marriage proves to be childless, it is easily dissolved. Sterility, especially in women is as good as death itself, while deep sentiment is attached to motherhood. In fact women are distinguished from one another according as they are fertile or infertile.²³² Furthermore, their status is dependent upon the number of times they have born children. The Yawo have different designations for mothers of one, two, three, or four children and for those who are past child-bearing age.²³³ The more children a mother has the greater the chance for "becoming a village founder herself."²³⁴ Women who are infertile cannot do everything the fertile women do: they cannot, for instance, attend

²³⁰ Abdallah, WaYao'we (We the Yawo People), p. 17.

²³¹ Mitchell, International Journal of Comparative Sociology 3 (1962), p. 38.

²³² Mitchell, The Yao Village, p. 134.

²³³ Mitchell, Africa 19 (1949), p. 299.

²³⁴ Mitchell, The Yao Village, p. 134.

the initiation ceremony for the first pregnancy and they cannot help in parturition, to name a few.

E. POLYGAMY AMONG THE YAWO PEOPLE

1. Polygamy as an African Cultural Feature

The discussion of the reality of marriage among the Yawo people will be incomplete if we ignore its polygamous dimension. As a matter of fact, the great majority of the African tribes, if not all, practice polygamy. But perhaps before we proceed any further, it is proper that we define our terms. It is usual to divide polygamy into polygyny and polyandry. The former is defined as the marital union of one husband with several wives, while the latter is defined as the union of one wife with several husbands. These unions can be simultaneous insofar as one marriage is entered into while the previous marriage is still in existence. They can also be successive insofar as the previous marriage has somehow been dissolved. It is also well to note that sometimes polygyny is also called simple polygamy (polygamia simplex).²³⁵ Apparently, it is on this showing that it has become the custom to employ the term polygamy as the equivalent of polygyny. In this

²³⁵Hervé, Manuale Theologiae Dogmaticae, Vol. 4, p. 508, n.450.

discussion, we employ the term polygamy to represent simultaneous polygyny.

The existence of the practice of polygamy by the Yawo people is supported by Abdallah, who, writing in 1919 affirms that in those days polygamous marriages were the preserve of chiefs, while the common people married monogamously.²³⁶ This is an indication that in a Yawo society there were some people who practiced polygamy, though not all. On the other hand E.K. Chikopela strongly denies that "Africans are polygamous by custom...." Nevertheless, his denial seems to be badly weakened by his three examples of its occurrence which he considers as "the only official or condoned polygamy ever known in African society - at least in Eastern, Central and Southern Africa."²³⁷ The first of these examples was the case where "a Chief was allowed more than one wife because of his exalted position." The second example was when a man was provided with a young girl from her parents or relatives to become his wife as a reward for his exceptional good behaviour. The third example was when, in the absence of a bachelor, a married man entered into a marriage of more or

²³⁶Abdallah, WaYao'we (We the Yawo People), p. 26.

²³⁷E.K. Chikopela, "Marriage Commitment," African Ecclesiastical Review 14 (1972), pp. 327-328.

less leviratic type.²³⁸ As a matter of fact, Chikopela has furnished more examples of the polygamy's occurrence in the African society than Abdallah has. But how is it that the former seems to deny the customary nature of polygamy in the African society?

Chikopela's argument against the customary nature of polygamy appears to be grounded in the paucity of its incidence. But such an argument seems to lack the necessary cogency. The fact that the British have only one king or queen at a given time, or the fact that not everybody in Britain is a knight or a lord does not prevent any of these statuses from being a British custom. A numerical argument in this case is not satisfactory. By the same token, George Peter Murdock expresses the unsatisfactoriness of a numerical criterion for polygyny, "since monogamous unions nearly always outnumber polygynous ones at any given period of observation, even in societies where the preference for plural wives is extreme."²³⁹ Murdock attempts to present what he considers to be the criteria for the existence of polygyny. The first criterion is the simultaneity of the plural marriages.

²³⁸Ibid.

²³⁹George Peter Murdock, Social Structure (New York: The Free Press, 1969), p. 27.

"Secondly, all the unions must be genuine marriages, involving residential cohabitation and economic cooperation as well as sexual association." This criterion is designed to exclude concubinage. "Finally, the unions must have the support of culture and public opinion." Excluded by this criterion is "the occurrence of occasional plural unions in defiance of law and custom" as in the western countries. As far as the degree of social sanction is concerned, a society can "be characterized as polygynous if plural unions enjoy superior prestige as compared to monogamy, so that successful males in the society will seek to acquire secondary wives" if they so wish.²⁴⁰ Murdock writes:

Rejecting the numerical criterion, we shall classify a society as polygynous whenever the culture permits, and public opinion encourages, a man to have more than one wife at a time, whether such unions are common or comparatively rare, confined to men of outstanding prestige or allowed to anyone who can afford them....

In a number of societies which are polygynous according to the above definition, monogamous unions may actually be considerably commoner for men of all ages because economic conditions strongly favour them. Only a few unusually energetic or capable men, perhaps, can successfully support two families. In other cases, polygyny is confined largely to chiefs or men of wealth and status, or is limited in other ways. So long, however, as it enjoys superior prestige and is not the exclusive prerogative of

²⁴⁰Ibid., p. 26-27.

a very small status group, it is assumed to be the cultural norm.²⁴¹

Murdock's criteria are apparently realized in every African tribe where the practice of polygamy is prevalent. Even from the examples presented by Chikopela, it is clear that polygamy enjoys superior prestige, since for instance, chiefs are already prestigious people, and the man who had to be given a girl as a reward must have acquired a good reputation for his exceptional good conduct. From all this, it may safely be concluded by affirming the existence of polygamy in African societies of which the Yawo are only one. Polygamy is part and parcel of our culture, and it does not appear to be something to be ashamed of, for the proof of its intrinsic wickedness is hard to come by.

2. Some Reasons for the Occurrence of Polygamy

Societies are not monolithic, rather they are characterized by their dynamism. This is why in the question of their customs they experience mutation and development. Some customs may have outlived their raison d'être, in which case their obsolescence results in their total disappearance. In other cases, the reasons for the

²⁴¹Ibid., p. 28.

existence of a custom may take a new form, so that the custom's survival is dependent upon totally different reasons. Yet in other cases, reasons may accrue to a custom in the course of its history so that its present existence is no longer dependent solely upon its original reasons but also on more recent ones, each of which is capable of bringing about the custom's existence. It goes without saying that a living society will also acquire new customs on the grounds of new circumstances that may have arisen in the meantime. That this should be so is not a cause for surprise, in that culture, in the words of Omoregbe operates "in response to the needs and circumstances" of a people's existential situation;²⁴² or again as Luzbetak puts it: "Cultures are a set of answers for human needs at any given moment of time of any social group".²⁴³

Polygamy is certainly one of the responses to the needs of the African society. It could be that the first reasons that led to the introduction of polygamy were not as many as they are today. Most of the reasons for its

²⁴²Joseph Omoregbe, "Is Polygamy Compatible with Christianity?" Ecclesiastical Review 21 (1979), p. 20.

²⁴³Louis Luzbetak, "Unity in Diversity: Ethnological Sensitivity in Cross-Cultural Evangelism," Anthropology 4 (1976), p. 214.

practice may have come only later on when it was discovered that polygamy could answer to the needs of society. The following are some of these reasons.²⁴⁴

1. It is difficult to identify which of the reasons was the first to introduce polygamy. But strange as it may seem, the first of the reasons was, as Abdallah seems to intimate and as Chikopela points out, a matter of prestige. Prestigious people like the chief were considered worthy of having more wives than one because of their status. But later on, other people considered themselves prestigious enough to benefit from the practice of polygamy. Thus in the end, it was not only the chief's position which was deemed worthy and capable of having more than one wife, but also other people of lesser positions felt they could do what the chief was doing.

2. As time went by, polygamy was not only for the prestigious people, but rather became the means for enhancing one's prestige. The polygamous man was no longer a commoner like the rest of the people who were satisfied with one wife. In this case the polygamous man was not a prestigious person prior to his polygamous marriage but

²⁴⁴Based mainly but not solely on Luzbetak, The Church and Cultures, p. 247.

acquired his prestige through it. Now the "polygamous husband is held in high esteem."²⁴⁵

3. Since the Africans traditionally have a strong desire not only for children but for many children, a way had to be found by which this desire could be fulfilled. It may be that this is the way he can increase the membership of his patrilineality, while in a matrilineal society the wife's desire for children might be stronger than that of the husband, in that the increase of her sorority-group is achieved through them. Despite the fact the husband in matrilineal society is a stranger and has no real power on his children, the sole fact that these children are produced by him is a source of indescribable satisfaction to him, and if there is a way to have more children he will utilize it. Therefore both in patrilineal and matrilineal societies, husbands seek polygamy to satisfy their desire for more children.

4. When a husband's desire for children cannot be satisfied owing to the wife's infertility there are two possibilities: the husband can achieve the object of his desire by taking another wife from whom he can have

²⁴⁵Jan P. Heijke, "Marriage in Africa," Pro Mundi Vita: Dossiers, Dossier n. 36 (1986), p. 10.

children or he can just abandon the wife through divorce. But the wife's abandonment will result either in her reduction to a life of perpetual celibacy, as other men will not like to marry a sterile woman for the same reason that she suffered abandonment from the first husband;²⁴⁶ or she may be forced into a life of a prostitute with the result of the spread of the attendant venereal diseases.²⁴⁷ Polygamy comes to the rescue of the women who find themselves in such a plight.

5. The spacing of children in a family furnishes another reason for the practice of polygamy. This was true especially in the past when the occurrence of war was imminent at any moment. Women had to be ever ready to flee away with their children when war broke up. Now, it was contended that no woman "could flee carrying two children, the elder child must be able to run before she was burdened with another." But even during peace time, most Africans do not have children every year. A space of three years between births is in the majority of the cases considered

²⁴⁶Francis-Marie Lufuluabo, "Mariage coutumier et mariage chrétien indissoluble," Revue du Clergé Africain 24 (1969), p. 361.

²⁴⁷Hillman, "Polygyny Reconsidered," African Ecclesiastical Review 10 (1968), p. 277.

proper.²⁴⁸ The observance of an abstinence from sexual relations for such long periods can understandably become intolerably burdensome on the husband. It is in circumstances of this type that a resort to polygamy seems to offer a satisfactory solution, in that he can continue his sexual relations with the second wife while the first wife is in her waiting period.

6. Spacing is not the only occasion when abstinence from sexual relations is demanded by custom. The observance of taboos is another sufficient reason for resorting to polygamy, as far as the African is concerned. We have already mentioned that the incidence of taboos that demand sexual abstinence can be so overlapping that periods of up to two years can elapse before the next sexual intercourse can occur. Polygamy saves the husband from such "a period of sexual abstinence"²⁴⁹ in view of the fact

²⁴⁸Wilson, "Nyakyusa Kinship," p. 115. Wilson's ideas describe what is also common practice among the Yawo.

²⁴⁹Schapera, Married life in an African Tribe, p. 185; Daryll Forde, "Double Descent Among the Yako," African Systems of Kinship and Marriage (London, New York, Toronto: Oxford University Press, 1967), p. 290: "There is a particular inducement to take a second wife very shortly after the first if the latter has borne a child, for a child is normally suckled for two years during which intercourse between the parents is forbidden. In such a situation the second wife is often a previously unmarried girl."

that he is not bound by the taboo in the village of the second wife.

7. Since the African marriage is not simply the union of the partners but also the unification of the two sorority-groups (mbumba) of the partners' origin, some husbands enter into polygamous marriage in order to achieve this unity between matrilinealities. Such unity is beneficial to both groups because it implies the destruction of potential hostilities, so that in case of war one family can rely on the support of the other, over and above the mutual cooperation in the important events and activities occurring in each other's villages. It was partly in virtue of this unifying character of the African marriage that chiefs made it a point to marry as many wives as possible from the surrounding tribes. The chief usually chose wives from tribes that were militarily strong for the deliberate purpose of making sure that he would not be attacked by any of these tribes now that they had become relatives. On the other hand, their support, in the event of his going to war with other tribes, was guaranteed.²⁵⁰

²⁵⁰ Nya Kwiawon Taryor, Impact of the African Tradition on African Christianity (Chicago: The Strugglers' Community Press, 1984), p. 119.

8. Infertility is also conducive to another type of polygamous marriage known as the sororate. This is the case where a sister of a husband's wife is presented to him as a second wife who can bear him children in view of the infertility of the first wife.²⁵¹ Such a marriage is usually a "junior sororate"²⁵² in the sense that the sister who is given to the husband as an additional wife is younger than the first wife. There is a possibility of this type of junior sororate in a matrilineal society, but it will heavily depend upon the exceptional good conduct of the husband. On the other hand, the occurrence of this junior sororate in a patrilineal society is more than a mere possibility. In view of the fact that the husband of a patrilineal society paid the so-called bride-price in order to be able to control the children born of the union, the contract will be considered unfulfilled in the event of the wife's infertility, and he is likely to demand his bride-price back. As the repayment may turn out to be more difficult to make, the wife's people will decide to give the husband the younger sister of his wife to bear children for him.

²⁵¹Jeffreys, African Studies 10 (1951), p. 170.

²⁵²Murdock, Social Structure, p. 29.

9. The levirate in this context may somewhat be the reverse of the sororate just described above. The possibility of its occurrence in a matrilineal society is almost nil. But in a patrilineal society this type of marriage which will also be a "junior levirate"²⁵³ is a common occurrence. This is the case where the husband and his people have paid a bride-price but before the wife has any children the husband dies. The brother or classificatory brother of the deceased would marry the brother's wife so that she can bear children for the husband's people. The children born in the levirate belong not to the begetter or genitor, but to the deceased, the pater,²⁵⁴ the latter "being the sociological father and the genitor the biological father."²⁵⁵ Here the polygamous marriage occurs obviously on the hypothesis that the genitor is already married. In this case, the genitor is also performing a religious act towards the deceased which is itself a source of prestige, while at the same time he provides security to the widow.

²⁵³Ibid.

²⁵⁴Schapera, Handbook on Tswana Law (London: 1938), p. 165. Levirate marriages are commoner among the patrilineal societies like the Tswana than among matrilineal societies. It is, however, one way whereby polygamy can take place among Africans.

²⁵⁵Majumdar and Madan, An Introduction to Social Anthropology, p. 117.

10. Polygamy is also resorted to for the provision of labour force. In the words of Daryll Forde, "plural marriage is an undoubted advantage in maintaining a large farm every year, for weeding the farm, cultivating secondary crops...."²⁵⁶

11. Allied to the question of providing labour force is the question of the reduction of labour. Sometimes a wife may feel that she has so much to do that she requires a helper. In such a case, "it is not unusual for a woman to ask her husband to take a junior wife - particularly a sister - to help with the chores."²⁵⁷ Here emerges a sororate of a different type as far as the reason for its occurrence is concerned.

12. Traditionally African women do not constantly mingle with men. In some societies, this separation of the sexes may be so severe that a man's wife may be consigned to a life of a monk, unless the husband marries another

²⁵⁶Forde, "Double Descent Among the Yako," p. 290. Daryll Forde describes a situation which would be commoner in the patrilineal than in the matrilineal societies.

²⁵⁷Kuper, "Kinship Among the Swazi," p. 94. The situation described by Kuper here regarding the Swazi is commoner in the patrilineal than in the matrilineal societies. But the possibility for a wife to ask a husband to take a second wife for some other reasons cannot be ruled out even among the matrilineal societies.

wife who will provide companionship to the first wife. However this situation appears to apply more to patrilineal than matrilineal societies.

13. Personal reasons, such as incompatibility, can lead the husband to a polygamous marriage. A husband who has lived in a village for a long time and has born so many children and is liked by the people in the village may prefer to marry a second wife rather than take the drastic step of divorcing his first wife. The time during which he makes his rounds with the second wife will give him a breathing space and contribute to the survival of the first marriage, which might not have been the case if the second wife had not been married.

Sometimes lust is given as the reason why husbands practice polygamy. Polygamy for pure lust in societies where there are so many other reasons to compel husbands to take a second wife, is something hard to imagine. One of the above reasons will in the majority of cases be the primary motive for the husband to marry polygamously before the question of pure lust ever arises. Again, to affirm that husbands marry several wives because women constitute a greater number than men seems to assign a motive for polygamy which does not occur in the minds of the people concerned. Paul Bohannon believes that "polygamy does not

mean that there are more women than men in the society."²⁵⁸ Even if there were actually more marriageable women than men, to assert that men marry second wives because they deliberately wish to offset this imbalance is apparently to assert more than is warranted. If anything, the question of imbalance will be secondary or merely coincidental.

Apart from those reasons that exclusively pertain to the patrilineal societies, such as those connected with bride-price, the rest of the above mentioned reasons find their application in the matrilineal society of the Yawo people. On the other hand, there is a religious reason that encouraged the practice of polygamy among the Yawo people, namely Muhammedanism. Apart from the fact that polygamy is a cultural feature of the Yawo people, their adherence to Muhammedanism most probably gave a good deal of impetus to their polygamous practices, so that more people became polygamous than ever before.

3. Conclusion

Polygamy is certainly one of the cultural features of the African marriage just as it was of the Jews in the Old Testament. Polygamy is not only sanctioned by society, but

²⁵⁸Bohannan, Social Anthropology, p. 105.

it is even highly esteemed and the men who practice it are equally highly esteemed. In the majority of cases it will be men who will initiate its occurrence. Nevertheless, there are occasions when women take the initiative. To be sure, not all women want their husbands to take a second wife, but the reverse is also true: not all men wish to practice polygamy. However, when the question of polygamy arises in a marriage, it does not come as a surprise to the wife. In fact during the women's initiation ceremonies, for instance, when they are taught the numerous taboos which involve abstinence from sexual relations, the candidates are told not to be surprised when they hear of their husband's intention to take a second wife, because it is for the purpose of gaining their freedom from these restrictions.²⁵⁹ Women do not feel that they are degraded by the practice despite the special status that the first wife enjoys. The practice of polygamy has, as far as the African is concerned, a lot of advantages which are not found in monogamy in that it answers to many needs of society. It is only through monogamy's ability to fulfil these needs or through the disappearance of these needs that the hope for the disappearance of polygamy can be

²⁵⁹ Gwengwe, Kukula ndi Mwambo (Growing with Culture), p. 115.

entertained.²⁶⁰ It can only be briefly stated that the arrival of such a day can only be in the distant future, if at all.

F. THE REALITY OF YAWO MARRIAGE AND SOCIAL CHANGE

We have made an exploration of the reality of marriage as it is traditionally lived. From the dynamic nature of society, it can be expected that some of the marriage's customs may have changed or at least modified, whatever the extent of the changes or modifications might be. The purpose of this section is simply to attempt to briefly answer the question whether or not there have been any changes or modifications in some areas of the customary marriage of the Yawo society as a result of the people's contact with the western culture. We will, therefore, examine some possible changes or modifications in the area of marriage; in the functions of the important figure of the Yawo society, the brother, who eventually becomes the maternal uncle; and in other areas where the western influence has occurred.

However, what must be taken into account from the outset is the fact that most of the changes affect only a

²⁶⁰Luzbetak, The Church and Cultures, p. 247.

tiny minority of the people. As may be gathered from the following discussion, often these changes affect the educated or the people who work in towns. But the educated or the people who work in towns already constitute a minority. To be sure, not all the educated and not all who work in towns practice polygamy or neolocality, for example.

1. Changes Occurring in the Area of Marriage

We have emphasized the importance of the guardians (angoswe) in the effectuation of the Yawo marriage. No marriage that is recognizable can occur without their involvement. It is through them that the marriage in the phase of acceptability, the first stage of the Yawo marriage, which we have also called the epainogamy, becomes possible. The marriage in the phase of acceptability is facilitated by the fact that the people live in their sorority-groups (mbumba) in the villages. Any man who intends to marry a woman will not be able to live with her in her village and escape for long the notice of the people in the village. Such a notice will lead to the arrangement of the marriage in its early stages.

But with the coming of urbanization where the community life of the village is absent but where individualism prevails, the traditional phase of

acceptability is put in jeopardy. In towns and cities, men and women from all over the country meet and decide to marry. However, before they can inform their respective guardians (angoswe) who are living in villages sometimes hundreds of miles apart, they begin to cohabit. In a few cases this cohabitation may be genuine concubinage in that the couple have no serious intention of committing themselves to a true marriage.²⁶¹ But in the majority of cases, their cohabitation is intended to represent a true marriage despite the omission of the traditional procedures owing to the fact that their proper guardians (angoswe) live long distances apart, making it difficult for them to meet for the marriage negotiations. Here emerges a modification of the traditional phase of acceptability.

The society is also experiencing a neo-polygamy that differs from the traditional polygamy in that it neglects the involvement of the guardians (angoswe) who are essential for any marriage. This happens mostly with the educated people and especially those who live in towns. Because of the possibility of purchasing land, there emerges a further possibility of the neolocality²⁶² of

²⁶¹Cyriaque Obamba, "Marriage in Stages Lived 'in the Lord'," African Ecclesiastical Review 23, 1981), p. 48.

²⁶²Marwick, African Studies 17 (1958), pp. 146-147.

marriage, i.e. one which is neither uxori-local nor virilocal. In any case, the marriages become neolocal only after a good number of years when the husband has earned enough money to enable him to purchase land. This again happens with the educated in the majority of cases. There is also a trend among the educated to practice sterilization and contraception for the purpose of limiting the number of offspring, contrary to the traditional desire for many children, whereas school girls practice abortion or employ contraceptives to avoid embarrassing pregnancies. It is not certain whether or not it is due to the western influence that parents no longer give their children in marriage before their births. At any rate, this practice was not very prevalent even in the past.

2. Reduction of Avuncular Power

The maternal uncle still remains a formidable power in the running of the affairs of his sorority-group (mbumba). Nevertheless, a reduction of his powers is being experienced in some areas. This is particularly true in the question of the education of his nieces and nephews. Traditionally, "he is also responsible for sending them to school."²⁶³ But owing to the high school fees and to the

²⁶³Richards, "Some Types of Family Structure Amongst the Central Bantu," p. 234.

number of children he would have to pay for, the maternal uncle left this responsibility on the shoulders of the husbands (akamwini) who in fact are the fathers of the children. In some cases, the maternal uncles themselves were ignorant of the value of formal education, so that they would not recognize their responsibility of sending them to school, in the first place. Anyway, apart from a few instances, the fathers of the children assume the whole responsibility for their education, despite the fact that sometimes the maternal uncles assert their authority over their sisters' children by giving them a token assistance in their education, such as buying them an exercise book, as a reminder to the husbands (akamwini) that they are still in charge. From the fact that the fathers send their children to school, they have also acquired the power to reprimand and punish their children without, however, entirely dispossessing the same power from the maternal uncles. Thus, it can be said that to a certain degree the "authority is shifting from the maternal uncle to the father."²⁶⁴

3. Some Influences of Westernization on Culture

The advent of western culture into Malawi has had its impact on different aspects of the life of the people.

²⁶⁴ Lawson, African Studies 8 (1949), p. 181.

This discussion simply mentions some instances of the areas of the people's life where the western influence has been exerted and felt, without claiming to make an exhaustive exploration.

We have mentioned that the Yawo live in villages and that the membership of the community of the village is derived from the membership of the overlapping sorority-groups (mbumba). Villages, therefore, are constituted mainly by people who are blood relatives or relatives through marriage. It was in these villages that people spent their entire life. But the coming of towns and cities and the introduction of boarding schools and of modern economy have disrupted the traditional village life. People no longer spend much of their time in their villages despite the fact that the people who live away from their villages still claim these villages to be their true home. The idea is not that the clock must be turned backwards by demanding that everybody should go back and live in the village. Life in a new place of work and education has certainly its own advantages. But the point still remains true that the people miss the feeling of community and belonging which the villagers experience as opposed to the new individualistic life they are compelled to live.

The Yawo believe that serious illnesses are caused by sorcerers. In their effort to know who the sorcerer is they go consult diviners. The result of divination is hatred between relatives, conflicts and eventual division of villages in that those accused of sorcery migrate and start a new village at a distant location, or the innocent decide to run away from the accused. With the coming of hospitals, many people have learned to seek help from doctors rather than from diviners. When one imagines that the thousands of patients who find themselves in hospitals today implied an equal number of consultations of diviners with the attendant enmities and the eventual break-up of villages they caused, one comes to the realization of the enormous preventive role the hospitals play. We by no means claim that the hospitals have effected the total discontinuance of the consultation of diviners, but that they are a major factor in its reduction. Moreover, since the consultation of the diviners is the responsibility of the guardians (angoswe), hospitals have greatly reduced this onerous burden of theirs.

It is during initiation ceremonies that "both sexes are supposed to receive their sexual education."²⁶⁵ The

²⁶⁵Torday, Africa 29 (1929), p. 255.

instructions on this subject are not merely theoretical but also practical in that a demonstration of what occurs during sexual intercourse is given through mimicry.²⁶⁶ In fact when girls have completed their first initiation ceremony, they are instructed to have a ritual sexual intercourse with a boy, who once again is called 'a hyaena'.²⁶⁷ A similar ritual is performed at the initiation ceremony of the first pregnancy.²⁶⁸ When Christianity came into contact with the practice of initiation ceremonies, the missionaries waged unrelenting war against it in order to abolish it but they did nothing to substitute for it. They were not successful, for even Christians continued secretly to send their children to the initiation ceremonies. When the missionaries discovered that the practice was alive, they tried to introduce a Christian initiation ceremony in which everything that was considered unchristian was purged, filling them with Christian instructions. As long as the priest was present at the ceremonies, the instructors spoke of the sacred heart of Jesus, the rosary and so on. But as soon as he left the place, the instructors reverted to the traditional

²⁶⁶Informant, 1974.

²⁶⁷Marwick, Sorcerey in its Social Setting, p. 138.

²⁶⁸Ibid., p. 237.

initiation ceremonies. When this was again discovered the missionaries ordered a total cessation of the ceremonies. The importance attached to these ceremonies by the people made it impossible to effect the desired total cessation. Many other ways have been tried for the purpose of stopping the custom, but none seems to have succeeded. The struggle is still going on with no solution in sight. There is, however, a partial success on the part of the boys in that not every boy attends the initiation ceremonies as in the past, while there is very little success on the part of the girls as the instructions the girls are supposed to receive are literally a matter of life and death to the members of the society.

While some misconducts of members of the society were sanctioned by death, taboos, from our viewpoint, were introduced for the purpose of abolishing the death penalty while maintaining the high moral standard of the members of the community. Most of these taboos are clouded in secrecy. Women are experts in these taboos, so that even husbands come to know them through their wives. In any case, regarding those taboos that came to the knowledge of the missionaries, an attempt was made at their suppression. While the beliefs in the effects of neglecting the taboos may be false, the effects of following them are commendable. Thus obedience to the missionaries' orders

against taboos has the adverse effect of lowering the moral standard of society.

4. Conclusion

These are just some of the areas of change and modification through westernization. It has been indicated that not every area that has come into contact with westernization has actually responded to the change that was intended or otherwise: while some areas have experienced the change, others have more or less maintained their status quo. Moreover, it is clear that the western influence has attained its effect at the expense of the advantages that accrued to society prior to westernization. It may be that in some cases, such an outcome was inevitable whereas in other cases an intended change could have followed a better procedure. On the other hand, the society has also benefitted from some of these changes.

G. SUMMARY

We have come to the completion of our survey of the concept of marriage according to the Yawo world view. The Yawo society in Southern Malawi is, among other tribes, matrilineal, uxorilocal and matrilocal, centered around what we have called the sorority-group (mbumba), which is under the charge of the sister's brother who eventually becomes the maternal uncle. This man enjoys a formidable

avuncular power in the running of the affairs of the sorority-group (mbumba) which lives in a village. But his power cannot be used to tyrannize the members of his sorority-group (mbumba) which is itself a factor in the tempering of his powers even to the point of neutralizing them. At any rate, he has a multifarious responsibility over the members of the village in the events that affect them including, of course, marriage. From the same maternal uncle proceeds the inheritance to the first-born son of the eldest sister, in view of the fact that, according to the Yawo custom, a son cannot inherit from his father, because he is an alien in the village whose function is simply the begetting of children for the sorority-group (mbumba), but with no control over them. On the other hand, the eldest daughter of the sister inherits from her grandmother with whose generation the granddaughter is identified thus creating the paradoxical situation of becoming the mother of her own mother. This phenomenon reduces the Yawo into a society of only two generations owing to the fact that, no matter how many actual generations there may be in the society, all alternate generations are identified.

With respect to the question of the Yawo marriage, we have emphasized the fact that it is progressive, in the sense that Yawo marriage is not a sudden event but one

whose maturity is attained after a long process. We detect three stages that constitute the reality of the Yawo marriage: the first is the phase of acceptability, the second, the phase of ratification, and the third, the phase of establishment. The marriage in the phase of acceptability has unfortunately been misunderstood and misinterpreted by anthropologists and missionaries alike, in view of the fact that it has no equivalent in their culture. Nevertheless, this first stage is already a true marriage sanctioned officially and formally by society, though not ritually as yet. We have, accordingly, called the marriage in this phase epainogamy. The marriage guardians' (angoswe) involvement begins already to be experienced in this phase, starting with the marriage negotiations which do not involve bride-price. By virtue of the partners' intention to become husband and wife and of the public sanction, the marriage in the phase of acceptability cannot be termed concubinage. In point of fact, concubinage, owing to the Yawo's belief in dire consequences for the violation of taboos, is of a rare occurrence in their society.

The second stage of the marriage is called the phase of ratification, which, despite its resemblance to the western marriage, is entirely different from it both in form and significance. The ceremony of the ratification

does not, by and large, concern the partners but rather the guardians (angoswe) who are far from being mere witnesses of the marriage. It is on this basis that the ceremony itself is called 'the tying or binding together of the guardianship'. There are four of these guardians: two guardians, junior and senior from each side. In virtue of the fact that the marriage is already valid in the phase of acceptability, the ceremony's function is not the validation of the union, rather it confers upon the guardians the responsibilities of assisting the partners in their difficulties and of protecting and defending the marriage during its entire life. Furthermore, the ceremony ritualizes the unification of the sorority-groups (mbumba) of the partners' origin, destroying the previous potential hostilities and establishing a sempiternal relationship between them. The ceremony consists in the exchange of foods, symbolizing the assimilation of the eaters into the group of the givers.

After the phase of ratification, there comes the third stage which is called the phase of establishment. This phase is attained through the birth and presence of offspring in the marriage. For the Yawo the number of children also counts. In other words, the birth of one child, apart from the fact that it engenders the hope for a possible establishment of the marriage, does not itself

effectuate its establishment. A number of these children are required for the attainment of the establishment of a marriage, despite the fact that there is no fixed number for all marriages. Just as the rite of ratification does not validate marriage, so too, the phase of establishment does not imply the validation of the marriage as some appear to believe. Such a belief gives the impression that the marriage was in the meantime invalid, which is entirely false. The function of the phase of establishment is the stabilization of the marriage more than anything else. Despite its validity, the marriage had not yet attained the required stability until the required number of offspring had been born.

The stability of marriage does not, however, imply absolute indissolubility. Even when there are many children in the marriage, its stability can be destroyed on various other grounds. In any case, offspring in a marriage are, by and large, the very foundation for its stability in that their absence renders the marriage liable to dissolution, in the first place. This is so because reproduction is highly esteemed in the society of the Yawo people. The concept of reproduction is instilled in the minds of the people right from their childhood especially through the various initiation ceremonies which have reproduction as one of its most important topics.

Another important feature of the African marriage in general and of the Yawo marriage in particular is that it can be polygamous. There are many reasons why polygamy is practiced, one of which, of course, has to do with the question of reproduction. In view of the multiplicity of the reasons for the practice of polygamy among Africans, it can rightly be affirmed that the African "customary marriage is potentially polygamous."²⁶⁹

²⁶⁹Chimango, "Marriage Laws of Malawi," Seminar on Christian Marriage: 11th-15th November, 1974, p. 7 (unpublished).

CHAPTER THREE

THE EMERGENCE OF A LOCAL THEME: AN AREA OF RESISTANCE TO THE SACRAMENTAL MARRIAGE

A. THE PROGRESSIVITY OF THE YAWO MARRIAGE IN RELATION TO CHRISTIAN MARRIAGE

Having made the analysis of the marriage according to the Yawo world view, we now turn to the question of the emergence of a theme of the progressivity of the Yawo marriage as an area of conflict when this marriage comes into contact with Christianity. To be sure, one of the greatest problems that missionaries encounter in the execution of their task of the evangelization of a new people is the question of marriage. The principal reason for this state of affairs can be situated in the differences existing between the culture of the conveyors of the gospel message and that of its recipients. The point is that the gospel message is never transmitted pure and simple. When the gospel and the Christian tradition were first received by countries from which the missionaries hail, this gospel and tradition became embodied by the culture of the people of these countries, so that when the theology of marriage is brought by missionaries to peoples of the mission lands, it contains cultural accretions of their countries of origin. The result of this process is what Robert J. Schreiter describes as local theology. Schreiter defines local

theology as "the dynamic interaction among gospel, church, and culture."¹ Local theology, therefore, becomes the accommodation of the gospel and Christian tradition to the culture of a people and vice-versa. Through this process of interaction occurs what is termed as inculturation which Ary A. Roest Crolius defines as:

The integration of the Christian experience of a local Church into the culture of its people, in such a way that this experience not only expresses itself in elements of this culture but becomes a force that animates, orients and innovates this culture so as to create a new unity and communion, not only within the culture in question but also as an enrichment of the Church universal.²

Any people, therefore, whose culture has experienced the impact of the gospel and the Christian tradition can have their own local theology. While the gospel is the same, the resultant local theology through the gospel's dialectic interaction with one culture of a given people will not necessarily be the same as the local theology of a people of a different culture. Each local theology will

¹Robert J. Schreiter, Constructing Local Theologies (Maryknoll, New York: Orbis Books, 1985), p. 22.

²Ary A. Roest Crolius, "What is So New About Inculturation?" Gregorianum 59 (1978), p. 739.

vary according to the mutual influence exercised by the given culture and the gospel.

In the meantime, however, the missionaries, equipped with a local theology originating from their culture, came to evangelize the Yawo people of Southern Malawi. Among other things, the missionaries began to teach the Yawo people about Christian marriage inspired by their local theology. On the other hand, it goes without saying that prior to the advent of the Christian religion among the Yawo of Southern Malawi and their conversion into it, they had their own culture. Consequently, the understanding of the concept of marriage by these recipients of the gospel does not, in many respects, coincide with that of the missionaries. In fact, it might be affirmed that on a number of counts the lack of coincidence becomes more conflictual than merely differential. It is not surprising, therefore, that the teaching about Christian marriage based on the local theology of the missionaries meets with stiff resistance from the Yawo people.

The first question that arises from the conflicting concepts of the reality of marriage as is understood by the missionaries on the one hand, and the Yawo people on the other, is whether the resistance which the Yawo show to the local theology of the missionaries is directed specifically

towards the gospel or whether it represents a confrontation between two cultures, namely, between the culture of the missionaries and that of the Yawo people. The answer to this question is certainly very important, because on it depends what action should be taken for the solution of the problem. For if the resistance of the Yawo to the missionaries' local theology is directed towards the evangelical component of their theology, there will be no other course to take than to simply dispose the Yawo people to align their cultural practices to the gospel message. On the other hand, if the resistance represents a confrontation between two cultures, while the teaching of the gospel is by all means observed, then it will mean that it is the cultural component of the missionaries' local theology that requires a certain adjustment for the accommodation of the cultural beliefs and practices of the Yawo people apropos of the reality of marriage.

1. The Progressive Marriage Unrecognized on the
Grounds of the Teaching on the Absolute
Inseparability of Contract and Sacrament

In view of the progressivity of the Yawo marriage, the Yawo begin their marriages with the phase of acceptability. The Yawo and other African tribes firmly believe that this first stage already constitutes a veritable marriage to the extent that any misconduct by either partner is considered

as an adultery in the same way as it is considered in any other stage of the Yawo marriage.³ Accordingly, in the past such a misconduct was punished by death. We have pointed out how social anthropologists erroneously refer to the marriage in this phase of acceptability as a mere betrothal. But they are right in assigning death penalty to it in the event of adulterous misconduct. Torday states: "If a betrothed Yao girl is seduced, the penalty may be death."⁴ Despite the abruptness of Christian marriage, the Yawo's conversion into Christianity does not, in the majority of cases, mark the cessation of this their cultural practice, in that they cannot bring themselves to accept that a marriage commitment can be entered into with such abruptness. Thus, when a Yawo convert intends to marry, he or she begins with the phase of acceptability. This implies the postponement of the church marriage until the partners have lived together for quite some time.⁵ With the coming of Christianity, the Christian marriage rite has become an additional phase to the three customary phases. It is an additional phase because, if not before,

³Lufuluabo, Revue du Clergé Africain 24 (1969), p. 409.

⁴Torday, Africa 29 (1929), p. 256.

⁵Lufuluabo, Revue du Clergé Africain 24 (1969), p. 405.

certainly after the celebration of the marriage in church, the customary phase of ratification takes place in the village for the purpose of explicitating the unification of the two sorority-groups (mbumba), something which the church ceremony has not done.

In this matter, the attitude of the Church is that since on conversion to Christianity the Yawo have become the subjects of the Church, they are now supposed to follow the directives of the Church in everything including matrimonial matters irrespective of what they were doing prior to their conversion. Therefore, the fact that the Yawo live in a marriage which is only in the phase of acceptability in defiance of the teaching on marriage as presented to them by the missionaries means that their marriage is unacceptable to the Church. In the words of the International Theological Commission:

As a consequence the church cannot in any way recognize that two baptized persons are living in a marital state equal to their dignity and their life as "new creatures in Christ" if they are not united by the sacrament of matrimony.⁶

⁶International Theological Commission, "Propositions on the Doctrine of Christian Marriage," Origins 8 (1979), p. 238.

It appears that the local theology of the missionaries does not recognize the marriage of the Yawo people first because it is only in the phase of acceptability which is erroneously believed to be invalid. But this was before the coming of the Second Vatican Council which teaches that "in pastoral care, appropriate use must be made not only of theological principles but also of the findings of the secular sciences, especially of psychology and sociology."⁷ Or as is also taught by the "General Catechetical Directory:" "Catechesis on marriage...should take proper account of the present-day progress in the science of anthropology."⁸ Although we have, in our judgment, sufficiently demonstrated the validity of the marriage in the phase of acceptability it would apparently not gain the recognition of the local theology of the missionaries, in the second phase, because even the marriage in the phase of ratification which the missionary local theology recognized as a valid marriage for non-Christians, would not be accepted as valid for the "new creatures in Christ." The

⁷"Pastoral Constitution on the Church in the Modern World," The Documents of Vatican II, ed. Walter M. Abbott, p. 269, n. 62.

⁸Sacred Congregation for the Clergy, "General Catechetical Directory, 11th April, 1971," Vatican Council II: More Post Conciliar Documents, Vol. 2, ed. Austin Flannery (Boston: Daughters of St. Paul, 1982), p. 562, n. 59 (hereafter cited as Vatican Council II, ed. Flannery).

marriage of Christians can, in the normal circumstances, only attain validity through its celebration in church. Only a sacramental marriage can be a valid marriage for a Christian. Therefore, the sacramentality of a Christian's marriage is also attained through its celebration in church. As a matter of fact, the whole matter revolves around the question of the teaching on the inseparability of the marriage contract and sacrament, and not a mere inseparability but an absolute inseparability⁹, for that matter, together with the question of the canonical form.

2. The Theologians' Defence of the Absolute Inseparability of Contract and Sacrament

The teaching on the absolute inseparability of contract and sacrament for marriages between two baptized persons is now enshrined in the Code of Canon Law, 1983, canon 1055:2. It states: "For this reason a matrimonial contract cannot validly exist between baptized persons unless it is also a sacrament by that fact."¹⁰ The

⁹Julius Manzanares, "Habitudo Matrimoniorum Baptizatorum inter et Sacramentum: Omne Matrimonium Duorum baptizatorum Estne Necessario Sacramentum?" Periodica 67 (1978), p. 36.

¹⁰Code of Canon Law: A Text and Commentary, eds. James A. Coriden, Thomas J. Green and Donald E. Heintschel (Paulist Press, 1985), p. 740; Code of Canon Law: Latin - English Edition (Washington, D.C.: Canon Law Society of America, 1984), 486, Can. 1055:2: Quare inter baptizatos (Footnote Continued)

teaching on the inseparability of marriage contract and sacrament has, for various reasons, been the subject of discussion among theologians for many centuries. While some theologians have defended it, others have attacked it in favour of the separability of marriage contract and sacrament. Although the question appeared to have been definitively settled,¹¹ the resumption of its discussion has of late been prompted by the current pastoral problems that baptized persons are experiencing as a result of this teaching on the inseparability of the marriage contract and sacrament. The question can be formulated this way: "Is any true contract between baptized persons necessarily a sacrament?" It is easily accepted that when a sacramental marriage has occurred a true contract must have simultaneously occurred. But does the occurrence of a true contract between baptized persons necessarily coincide with the occurrence of a sacrament in such a manner that if the sacrament does not occur the contract cannot be true?¹² In

(Footnote Continued)

nequit matrimonialis contractus vilidus consistere quin sit eo ipso sacramentum," Code of Canon Law (London: Collins, William B. Eerdmans Publishing Company, 1983), p. 189.

¹¹G. Le Bras, "La Doctrine du Mariage Chez les Théologiens et les Canonistes depuis l'An Mille," Dictionnaire de Théologie Catholique, eds., A. Vanc. D. Mangenot and E. Aman (Paris: Letouzey et Ané, 1927), col. 2294.

¹²Manzanares, Periodica 67 (1978), p. 36.

other words, does the occurrence of a true contract between two baptized Yawo persons in the phase of acceptability necessarily imply its sacramentality? Or because of the absence of the sacramentality, does the contract of two baptized persons in the phase of acceptability become invalid? In what does this sacramentality consist?

We will postpone our response to these questions till the next section. For the time being we will focus on the response of the local theology of the missionaries to the problem posed by the marriages of the Yawo converts. This response is, to be sure, grounded in the teaching on the inseparability of the marriage contract and sacrament. It, therefore, becomes necessary that we examine what some of the theologians have said on this question.

The teaching on the inseparability of contract and sacrament centres around the element that constitutes the essence of the human reality of marriage. According to theologians the essence of marriage is situated in the mutual consent of the partners: "For mutual consent constitutes marriage."¹³ Aquinas refers to this essential

¹³Martin Jugie, Theologia Theologica Christianorum Orientalium (Paris: Letouzey et Ané, 1930), p. 448. [My translation].

element in terms of cause and effect. He states: "Therefore seeing that the joinings of material contracts are effected by mutual consent, it follows that the joining of marriage is effected in the same way."¹⁴ Now, it is this very mutual consent of the human reality of marriage that is said to have been raised by Christ to the dignity of a sacrament.¹⁵ The scriptural basis of the said elevation of the matrimonial sacrament is found in Ephesians 5. Bellarmine writes: "Therefore the sentence of Paul ought to be: this sacrament, that is to say, that a man should leave his father and mother, etc., is great because it represents the union of Christ and the Church."¹⁶ Bellarmine's interpretation of the Greek mysterion is, to say the least, problematical. For the time being, it must be said that this is the way many theologians understood Paul's words. Thus, Joseph Pöhle explains Ephesians 5 in the following terms:

¹⁴Thomas Aquinas, Supplementum, Q. 45, a. 1c.

¹⁵Henry Noldin, Summa Theologiae Moralis vol. 3: De Sacramentis (Ratisbon, Rome, New York: Felizian Rauch (C. Pustet), 1906), 577, n. 508.

¹⁶Robert Bellarmine, Opera Omnia vol. 5: De Matrimonio (Paris: Ludovic Vives, 1873), Chapter 2, quoted by Ludovic Billot, De Ecclesia Sacramentis, Vol. 2 (Rome: 1901), p. 234. [My translation].

On no other hypothesis can the phrase, "this is a great mystery," be interpreted intelligently. How could the conjugal union between a man and a woman be a great mystery if it did not communicate grace? How could it symbolize the mystic union between Christ and His Church, had not the Lord Himself raised it to the supernatural sphere, in other words, made it a true sacrament? Thus understood, the term sacramentum regains its primitive meaning.

The argument from Eph. 5:25-32 may be briefly formulated thus: A sacred sign which produces internal grace is a true sacrament. Now Christian marriage is a sacred sign which produces internal grace, because St. Paul calls it a great mystery and a symbol of Christ's union with His Church. Consequently, Christian marriage is a true Sacrament.

As we have seen in a previous volume of this series, the Sacraments of the New Law, unlike the symbols of the Ancient Covenant, not merely signify and prefigure grace, but actually cause or produce it ex opere operato. Hence, if matrimony is a true symbol of the mystic union between Christ and His Church, it must cause or produce grace in the souls of those who receive it.¹⁷

Pöhle's argument for the sacramentality of marriage resides in the fact that it produces grace. However, the affirmation that marriage produces grace on the basis of Paul's statement that marriage is a symbol of Christ's

¹⁷ Joseph Pöhle, The Sacraments: A Dogmatic Treatise (St. Louis Mo., London: B. Herder Book Company, 1946), pp. 149-150; Wilhelm Bertrams, "De Unitate Baptizatorum Matrimonii cum Sacramento," Periodica 67 (1978), pp. 261-267, p. 264: "Sacramentum hoc magnun est, ego autem dico in Christo et in ecclesia" (Eph. 5:32). Haec S. Pauli verba se referunt ad ipsum matrimonium, quod est sacramentum." [My translation].

union with His Church appears to be an arbitrary eisegesis. The contention here is not to deny the marriage's capacity for the production of grace. We are simply questioning the scriptural basis for the assertion.

In any case, the attempt has been made at the establishment of the sacramentality of marriage. Like in all the other sacraments, hylemorphism had to find its application in the sacrament of marriage. What, therefore, were the form and matter of this sacrament? Since the mutual consent is what constitutes marriage, matter and form can only be found in this consent. For the form, Aquinas states that "the words whereby the marriage consent is expressed are the form of this sacrament and not the priest's blessings which are a sacramental."¹⁸ The matter is also found in the words of the mutual consent. "The proffer whereby the contract is initiated is the determinable part, and is considered as the matter: the acceptance whereby the contract is constituted is the determinative part, and is considered as the form."¹⁹ "The

¹⁸ Aquinas, Supplementum q. 42, a.1, ad 1.

¹⁹ Ludovic Lercher, Institutiones Theologiae Dogmaticae, Vol. 4:2 (Oeniponte: Felician Rauch, 1949), 352, n. 754: "Oblatio, qua contractus inchoatur, est pars determinabilis et se habet per modum materiae; acceptatio, qua contractus perficitur est pars determinans et se habet per modum formae." [My translation].

transference of the right and the acceptance of it, together with the intention of the parties constitute the Sacrament for they constitute the contract."²⁰ In virtue of the fact that the mutual consent or the contract constitutes marriage and that this contract has been elevated to the dignity of a sacrament, it implies that the contract and sacrament are actually identified and can by no means be separated from each other.²¹ Although the Council of Trent did not teach the absolute inseparability of contract and sacrament, the Council's mere declaration of the excellence of marriage in the evangelical law over ancient marriages²² is, for Michael Rosset, sufficient evidence that the Council taught it. He argues that if the sacrament had been different from the contract and had been added to it as something separate, the Council would not have taught that Christ instituted the sacrament of marriage but rather that he had instituted a distinct sacrament and joined it to marriage for the marriage's

²⁰Henry Davis, Moral and Pastoral Theology, Vol. 4 (London, New York: Sheed and Ward, 1958), p. 66.

²¹Jugie, Theologia Dogmatica Christianorum Orientalium, p. 447.

²²Henry Denzinger and Adolfus Schönmetzer, eds., Enchiridion Symbolorum Definitionum et Declarationum de Rebus Fidei et Morum, The Sources of Catholic Dogma, trns. Roy Deferrari (St. Louis, Mo., London: B. Herder Book Company, 1957), p. 296, n. 970.

sanctification.²³ Saint Bonaventure is also referred to as having taught the teaching on the inseparability of contract and sacrament by the fact that he asserts that the marriage contract produces grace for those who receive it.²⁴

Theologians who support the teaching on the inseparability of contract and sacrament go so far as to assert the non-necessity of the faith and worthiness of either the minister or the subject of the sacrament provided they have the intention of doing what the Church does, as the famous theological formula goes. This opinion is based on the fact that sacraments produce their effect ex opere operato.²⁵ Referring to baptism, Aquinas expresses the same view in the following terms:

Something is required of necessity for Baptism, because without it the baptismal character cannot be imprinted. And thus right faith is not necessary in the one baptized any more than in the one who baptizes: provided the other conditions are fulfilled which are essential to the sacrament. For the sacrament is not

²³Michael Rosset, De Sacramento Matrimonii (St. John Maurian (Sabaudia), 1895), p. 272, n. 326.

²⁴Bonaventura, Saint, In 4 Lib. Sententiarum, Opera Theologica Selecta, Vol. 4 (Ad Claras Aquas, Florentiae, Quaracchi, 1949), dist. 26, a.2, q.2.

²⁵Manzanares, Periodica 67 (1978), p. 40.

perfected by the righteousness of the minister or the recipient of Baptism, but by the power of God.²⁶

In the second section of this chapter we shall point out how far from being consonant with the teaching of the Second Vatican Council this opinion of the non-necessity of faith for the reception of sacraments seems to be. We have brought up this question here insofar as it is the basis of the local theology of the missionaries.

On the other hand, if faith is, according to these theologians, not a requirement for the reception of sacraments, the intention is a must. Thus, the Christians' absolute refusal to contract marriage sacramentally results in the contracting of an invalid marriage: "He who does not want a sacrament cannot want a true marriage." Whereas if they want a true marriage, then they receive a sacrament despite the fact that they do not want to perform a sacrament. The point is that those who contract marriage in this manner have two opposing intentions whereby on the one hand they want to contract a true marriage and on the other they exclude the sacrament. The fact that the intention of contracting a true marriage prevails destroys

²⁶ Aquinas, Summa Theologica, Vol. III, q.68, a.8c.

the intention of excluding the sacrament.²⁷ Expressing his view in support of the inseparability of contract and sacrament James A. Nowak writes:

It is the judgment of this author that there cannot exist in reality a valid marriage between two Christians which is not at the same time a sacrament. Given the fact of baptism and the transformation which it effects in the ontological state of the parties - and also hopefully in their moral life - and given the fact that marriage is "the intimate community of life and conjugal love...by which the spouses mutually give and receive each other" (Gaudium et Spes n. 48), it is difficult to conceive how such a radical union could really be effected if the sacramental dimension were positively excluded. For this author such a state of affairs would involve a schizophrenic stance toward the reality of the²⁸ Christ-event in the life of the baptised.

The idea here is not to exhaust the list of theologians who espouse the teaching on the inseparability of contract and sacrament. There is no end to the list. We have tried to present a few examples of theologians in this category. As we have seen the main point round which the teaching revolves is the fact that marriage was first of all a simple human reality prior to its elevation to

²⁷Noldin, Summa Theologiae Moralis, Vol. 3., p. 578, n. 508.

²⁸James A. Nowak, "Inseparability of Sacrament and Contract in Marriages of the Baptised," Studia Canonica 12 (1978), p. 362.

sacramentality. Since the elevation affects the marriage contract itself, the sacramentality of marriage is the sacramentality of the contract itself. This leads the theologians to affirm the identity of contract and sacrament with respect to the marriages of baptized persons. The identification seeks to protect "the sacramentality of marriage from becoming a kind of pious superstructure on marriage."²⁹ On the other hand the identification does not suggest the total exclusion of differentiation. To be sure, at least "from the purely philosophical point of view, this identity, which in its definition is more than mere tautology, presupposes a certain differentiation." This identity is a reflection of "the unity that exists between the order of creation and that of redemption."³⁰

3. The Popes' Defence of the Absolute Inseparability of Contract and Sacrament

The teaching on the inseparability of contract and sacrament has not only been the subject of the theologians' reflections but has also gained the support of the highest authorities of the Church. In the first place, mention

²⁹Walter Kasper, Theology of Christian Marriage, trans. David Smith (New York: The Seabury Press, 1980), p. 75.

³⁰*Ibid.*, p. 76.

will be made of Benedict XIV who expressed his awareness of the debate that was going on among theologians with respect to this teaching. At the beginning, the pope exhibits uncertainty as to which of the opposing opinions he should hold, taking in the meantime a neutral stance. Thus, commenting on the opinion which advocated the separation of contract and sacrament, Benedict XIV states: "Whatever may be the case concerning this opinion, which for the time being we indeed leave neutral...."³¹ But the fact that Benedict XIV described Melchior Cano's opinion, which stated that the minister of the sacrament of marriage was the priest, as very probable (valde probabilem), gave the supporters of civil marriage the courage to insist on the separation of contract and sacrament.³² However, towards the end of his life, Benedict XIV appears to have firmly believed in the inseparability of contract and sacrament, for he states: "At first it was doubted whether the Church could abrogate clandestine marriages seeing that the

³¹Codicis Juris Canonici Fontes, eds. Petrus Gaspari and Gyorgy Justinianus Seredi (Rome: Vatican Press, 1926ss), Vol. 2, p. 42: "Quidquid sit de hac opinione, quam nos quidem nunc in medio relinquimus...." [My translation].

³²Rosset, De Sacramento Matrimonii, p. 278, n. 336.

legitimate contract is the matter as well as the form of the sacrament of matrimony."³³

In 1817, July 6, the Sacred Congregation of the Holy Office made the first strong pronouncement of the nineteenth century concerning the teaching on the inseparability of contract and sacrament.³⁴ The Sacred Congregation declared:

It is heresy...to separate absolutely by means of a law the sacrament of matrimony from the contract of matrimony, just as if the contract did not enter into the essence and substance of the sacrament by the force of divine institution, and the sacrament of marriage would be discovered to be nothing other than a quality floating over the contract or a frame decorating a painting to which it is foreign. [...] Matrimony [...] is on that account a sacrament because the contract also pertains to the sacrament and enters into the definition of the sacrament; and this also is Catholic dogma. Moreover, although someone may wish to posit that there can be among the faithful something other than a sacrament, always, nevertheless, it will be a matter of faith (de fide) that there not be discovered among the faithful the sacrament of marriage which is not essentially built on the contract; namely in the evangelical law, there can be a contract of marriage which may not be a sacrament; nevertheless, there cannot be a

³³Codicis Juris Canonici Fontes, Vol. 2, p. 575.

³⁴Nowak, Studia Canonica 12 (1978), p. 339.

sacrament of marriage, in which the contract itself is not a sacrament.³⁵

The Sacred Congregation begins by intimating the occasion that prompted the issuance of the statement. The declaration was made in response to a civil law that separated the contract from the sacrament as if the contract did not constitute the essence of the sacrament. Such an understanding gave the impression that the sacrament was simply an adjunct of the contract the absence of which would not affect or jeopardize the essence of the contract of marriages between Christians. Contrary to this understanding, the Congregation affirms the dogmatic nature (de fide) of the teaching on the inseparability of contract and sacrament in marriages between two baptized persons.

³⁵Codicis Juris Canonici fontes, Vol. 4, pp. 137-138: "Haeresis...est, sacramentum Matrimonii a matrimonii contractu per modum regulae, et absolute seiungere, perinde ac si contractus essentiam atque substantiam Sacramenti minime divinae institutiones vi ingrediatur, neque aliud Matrimonii sacramentum esse reperiatur, nisi qualitas contractui supernatans, aut corona pictam tabulam, cui extranea est, circum ornans. [...] Matrimonium ... ideo sacramentum est, quia contractus et ad substantiam pertinet, et definitionem ingeditur sacramenti: atque hoc dogma catholicum est. Quamvis autem quispiam ponere velit, aliquod inter fideles matrimonium sacramentum non esse posse, semper tamen erit de fide, minime inter fideles Matrimonii sacramentum reperiiri, quod super contractu essentialiter haud aedificetur; nempe in lege evangelica matrimonii contractum esse posse, quod non sit sacramentum; Matrimonii tamen sacramentum esse non posse, in quo contractus ipse non sit sacramentum." Translation in *Studia Canonica* 12 (1978), pp. 339-340.

It explains that while it is possible to affirm the existence of a contract without a sacrament, it is impossible to affirm the sacramentality of a marriage without a contract.

In a Consistorial Allocution of 1852, September 27, Pius IX made a statement along the same lines on the occasion of "Laws Contrary to the Church in New Guinea."³⁶ After affirming the institution of marriage by Christ as a sacrament of the evangelical law Pius IX declares:

It necessarily follows that: among the faithful there cannot be a marriage which is not at the same time a sacrament; every other union between Christians outside of the sacrament, made in virtue of any civil law, is none other than disgraceful and base concubinage, repeatedly condemned by the Church; the sacrament can never be separated from the marriage contract, and only the Church has the power to regulate those matters which pertain to matrimony.³⁷

Thus, Pius IX asserts that in virtue of the institution of marriage as a sacrament of the evangelical law, Christians'

³⁶Papal Teachings: Matrimony, eds. Benedictine Monks of solesmes, trans. Michael J. Byrnes (Boston: Daughters of St. Paul, 1963), p. 110.

³⁷Pius IX, "Civil Matrimony in New Granada," Papal Teachings: Matrimony, eds. Benedictine Monks of Solesmes, trans. Michael J. Byrnes (Boston: Daughters of St. Paul, 1963), p. 110, n. 101; Denzinger and Schönmetzer, Enchiridion Symbolorum, n. 1640.

marriages are at one and the same time sacramental. Consequently, a civil marriage is for Christians a "disgraceful and base concubinage." In other words, the Pope affirms the impossibility of a valid marriage for Christians apart from the sacramental marriage and condemns the opposite teaching that states that "a true marriage can exist between Christians in virtue of a simple civil contract."³⁸

In his congratulatory letter, Ci siamo, of 1879, June 1, to the bishops of Piedmont who produced a letter of protest against the new law prohibiting the celebration of religious marriage prior to the completion of civil formalities,³⁹ Leo XIII considers the subjection of Christian marriage "to the dominion of the State" through "the concept of the separation of the contract from the sacrament" as "the intrusion of civil power."⁴⁰ In his Encyclical letter, Arcanum Divinae Sapientiae of 1880,

³⁸Pius IX, "Syllabus, or Resume of the Principal Contemporary Errors, December 8, 1864," Papal Teachings: Matrimony, eds. Benedictine Monks of Solesmes, trans. Michael J. Byrnes (Boston: Daughters of St. Paul, 1963), p. 115, m. 114.

³⁹Papal Teachings: Matrimony, p. 126.

⁴⁰Leo XIII, "Ci Siamo," Papal Teachings: Matrimony, eds. Benedictine Monks of Solesmes, trans. Michael J. Byrnes (Boston: Daughters of St. Paul, 1963), p. 127, n. 131.

February 10, Leo XIII warns against the deception of court lawyers who, "with the intent to hand over the contract to the power and will of the rulers of the State, while reserving questions concerning the sacrament to the Church" insist on the severance of the "matrimonial contract from the sacrament."⁴¹ The Pope continues:

A distinction, or rather severance, of this kind cannot be approved: for certain it is that in Christian marriage the contract is inseparable from the sacrament, and that for this reason the contract cannot be true and legitimate without being a Sacrament as well. For Christ Our Lord added to marriage the dignity of a Sacrament: but marriage is the contract itself,⁴² whenever that contract is lawfully concluded.

For baptized persons this lawful conclusion of a marital contract can only be effected through the sacrament, for the union that is not a sacrament "has not the force and nature of a true marriage;" "it cannot be more than a rite or custom introduced by the civil law."⁴³ Leo XIII states that apart from the rights of the state over the so-called civil effects, marriage "falls under the authority of the

⁴¹Leo XIII, "Encyclical Arcanum Divinae Sapientiae, February 10, 1880," Papal Teachings: Matrimony, eds. Benedictine Monks of Solesmes, trans. Michael J. Byrnes (Boston: Daughters of St. Paul, 1963), p. 149, n. 169.

⁴²Ibid., pp. 149-150, n. 169.

⁴³Ibid., p. 162, n. 192.

Church." He reiterates his teaching on the inseparability by declaring that through the marriage's elevation to the dignity of a sacrament by Christ, "every marriage between Christians is by that fact a Sacrament, nor can the contract be separated from the Sacrament."⁴⁴ The teaching on the inseparability of contract and sacrament is not, as far as the Pope is concerned, a matter of opinion, rather it falls under the dogma of faith. Leo XIII declares:

It is a dogma of Faith that the marriage of Christians was raised by Our Lord Jesus Christ to the dignity of a Sacrament, nor can this dignity, according to Catholic doctrine, be treated as an accidental quality added to the matrimonial contract, but rather it is intimately essential to it, so much so that the very contract became a Sacrament by divine institution. Vain distinction between the contract and the sacrament from which one would infer therefore, is that distinction that between Christians there can exist a valid marriage contract which is not a Sacrament. Since the administration of the Sacraments belongs exclusively to the Church, every interference of political authority in the matrimonial contract - not confined merely to its civil effects - is a sacrilegious usurpation.⁴⁵

⁴⁴Leo XIII, "Letter, Dum Multa, December 24, 1902 to the Bishops of Ecuador," Papal Teachings: Matrimony, eds. Benedictine Monks of Solesmes, trans. Michael J. Byrnes (Boston: Daughters of St. Paul, 1963), p. 196, n. 247.

⁴⁵Leo XIII, "Letter, Il Divisamento, February 8, 1893 to the Italian Bishops," Papal Teachings: Matrimony, eds. Benedictine Monks of Solesmes, trans. Michael J. Byrnes (Boston: Daughters of St. Paul, 1963), p. 179, n. 218.

The sacramentality of marriage is not "an accidental quality added to the matrimonial contract," or "a certain ornament or outward endowment which can be separated and torn away from the contract at the caprice of man."⁴⁶ On the contrary, the sacramentality of marriage is an essential element of the Christian marriage. The Church's exclusive powers over the administration of sacraments imply that "no conjugal union can be held valid if it is not contracted according to the law and discipline of the Church."⁴⁷

The last two pre-Vatican II popes did not lose their opportunity to address themselves to the question of the inseparability of contract and sacrament. Pius XI in his famous Encyclical Casti Connubii, December 31, 1930, teaches that from the fact that the valid matrimonial consent of the faithful has been made the sign of grace, "the essence of the Sacrament is so closely bound up with the wedlock that there can be no true marriage between baptized persons

⁴⁶Leo XIII, "Encyclical Arcanum Divinae Sapientiae," Papal Teachings: Matrimony, p. 150, n. 170.

⁴⁷Leo XIII, "Civil Marriage in Peru: Letter, Quam Religiosa, August 10, 1898," Papal Teachings: Matrimony, eds. Benedictine Monks of Solesmes, trans. Michael J. Byrnes (Boston: Daughters of St. Paul, 1963), p. 192, n. 241.

'which is not at the same time a Sacrament'."⁴⁸ In other words, if between baptized persons there exists a true marriage, then that marriage must necessarily be considered as a sacrament. On the other hand Pius XII, in his "Radio Message to Austrian Catholics, September 14, 1952," exhorts the faithful Christians to persevere in their faith by guarding the sanctity of matrimony. He declares: "Let the conclusion of matrimony be holy for you. For a Catholic only a religious marriage, and never an exclusively civil marriage, is a true marriage."⁴⁹ The conclusion of marriage otherwise than religiously is, for baptized persons, a departure from the faith. What does the Pope mean by a religious marriage? Does he mean a sacramental marriage? Does he mean a marriage celebrated with the forma canonica? Is a sacramental marriage and a marriage celebrated with the canonical form necessarily the same? The reasons why the question of the inseparability of contract and sacrament was raised by the theologians were different from those that prompted the popes to make their

⁴⁸Pius XI, "Encyclical Casti Connubii, December 31, 1930," Papal Teachings: Matrimony, eds. Benedictine Monks of Solesmes, trans. Michael J. Byrnes (Boston: Daughters of St. Paul, 1963), p. 240, n. 302.

⁴⁹Pius XII, "Radio Message to Austrian Catholics, September 14, 1952," Papal Teachings: Matrimony, eds. Benedictine Monks of Solesmes, trans. Michael J. Byrnes (Boston: Daughters of St. Paul, 1963), p. 442, n. 669.

official declarations. The question came under discussion by the theologians either because, among other things, the matter, the form or the minister of the matrimonial sacrament was being debated. On the other hand, in reading the official declarations on the inseparability of contract and sacrament, one is struck by the pattern which the popes follow almost invariably in the declarations' formulation. They always begin with the assertion of the elevation of matrimonial contract to the dignity of a sacrament. This is followed by the affirmation of the identity of the contract and sacrament. After the identification of contract and sacrament, the popes very often proceed to pronounce a condemnation of the usurption of the Church authorities' powers over the matrimonial sacrament by the State or supporters of the State. It is through this condemnation that it becomes apparent as to the popes' motive for their declarations. While it is true to say that one of the reasons why some theologians undertook to discuss the question of the inseparability of contract and sacrament was the intrusion of the supporters of civil marriage at the expense of the matrimonial sacrament, it appears that, with respect to the popes, the said intrusion constituted the chief if not the sole motive for their declarations.

In this work, the question of the inseparability is discussed for pastoral reasons of a different type. The purpose of this discussion is to find out whether the African customary marriage contracted by the African converts can find room in the sacramental marriage of the Church. We will have occasion to discuss again this question in the fifth chapter of this work. Nevertheless, for the time being we can make this brief statement. It does not appear to this writer that the African marriage contracted by the African converts even in its phase of acceptability is in essence opposed to the teaching on the inseparability of contract and sacrament depending, of course, on where the sacramentality of marriage is located. The problem is that the Church begins with the sublime concept of the sacramentality of marriage consisting in the analogous union between Christ and the Church. But later, we witness the emergence of a drastic shift from this sublime concept to the notion of the sacramentality of marriage consisting in its religious ceremony officially known as the canonical form. This relegation of the sacramentality of marriage to the disciplinary law of the religious ceremony through the so-called canonical form implies that the African customary marriage in general and the Yawo marriage in particular stand no chance of gaining the recognition of the authorities of the Church. These marriages are all relegated to the category of "disgraceful

and base concubinage." Nevertheless, in the words of John Kevin Coyle:

Older than Christianity, marriage constitutes a human reality in itself, with an existence independent of the sacramental significance Christianity bestows on it. The difficulty for the Catholic Church at present is that she leaves no room for separating the two; for when she perceives no sacramental significance in the marriage of a Catholic (meaning that it has not been initiated by the proper canonical form), she admits of no human reality there, either. But if the canonical form has been duly observed, ⁵⁰the sacramentality seems to be taken for granted.

The present practice of the Church, allegedly derived from the teaching on the inseparability of contract and sacrament, does not appear to recognize the simple human reality of marriages contracted by baptized persons. In a great number of cases, the Church refrains from recognizing the sacramentality of the marriages of Catholics contracted without the canonical form, whereas it takes for granted the sacramentality of the marriages of Catholics merely on the grounds of their being contracted through the canonical form.

⁵⁰ John Kevin Coyle, "Marriage Among Early Christians: A Consideration for the Future," Eglise et Théologie 8 (1977), pp. 86-87.

B. A CONFRONTATION BETWEEN TWO CULTURES?

Thus far, we have seen one side of the teaching on the inseparability of contract and sacrament with which the Yawo progressive marriage comes into conflict. In this section we will discuss the other side of the question. That is, we intend to find out whether this inseparability has necessarily to be absolute and whether this absoluteness can find any support in the New Testament. Moreover, since the absolute inseparability seems to be effected through the employment of the canonical form, it will be necessary to examine whether this employment has always been the case in the history of the Church. In a few words, the discussion revolves round the question whether the conflict between the customary progressive marriage and the teaching on the absolute inseparability of contract and sacrament is not a confrontation between two cultures.

1. The Problem of the Absolute Inseparability of the Marriage Contract and Sacrament

As the caption above indicates, the question is not simply of inseparability but rather of absolute inseparability whereby two baptized persons cannot, by any manner of means, contract a valid marriage which is not at the same time a sacrament, and that by divine law.⁵¹ This

⁵¹Manzanares, Periodica 67 (1978), p. 36.

question is sometimes referred to as 'the contract-sacrament equation',⁵² or 'the automatic sacramentality of marriage'.⁵³ Mention has already been made of the chief argument in favour of the absolute inseparability of contract and sacrament based on the view that marriage was elevated to the dignity of a sacrament by Christ. It was argued that in view of the fact that the elevation affected the contract of marriage, it implied that for two baptized persons it was impossible to make a valid matrimonial contract from which sacramentality was excluded. However, Melchior Cano,⁵⁴ Paul Joseph a Rieger⁵⁵ and the theologians of Wirceburgensis⁵⁶ deny the authority not only of

⁵²William Bassett, "The Marriage of Christians - Valid Contract, Valid Sacrament?" The Bond of Marriage, ed. William Bassett (Notre Dame, Indiana: University of Notre Dame Press, 1968), p. 162.

⁵³Ibid., p. 164; Mackin, What is Marriage, p. 286.

⁵⁴Melchior Cano, De Locis Theologicis vol. 1 (Rome: Forzani et soc., 1890) Lib. VIII, c.4, p. 102; cf. "De Locis Theologicis," Theologiae Cursus Completus, ed. Jacques-Paul and V.S. Migne vol. 1 (Paris: Migne, 1937), Lib. VIII, c.5: "Tres sunt res quibus efficitur aliquid ad fidem pertinere. Aut enim in Sacris Libris habetur scriptum, aut apostolicis institutis est traditum, aut ex utrislibet plane certa complexione et consecutione colligitur. Nulla autem harum rerum efficere potest, matrimonium sine ministro profane contractum esse Novae Legis Sacramentum."

⁵⁵Quoted from Nowak, Studia Canonica 12 (1978), p. 336.

⁵⁶Wirceburgenses, Theologia Dogmatica, Polemica,
(Footnote Continued)

scripture but also of tradition, the Councils and the Fathers of the Church as espousing the teaching on the absolute inseparability of contract and sacrament. This teaching appears to have originated especially in the 13th century, while the theologians of the 17th and 18th centuries had simply deepened the notion already well established in the 13th century by affirming the mutual exchange of consent as constituting the efficient cause of the contract and sacrament.⁵⁷ The doctrine "is historically recent in magisterial documents."⁵⁸ However the complete imposition of the teaching on the automatic sacramentality of marriage occurred only in the 19th century.⁵⁹ We have already dealt with a good number of these documents in the first section.

Most theologians are agreed that the Council of Trent cannot be invoked as having taught the absolute inseparability of contract and sacrament. To be sure it

(Footnote Continued)

Scholastica et Moralis vol. 10 (Paris: Berche et Tralin, 1880), p. 472, n.300.

⁵⁷Godfroy, "Le Mariage d'après la Sainte Ecriture," Dictionnaire de Théologie Catholique vol. 36, ccl. 2058.

⁵⁸Nowak, Studia Canonica 12 (1978), p. 361.

⁵⁹Philippe Beguerie and Roger Beraudy, "Problèmes actuels dans la pastorale du mariage en France," La Maison Dieu 127 (1976), p. 10.

teaches the sacramentality of marriage, but "it does not say that all marriages are sacramental."⁶⁰ It will be recalled that the Council of Trent did not even affirm the explicit institution of the sacrament of marriage by Christ but simply that Ephesian 5 suggested (innuit) it. Nowak writes:

First of all as it can be seen none of the conciliar texts explicitly treat of the matter. The Fathers say that Christ instituted marriage as a true and proper sacrament. They do not explicitly state that He instituted the matrimonial contract as a sacrament. It can be argued that implicitly this was taught since the Fathers do refer to marriage as a contract. Such progression may be legitimate. To say, however, that the Council of Trent declared the inseparability of sacrament and contract seems to weight the texts with a burden they are incapable of bearing logically or historically.⁶¹

Far from declaring the absolute inseparability of contract and sacrament, the Council preferred to leave the question open.⁶² Despite all this, the Sacred Rota in 1910 declared

⁶⁰James A. Schmeiser, "Welcome Civil Marriage: Canonical Statements," Studia Canonica 14 (1980), p. 54.

⁶¹Nowak, Studia Canonica 12 (1978), p. 328-329.

⁶²A. Duval, "Contrat et sacrement du mariage au concile de Trente," La Maison Dieu 127 (1976), p. 50.

that the doctrine of the absolute inseparability had to be qualified by the note of 'proxima fidei'."⁶³

What must be taken into consideration, however, is that this teaching on the automatic sacramentality of marriage was first "formulated in a period of Christianity where baptism was supposed to be lived always in a faith structuring the whole of social life."⁶⁴ Paul F. Palmer observes that whenever the popes speak about this question, they refer to the contractants of the marriage as the "faithful" or "Christians." Referring to Pius IX and Leo XIII, Palmer explains that "neither pontiff speaks of the marriage of the baptized as does canon 1012 (1917 Code), but of the 'faithful' or of 'Christians', expressions which have traditionally been used of baptized believers."⁶⁵ The point is that theologians are of the conviction that the automatization of the matrimonial sacramentality arose from

⁶³"*Sacra Romana Rota*", *Acta Apostolicae Sedis* (1910), 933, cited by A. Verhamme, "*Sacramentum est ipse Contractus maritalis*," *Collationes Brugenses* 47 (1951), p. 363.

⁶⁴Jean-Marie Aubert, "Foi et sacrement dans le mariage," *La Maison Dieu* 104 (1970), p. 121-122: "Cette conception traditionnelle a été formulée à une époque de chrétienté où le baptême était supposé toujours vécu dans une foi structurant toute la vie sociale." [My translation].

⁶⁵Paul F. Palmer, "Questioning the Marriage of Baptized Unbelievers," *Pastoral Life* 26 (1977), p. 14-15.

the fact that at the time the teaching on the absolute inseparability of contract and sacrament was being formulated, Christianity was so prevalent that the situation could not be envisaged where a baptized person could be an unbeliever at one and the same time. A person to whom the designation 'Christian' or 'faithful' was attached through the reception of baptism was believed to be a practicing Christian, certainly at least a believer. The question of an unbelieving Christian seemed so contradictory that the possibility of such a situation occurring could not even be imagined. Thus, marriage between baptized persons was equated with the marriage of practicing Christians. Consequently, the possibility of such a marriage being non-sacramental was just out of the question. Marriage between Christians had automatically to be sacramental. However, it must be emphasized that the teaching on the automatization of the matrimonial sacramentality did not go unchallenged.⁶⁶ It is now our task to examine how this challenge was spelled out.

⁶⁶Aubert, La Maison Dieu 104 (1970), p. 13.

2. The Challenge to the Teaching on the Absolute Inseparability of Contract and Sacrament

a. Separability of Marriage Contract and Sacrament in Traditional Theology

In traditional theology, the opposition to the teaching on the absolute inseparability of marriage contract and sacrament was launched from different angles. Worthy of first mention is, perhaps, the opinion of Duns Scotus who states that since, for the effectuation of a sacrament, clear and audible words are necessary and since in the sacrament of marriage the words of consent by the spouses constitute the required sign which is also the form of the sacrament, then it follows that the dumb cannot receive the sacrament of marriage. Scotus adds that despite the spouses' inability to become the recipients of the matrimonial sacrament, they still have the capacity of contracting a valid marriage, in that they can employ other ways in order to express their consent. However, these other ways cannot be considered as the proper form of the sacrament except in a very wide sense (*forma latissima*), but insufficient for the matrimonial sacrament.⁶⁷ What is of interest to us in this opinion is the fact that Scotus

⁶⁷Johannes Duns Scotus, "In 4 Sententiarum (Reportata Parisiensia) d. 28, q.1, n.22-23," Opera Omnia vol. 14 (Paris: Apud Ludovicum Vives, Bibliopolam Editorem, 1894), p. 384; Idem, "(Opus Oxoniense) d. 26, q.1, n.14," Opera Omnia vol. 19 (Paris: Apud Ludovicum Vives, Bibliopolam Editorem, 1894), p. 168.

expresses the possibility for dumb Christians to contract a valid marriage which is not at the same time a sacrament.

Apart from Scotus, J.M. Herve⁶⁸ and Joseph Pöhle⁶⁹ divide the rest of the opponents of the teaching on the absolute inseparability of contract and sacrament into three categories in accordance with the reasons adduced for their opposition. The first category comprises the so-called 'court theologians'. In the sacrament of marriage, these authors accredit essentiality exclusively to the contract and assign a merely accessorial role to the sacrament. Representative of this category we will single out Marc Antoine de Dominis. Apparently, this archbishop of Spalato did not even believe in the sacramentality of marriage. He states, however, that even on the hypothesis of the marriage's sacramentality, the contract still remains only a natural, profane, civil affair. Just as the scientific analysis of baptismal water or eucharistic bread and wine do not come under the competence of the Church authorities but rather of the secular scientists, by the same token, the marriage contract does not belong to the

⁶⁸Hervé, Manuale Theologiae Dogmaticae vol. 4, p. 497, n.436.

⁶⁹Pöhle, The Sacraments: A Dogmatic Treatise vol. 4, p. 158.

jurisdiction of the Church authorities, rather it belongs to that of the State. The Church's reasonable claim would be confined to the supernatural effects of the sacrament.⁷⁰ As the name of this category of theologians suggests, their theory was designed for the transference of the jurisdiction over marriage from the Church authorities to the State. It will be recalled from what we said in the first section that it was precisely the theologization of the sacramental marriage of this type that evoked multifarious declarations from the papacy.

The second category of theologians maintained the separability of contract and sacrament, on the grounds that the priest was the minister of this sacrament. Melchior Cano (1501-1560), an outstanding Tridentine theologian, looms high on the horizon as the representative of this category. Cano's argument was rooted in the declaration of the Council of Florence which in reference to the requirements for a sacrament stated: "All these sacraments are effectuated in three ways, namely, the things as the matter, the words as the form and the person of the

⁷⁰Le Bras, Dictionnaire de Théologie Catholique vol. 36, col. 2262.

minister conferring the sacrament."⁷¹ From this statement, Cano concluded that the priest was the minister of the sacrament of marriage, and dismissed out of hand the view which held that the husband and the wife were ministers to each other.⁷² Cano, therefore, argues that since even in the absence of a priest the contract could be made validly, it means that marriage could exist apart from the sacrament.⁷³ For, "not only is it not a dogma of faith that every marriage of the faithful is a sacrament, but also that the contrary opinion is more probable."⁷⁴ Despite Cano's opposition to the teaching of the inseparability of contract and sacrament, Pius VI approved the statutes of the Archigymnasium Romanum whose directives included the teaching to students in theology of the entire treatise of Cano's De Locis Theologicis in which precisely this opposition was strongly expressed.⁷⁵

⁷¹Denzinger and Schönmetzer, Enchiridion Symbolorum, n. 695. [My translation].

⁷²Cano, De Locis Theologicis vol. 2 (Romae: Ex Typographia Forzani et Soc., 1890), p. 104.

⁷³Ibid. [My translation].

⁷⁴Ibid., p. 103.

⁷⁵Bullarii Romani Continuatio, Continens Pontificatum Pii VI (Romae: Camera Apostolica, 1844) vol. 8, p. 191.

The third and last category of the opponents of the doctrine of the absolute inseparability of contract and sacrament, among whom are the Wirceburgenses, bases its argument on the necessity of intention for the reception of sacraments. The Wirceburgenses argue that in view of the fact that, prior to its elevation to the dignity of sacrament, marriage could occur by virtue of the contract alone, the same marriage can be brought about, even posterior to its elevation, if the contract alone without the sacrament is intended.⁷⁶ The denial of the separation of contract from the sacrament, on the grounds that by elevating the marriage to the dignity of a sacrament Christ intended the absolute inseparability, is, as far as the Wirceburgenses are concerned, baseless in the Scriptures, in the Councils or in the Fathers of the Church. The Wirceburgenses insist that the declaration of the sacramentality of marriage by the councils of Florence and Trent presuppose the celebration of the contract with the required conditions, one of which is the intention, just as the declaration of baptism as a sacrament presupposes the intention so that any washing with water does not necessarily become a sacrament in the absence of the

⁷⁶Wirceburgenses, Theologia Dogmatica, Polemica, Scholastica et Moralis vol. 10, p. 472, n.300.

required intention.⁷⁷ Therefore, a person kidnapped as a child by non-Christians and without any knowledge of the Church can contract a valid marriage in the same manner as the rest of the non-Christians, but does not receive a sacrament through lack of intention.⁷⁸ Carolus Renatus Billuart also asserts the possibility of a valid marriage without a sacrament through lack of intention, in that "although God instituted the sacraments without taking into account the will of the people, he did not want to impose their administration without the cooperation of their will."⁷⁹

Thus, in spite of the fact that the various groups of theologians mentioned here do not agree on the reasons for their opposition to the teaching on the absolute inseparability of contract and sacrament, they all concur on the separability of contract and sacrament. Scotus view based on the verbal expression as the sole means for bringing about a sacramental contract is no longer tenable, in that the sufficiency of any perceptible sign for the expression of the contract is today recognized by

⁷⁷Ibid., p. 472, n.301.

⁷⁸Ibid., p. 473, n.304.

⁷⁹Quoted by Le Bras, Dictionnaire de Théologie Catholique vol. 36, col. 2260. [My translation].

theologians. The purpose for the view of the court theologians is not all that relevant, insofar as the Church and the State do not appear to be vying with each other for jurisdiction over marriage any longer. Apart from the Eastern Church, there appears to be a convergence of opinion among theologians to the effect that the spouses are themselves ministers to each other in the sacrament of marriage. In this way, Cano's reason for his opposition to the teaching on the absolute inseparability of contract and sacrament seems to lose its validity.

On the other hand, the view of the theologians who base their opposition to the teaching on the absolute inseparability on the necessity of intention for the reception of sacraments seems, irrespective of declarations to the contrary, to retain much of its probability. It is interesting to note that this view was voiced in the Council of Trent. Chief among its exponents was Peter Guerrero, archbishop of Granada, who stated that "marriage can be without a sacrament even in the baptized person who wants to contract marriage but does not want a sacrament; such a person does not receive a sacrament, because it

cannot be conferred on the person against his or her will."⁸⁰ Again, Guerrero writes:

...Now no one receives a sacrament against one's will and against one's intention of receiving it, nay even Catholics could want to contract marriage without intending to receive a sacrament but in the same way as non-Christians contract, just as someone could want to be anointed with chrism or in sickness with the oil of the sick, intending to receive only bodily health, but not grace or a sacrament and without wanting them...; there is no doubt that a contract of marriage even between Catholics is in fact separable from the sacrament.⁸¹

b. Separability of Marriage Contract and Sacrament in Contemporary Theology

After a spate of magisterial declarations in favour of the absolute inseparability of contract and sacrament, the question has been resumed by contemporary theologians, especially in the wake of the teaching of Second Vatican Council on sacraments. The resumption of the question has not been prompted by mere nostalgic reasons, rather it is stimulated by contemporary problems which necessitate

⁸⁰Concilium Tridentinum, Diariorum, Actorum, Epistolarum, Tractuum Nova Collectio, ed. S. Goerrensiana IX (Friburg. Brisg. 1924), p. 781. [My translation].

⁸¹P. Guerrero, Manuscriptum: Acta Concilii Tridentini, Caja B 4, fol. 347 v. (Bibliotheca Univer. Granatensis in Hispania). [My translation].

equally contemporary theological solutions.⁸² The point is that these problems cannot be solved by the teaching on the absolute inseparability of contract and sacrament, inasmuch as this contemporary teaching argues against absolute inseparability itself.⁸³ This has caused theologians to deplore the view expressed in canon law on this question. As a matter of fact, the very incorporation of the teaching on the absolute inseparability of contract and sacrament into the Code of canon law seems to contradict the normal attitude of the magisterium whereby it refrains from defining questions which are in the meanwhile being debated by approved authors or from making decisions prior to a discussion on the matter by the opposing parties.⁸⁴

Therefore, in reference to the canon in which the teaching of the absolute inseparability is enshrined, i.e., canon 1012 (1917 Code), James A. Schmeiser accuses it of closing "an open theological question."⁸⁵ In another article, he writes: "Our canonical structure appears to

⁸²Manzanares, Periodica 67 (1978), p. 53-54.

⁸³Ibid., p. 63.

⁸⁴Ibid., p. 59.

⁸⁵James A. Schmeiser, "Marriage: New Developments in the Diocese of Autun, France," Eglise et Théologie 10 (1979), p. 383.

determine what is not yet a resolved theological question."⁸⁶ Richard G. Cunningham labels the teaching in this canon as simply "false." He states: "Unfortunately, the Code continues to foster the false notion of automatic sacramentality by retaining the absolute identity of the 'contract-sacrament' for the baptized."⁸⁷ On the grounds that the question has not yet been resolved, Manzanares, orders the Code of Canon Law not to utter a word on the matter. Manzanares writes:

The relationship between the marriage of baptized persons and the sacrament cannot be considered a resolved question. This has never been defined doctrinally even though for opportune reasons, one opinion prevailed over another and was taught by the ordinary magisterium. The proper historical context of this position must be kept in mind.⁸⁸

Therefore, "let C.I.C. (Codex Iuris Canonici) keep quiet on this matter, through the suppression of the paragraph which asserts the absolute inseparability" (Sileat C.I.C. de hac

⁸⁶Schmeiser, Studia Canonica 14 (1980), p. 52.

⁸⁷Richard G. Cunningham, "Marriage and the Nescient Catholic: Questions of Faith and Sacrament," Studia Canonica 15 (1981), p. 266.

⁸⁸Manzanares, Periodica 67 (1978), p. 59, trans. Schmeiser, Studia Canonica 14 (1980), p. 83.

re, mediante suppressione paragraphi asserentis inseparabilitatem absolutam [My translation]).⁸⁹

Let it be pointed out, in this regard, that there had been a move in the First Vatican Council towards the definition of the teaching on the absolute inseparability of contract and sacrament, but it had been halted by Giantommaso Tosa, rector of the Seminario Pio, with whose position the council's theological commission finally agreed. Tosa denied the very definability of the doctrine of the absolute inseparability of contract and sacrament, on the grounds that the doctrine had no explicit support "in the sources of revelation or contained in another truth that it followed with inescapable evidence."⁹⁰ To a certain degree, history repeated itself at the Second Vatican Council where the first schema on marriage asserted the traditional teaching on the absolute inseparability of contract and sacrament but suffered a total rejection, so that the final schema of the same Council did not contain this doctrine.⁹¹ It was not the wish of the Fathers of the

⁸⁹Manzanares, Periodica 67 (1978), p. 70.

⁹⁰Nowak, Studia Canonica 12 (1978), p. 349-350.

⁹¹Manzanares, Periodica 67 (1978), p. 60. Acta Synodalia Sacrosancti Concilii Oecumenici Vaticani II vol. III (Rome: Cittadel Vaticano, 1966), pp. 467-475.

Second Vatican Council to "take a position on this issue as indicated by their abandonment of the assertion of Canon Law regarding the issue which had been included in the initial schema."⁹²

For pastoral or doctrinal reasons, individual bishops, episcopal conferences and university professors, each made recommendations on this question to the commission responsible for the revision of marriage laws. For instance, the archbishop of Daresalaam asked as to "how a Christian who has lost his or her faith could receive sacraments."⁹³ Some members of these bodies called for further and deeper research on this question, others recommended that the canon which contains this doctrine should be completed by a phrase such as the following: "Provided that whatever is required for a valid reception of sacraments is observed." Others suggested that the phrase, 'between Christian faithful' should be substituted for the phrase 'between baptized persons', yet others simply demanded the total suppression of the canon.⁹⁴

⁹²Schmeiser, Studia Canonica 14 (1980), p. 83.

⁹³Manzanares, Periodica 67 (1978), p. 60-61.

⁹⁴Communicationes 9 (1977), p. 122.

In response to these suggestions, the members of the said commission, realizing the difficulty of the matter, unanimously acknowledged their lack of the necessary competence in solving such a theological question.⁹⁵ Their final decision, in the meantime, was the retention of the canon and the confirmation of the teaching on the absolute inseparability of contract and sacrament. While the members recognized the debatability of the question, they refrained from departing from a magisterial teaching which some theologians considered as proxima fidei or theologically certain. Incidentally, whether a doctrine is proxima fidei or theologically certain, these phrases express theological opinions on the doctrine in question. Consequently, the members of the said commission stated that their course of action was not intended to close the whole case, in that there was nothing to prevent the continuance of the work of theological research on the matter (neque hoc modo impeditur suscepta investigatio theologica).⁹⁶

In any case, the retention of the teaching on the absolute inseparability of contract and sacrament in the

⁹⁵Ibid., p. 190.

⁹⁶Ibid.

draft of the revised canon law on marriage did not satisfy many authors and invited criticism such as the following from the Canon Law Society of America:

An area of profound theological-canonical investigation today is the identity of the sacrament and every marriage relationship among the baptized.... This identity is a fundamental principle underlying the draft. Yet such automatic sacramentality of marriage among the baptized is questioned because of a renewed sense of the sacraments as action of faith within the Church.... In Aquinas and other medieval theologians there was a strong sense of a real distinction between marriage as officium naturae [a dutiful office of nature] and marriage as sacramentum novae legis [a sacrament of the new law]. This issue of automatic sacramentality needs further study, wider consultation and the authentic teaching by the College of Bishops before it is "frozen" into new law.⁹⁷

Like the traditional unofficial view, contemporary theology is bitterly opposed to the teaching on the absolute inseparability of contract and sacrament. With the new insights on sacramental theology provided by the second Vatican Council, the indiscriminate automatization of the sacramentality of marriage between baptized persons is deemed no longer tenable. Apparently, it will not be far

⁹⁷ Report of the Special Committee of the Task Force of Canon Law Society of America on the Marriage Canons of the Proposed: Schema Documenti Pontificii Qua Disciplina Canonica de Sacramentis Recognoscitur (An unpublished document), p. 21. Quoted from Mackin, *What is Marriage*, p. 286.

wrong to assert a greater moral unanimity among theologians today than in the past in their conviction about the separability of contract and sacrament in certain specific cases. As has just been seen above, even those who feel compelled to retain the traditional stand appear to do so not out of a conviction about the invincibility of the truthfulness of the traditional position, or they would not have encouraged further research. Rather, they feel constrained to retain the traditional teaching merely out of the fear to introduce changes "in such a delicate and grave matter for the life of the Church" (mutationes non inducendas esse in re tam delicate et gravi pro ecclesiae vita).⁹⁸ On the other hand, doctrine cannot be dictated by fear precisely "in such a delicate and grave matter" for the lives of such a great number of the people of God. No one would be prepared to shoulder the responsibility for the untold sufferings caused by what some theologians have not hesitated to call 'false' doctrine. Obviously, therefore, it is a matter of utmost urgency that a solution to such "a delicate and grave matter" be found and be found soon.

⁹⁸Communicationes 9 (1977), p. 190. [My translation].

3. An Attempt at Resolving the Problem of the Automatic Sacramentality of Marriage

Various reasons have been assigned to the opposition of the teaching on the absolute inseparability of contract and sacrament in traditional theology. Despite the irrelevancy of most of these reasons in the contemporary theological arena, it was, all the same, interesting to note the presence of a conviction among the theologians of the time concerning the separability of contract and sacrament. The same conviction is even more prevalent in contemporary theological circles and beyond, though for different pastoral problems and doctrinal reasons. The pastoral problems arise from the fact that there is present among the baptized persons today a great number who are unbelievers at the same time, and from the fact that another great number of Christians opt for customary or civil marriage. The doctrinal reason consists in the fact that the Second Vatican Council's teaching suggests the necessity of faith for the reception of sacraments, which exhibits a total departure from traditional theology where faith was, as we have seen earlier on, discounted for the valid reception of sacraments. For the Council teaches:

The purpose of the sacraments is to sanctify men, to build up the body of Christ, and, finally, to give worship to God. Because they are signs they also instruct. They not only presuppose faith, but by words and objects they also nourish, strengthen, and express it. That is why they are called "sacraments of faith." They do, indeed

confer grace, but, in addition, the very act of celebrating them most effectively disposes the faithful to receive this grace to their profit, to worship God duly, and to practise charity.⁹⁹

This being the case, can we continue to adhere to the traditional teaching on the automatic sacramentality with reference to marriages of baptized persons who have no faith? Can we continue to describe all marriages which have not employed the canonical form as "disgraceful and base concubinage?" These are the main questions which are going to occupy our attention in the following paragraphs.

a. Marriages of the Baptized Unbelievers

In contrast to the time of the formulation of the marriage's automatic sacramentality, when baptized unbelievers were almost inconceivable, contemporary Christian history exhibits a different picture where such baptized unbelievers are a very common occurrence. With the doctrine of automatic sacramentality, marriages between these baptized unbelievers present great and constant problems. However, encouraged by the teaching of the Second Vatican Council, many theologians are today asking questions about the marital situations of these baptized

⁹⁹ "The Constitution on the Sacred Liturgy," Vatican Council II vol. I: Conciliar and Post Conciliar Documents, ed. Austin Flannery (Boston: Costello Publishing Company, 1975), p. 20, n.59.

unbelievers, while others are suggesting their answers or making recommendations.

There are examples of persons whose personal history testifies to their reception of baptism in infancy, a baptism of which neither of the parties is aware. If, by any chance, these people, despite the fact that they, by no manner of means, practised their Christianity, were married canonically, their marriage would be regarded as a sacrament in the same way as the marriages of religiously devoted Protestants, Orthodox or Catholics. Basset puts the question: "How can we attribute such sacramentality to the marriage of persons who were baptized as infants, but who have never had faith nor life in the Christian community?"¹⁰⁰ Such Christian unbelievers are also found in non-Catholic churches. By virtue of the fact that non-Catholics are not bound by the canonical form,¹⁰¹ the marriages of the non-Catholic unbelievers are valid, no matter how they are celebrated, and consequently sacramental. In these cases too the question can be asked as to how a sacrament can be effected in the absence of faith. The fact that the marriages of the Catholic

¹⁰⁰Basset, Bond of Marriage, p. 165-166.

¹⁰¹Arregui, Summarium Theologiae Moralis, p. 522, n.791.

unbelievers become valid and sacramental by the fact that they are married canonically, implies that if the canonical form is not employed, their marriage is invalid. Since in many cases, these Catholic unbelievers will not employ the canonical form, it means that they will never contract a valid marriage for the rest of their lives. Many theologians find this to be a deprivation of the Catholic unbelievers' right to marry, in that they are placed before a dilemma: "either the sacrament or concubinage."¹⁰² Thomas P. Doyle describes this dilemma as a "basic tension: the right of the individual to marry vis-a-vis the right of the ecclesial community to set standards and place demands on those who intend to marry."¹⁰³ Orsy, in turn, states that despite his awareness of the fact that his reasoning comes into conflict with the present practice, he does not hesitate to make the following statement:

Assuming that a natural marriage has taken place between two baptized unbelievers, how should the Church look at their situation? The response can be no other than the one based on the truth: the presence of the marital covenant should be

¹⁰²Schmeiser, Studia Canonica 14 (1980), p. 70. John Baptist Sequeira, Tout Mariage entre Baptisés Est-Il Nécessairement Sacramentel: Etude historique, théologique et canonique sur le lien entre baptême et mariage (Paris: Editions du Cerf. 1985), pp. 462-463.

¹⁰³Doyle, "The Individual's Right to Marry in the Context of the Common Good," Studia Canonica 13 (1979), p. 245-301, p. 349.

recognized, the absence of the sacrament admitted. To deny the presence of a marital covenant would be to consign all baptized unbelievers to a limbo. They would be the only ones in the immense human family who would have no right to marry: not naturally, because they are baptized; not sacramentally, because they have no faith. Such a response does not make sense. The Church should speak the truth: they are married, but not sacramentally.¹⁰⁴

A number of episcopal conferences are reported to have suggested the refusal of a canonical marriage to the baptized unbelievers and to have recommended a purely civil marriage in recognition of "their natural right to contract a marriage."¹⁰⁵ Some theologians, without departing from the teaching on the absolute inseparability, recommend the dispensation of the baptized unbelievers from the canonical form. However, the marriage becomes sacramental all the same, regardless of the fact that all those who are present, including the contractants themselves, are unaware of the sacramentality of the marriage.¹⁰⁶ Schmeiser suggests a modification of the canon on the automatic sacramentality of marriage, so that by recognizing the

¹⁰⁴Orsy, Theological Studies 43 (1982), p. 390-391.

¹⁰⁵Schmeiser, Studia Canonica 14 (1980), p. 83.

¹⁰⁶Manzanares, Periodica 67 (1978), p. 50-51.

validity of civil marriage, the right of the baptized unbelievers is preserved.¹⁰⁷

Thus the above are mostly examples of theologians who take issue with the doctrine of the absolute inseparability of contract and sacrament, mainly on the grounds of the right of the baptized persons without faith to contract a valid marriage that is not necessarily an official sacrament. This right to marry is a natural right and therefore an inalienable right. No human law can be enacted and hope to be considered a just law, if it effects the deprivation of this natural right. Not even a sacrament can, it seems, effectuate the absolute incapacitation of people from the exercise of this right to marry. Apparently, this is the situation in which baptized persons without faith are placed when they are prevented from contracting a valid marriage civilly or rather when their marriage is not recognized as valid. Fortunately the church, at least at the theoretical level, recognizes this right. There is a multiplicity of official declarations to this effect, some of which we shall have occasion to mention later on. However, for the moment, we shall make one citation. Pope John Paul II refers, in his pastoral

¹⁰⁷Schmeiser, Studia Canonica 14 (1980), p. 53.

exhortation, "The Christian Family in the Modern World," to the Fathers of the Synod as having asserted persons' "right to exist and progress as a family, that is to say, the right of every human being, even if he or she is poor, to found a family and to have adequate means to support it."¹⁰⁸ Unfortunately, on the other hand, the translation of such beautiful declarations into practice is, as is often the case, a different question. But does it not have to be so?

There is another group of theologians who take issue with the doctrine of the absolute inseparability of contract and sacrament, on the grounds that, despite the fact that the absence of faith does not invalidate the marriage, it renders it non-sacramental. J.M. Aubert wonders why the civil marriage of persons who have been baptized but have not faith should be regarded as invalid even as a human reality, when the validity of a similar civil marriage contracted by persons who have not been

¹⁰⁸ John Paul II, "The Christian Family in the Modern World, November 22, 1985," Vatican Council II vol. II: More Conciliar and Post Conciliar Documents, ed. Austin Flannery (Boston: Daughters of St. Paul, 1982), p. 854, n.46.

baptized, and consequently have no faith, enjoys the Church's recognition.¹⁰⁹ He, therefore, calls for the recognition of the validity of the marriages of baptized persons without faith as human realities for two reasons: first, because compliance with the post-conciliar spirit which acknowledges the autonomy of human realities calls for such a recognition; secondly, because the Church and State are no longer in competition against each other as was the case when the official declarations of the automatic sacramentality of marriage were being pronounced.¹¹⁰ Louis de Naurois simply states that we can no longer think in terms of "base concubinage" as Pius IX did with regard to the marriage of baptized persons who have no faith.¹¹¹ Edward J. Kilmartin denies the conclusion arrived at by the teaching on automatic sacramentality as being necessarily the case "except where the faith of the participants recognizes in the human situation, however vaguely, the place of God's special

¹⁰⁹Aubert, La Maison Dieu 104 (1970), p. 119.

¹¹⁰Ibid., p. 139.

¹¹¹Louis de Naurois, "Le Mariage de baptisés de l'Eglise catholique qui n'ont pas la foi," Revue de Droit Canonique 30 (1980), p. 155; cf. Idem, Marriage of Baptized Persons Who Do Not Have the Faith," Marriage Studies, Washington 2 (1982), p. 38-59.

presence."¹¹² John Kevin Coyle, who appears to place the sacramentality of marriage in the liturgical rite, suggests that the "non-Christian Catholics," i.e., the baptized persons who have no faith, be given by the Church "the opportunity to marry in a civil ceremony which she would consider valid, rather than make them submit to a liturgical rite without any meaning for them."¹¹³ Bertrams, in turn, says that the baptized Catholics who have no faith should have the possibility of contracting a valid marriage in which the Church authorities should not be involved.¹¹⁴

Traditional theology did not require faith for the validity of sacraments. The intention alone was regarded as sufficient. We have already cited Aquinas in this regard. The only exception where, besides the intention, faith was also necessary was the sacrament of penance. Thus, in order to receive a valid sacrament, "with the possible exception of the recipient of penance," "one need

¹¹²Edward J. Kilmartin, "When is Marriage a Sacrament?" Theological Studies 34 (1973), p. 283.

¹¹³John Kevin Coyle, Eglise et Théologie 8 (1977), p. 88.

¹¹⁴Bertrams, Periodica 67 (1978), p. 267; C.F. Michel Legrain, Mariage chrétien modèle unique? Questions venues d'Afrique (Paris: Chalet, 1978), p. 42.

not believe in Christ or wish to be placed in any particular relationship to him."¹¹⁵ This teaching was confirmed by the then Holy Office in August, 1860 when it stated:

For while certainly faith and penance are required in an adult in order to receive the sacrament (baptism) and acquire the fruits of the sacrament, intention is indeed necessary in order to receive it validly, so that an adult who is baptized without faith and penance is baptized illicitly but validly, whereas, he or she who is baptized without the will to receive the sacrament¹¹⁶ is baptized neither licitly nor validly.

On the strength of the teaching of the Second Vatican Council on the necessity of faith for the reception of sacraments, Palmer dismisses this teaching of the Holy Office when he writes: "The decision should not be normative or definitive for theologians today."¹¹⁷

¹¹⁵Denis F. O'Callaghan, "No Sacrament, No Marriage," Furrow 26 (1975), p. 233.

¹¹⁶Denzinger and Schönmetzer, Enchiridion Symbolorum, p. 566, n. 2837: "Etenim vero fides et paenitentia in adulto requiruntur, ut licite sacramentum suscipiat et fructum sacramenti consequatur; intentio vero necessaria est ad illud valide consequendum, adeo ut qui baptizatur adultus sine fide ac paenitentia illicite quidem, at valide baptizatur, et contra qui baptizatur absque voluntate sacramentum suscipiendi nec licite nec valide baptizatur."

¹¹⁷Palmer, "Christian Marriage: Contract or
(Footnote Continued)

"Marriage is not automatically a sacrament but only becomes so in the measure of faith which leads the participants to accept this human institution as a graceful state,"¹¹⁸ writes Kilmartin.

From what we have seen, it can be affirmed that the majority of contemporary theologians recognize the possibility of the validity of marriages of baptized unbelievers without automatizing their sacramentality at the same time. In other words, contemporary theologians believe in the separability of the marriage contract and sacrament. This, to be sure, does not imply that the separability must apply to all marriages of baptized persons, rather the separability is confined to those marriages contracted by baptized persons who have no faith. However, these theologians differ from each other in the way they view the validity of the baptized unbelievers' marriages, in that a few appear to maintain that the validity of such marriages will be attained only through the Church's authorities' dispensation of these marriages from the canonical form, while the majority of the theologians appear to recognize the validity of these

(Footnote Continued)
Covenant," Theological Studies 33 (1972), p. 642, footnote 49.

¹¹⁸Kilmartin, Theological Studies 34 (1973), p. 285.

marriages even as human realities, regardless of whether or not the authorities of the Church acknowledge it. As a matter of fact, it is precisely in view of this apparent self-contained validity that the Church authorities are considered to be under obligation to recognize this validity. The fact that the persons have lost their faith implies that they cannot be recipients of sacraments, to be sure, but it does not appear to imply that they are incapacitated from acting authentically as human beings.

The necessity of faith for the reception of sacraments, the natural right of human beings to marry, and the autonomy of human realities seem to make it abundantly clear that the view which advocates the validity of the marriages of the baptized unbelievers is the correct one, notwithstanding the Church authorities' recognition or non-recognition of this validity. This is consonant with and implied by the contemporary notion of sacrament as the actualization of the Church's nature. For "is it possible that the Church can actualize itself when the principal celebrants have no faith?"¹¹⁹ The New Testament Church is

¹¹⁹Schmeiser, "Marriage: New Alternatives," Worship 55 (1981), p. 32.

a "community of believers joined in the Lord."¹²⁰ Let us face it: when persons no longer believe in Christ, they are no longer effective members of the community of believers. When persons no longer recognize this community, when they refuse it, when they openly despise it, they can no longer actualize the same community.¹²¹ Once they have excluded themselves from the membership of the Church and explicit followers of Christ, their activities cease to be explicit witness to Christ, but they do not cease to be authentic human activities.

On the other hand, the recognition of the validity of marriages of the baptized persons who have no faith raises the question of the indelible character of baptism.¹²² It is argued that their defection from Christianity does not, on the strength of baptismal character, remove their relationship to the Church.¹²³ The question is to see how the marriage of the baptized unbelievers is not a sacrament when through baptismal character their relationship to the

¹²⁰Richard P. McBrien, Catholicism (Minneapolis: Winston Press, 1981), p. 580.

¹²¹Manzanares, Periodica 67 (1978), p. 55.

¹²²Naurois, Revue de Droit Canonique 30 (1980), p. 167.

¹²³Betrans, Periodica 67 (1978), p. 267.

Church perdures. The problem seems more apparent than real, provided that a correct notion of character is grasped. Rahner explains the notion of baptismal character thus:

One must ask what this signum spirituale et indelibile (Denzinger 852), which is impressed on the soul really means and in actual fact is. If one avoids arbitrary mystification about this sign, and bears in mind the origin of the doctrine of baptismal character in Augustine, it will be quite possible to say that the import of the character is the church of Christ's express and enduring claim to the baptized person, produced¹²⁴ by a sacramental and historical event.

Traditional theology conceives of baptismal character as "an ontological state of the soul."¹²⁵ Must we really believe that through baptism something in the form of, say, a cross or a heart or whatever it may be, is written, imprinted as an indelible sign on the soul? This apparently is what Rahner describes as an "arbitrary mystification" of the baptismal character. A sign must be something possessing perceptibility. Now to whom is the signum spirituale imprinted on the soul a sign? It cannot be a sign for human beings insofar as it has no

¹²⁴Rahner, Inquiries, p. 270-271.

¹²⁵*Ibid.*, p. 271.

perceptibility. On the other hand, Rahner describes it as "absurd" to consider the signum spirituale as "a sign for God and the angels, simply so as to be able to maintain that it is still a sign even when it is a completely invisible reality."¹²⁶ As a matter of fact, does God with his angels need a sign? Thus, Rahner believes that a character must be conceived of as "the Church of Christ's express and enduring claim to the baptized person." Through baptism the person is perpetually being claimed by the Church. In this sense, whether he becomes "a heretic or a schismatic, he always remains in relation to the Church through the enduring fact of having been baptized."¹²⁷ However, what must be taken into consideration is the fact that the existence of an authentic relationship in this regard demands reciprocity. When members cease to actuate their relationship to the Church through faith, when, that is, what remains of the relationship is only the Church's "express and enduring claim" on the person as its member, then the relationship becomes one sided, has no reciprocity, and is therefore deformed. While the Church remains related to the baptized person the baptized person refuses, through the loss of

¹²⁶Ibid., footnote 9.

¹²⁷Ibid., p. 272.

faith, to be related to the Church. It is on this account that the baptized unbelievers' marriage does not appear to be the actualization of the nature of the Church, and therefore not a sacrament. But since marriage was an authentic human reality even prior to its becoming a sacrament, and since the baptized unbelievers do not cease to be human beings with the capacity to engage authentically in human activities, their marriage, according to many theologians, retains its validity.

The point is that, apart from signifying an "express and enduring claim," the so-called character also signifies, on the part of the baptized person, the acquisition of a status in the community of believers, that is, the character is a permanent commission. Through baptism the person is commissioned to proclaim God's salvation through Christ, over and above the task of personal salvation. Rahner states:

Anyone who is sanctified through Baptism, in which he is incorporated in this Church as the historical and social reality of Christ's grace in the world, receives necessarily with the grace of the Church a status, a commission, and a power to share in this function of the Church as a tangible historical embodiment of God's grace in the world.¹²⁸

¹²⁸Rahner, Nature and Grace, p. 90-91.

Baptized persons' loss of faith implies that their empowerment or commission is no longer being exercised. The baptized persons no longer participate in the Church's function "as a tangible, historical embodiment of God's grace in the world," which is tantamount to saying that they are not actualizing the Church's nature. This condition redounds to all their activities, including the contracting of marriage, which would explain why their marriage is not an official sacrament. However, this does not compromise their ability to operate effectively as human beings. Consequently their marriage, as a human reality, appears to retain its authenticity.

b. The Baptized Believers and the Canonical Form

1) When Marriage Was Free From the Church Authorities' Influence

In the above discussion we concentrated on the marriages of baptized persons who have no faith. Our present discussion focuses chiefly on marriages of the baptized and believing Christians. While the main problem with the baptized unbeliever was the absence of faith, the problem with the Christian faithful is the absence of the so-called canonical form. On the basis of the teaching on the absolute inseparability of contract and sacrament, the marriages of the baptized faithful are automatically sacraments. However, the validity of such marriages hinges

solely on the observance of the canonical form, for the law in this regard states:

1. Only those marriages are valid which are contracted in the presence of the local ordinary or the pastor or a priest or deacon delegated by either of them, who assist, and in the presence of two witnesses....

2. The one assisting at a marriage is understood to be only that person who, present at the ceremony, asks for the contractants' manifestation of consent and receives it in the name of the Church.¹²⁹

Those marriages, therefore, which do not observe this law are considered by the Church authorities as invalid. In view of the progressivity of the African marriage, when the Africans become converted into Christianity, they find themselves involved in great difficulties with the Church authorities insofar as they cannot bring themselves to celebrate their marriage in the abrupt way demanded by the canonical form. Such progressive marriages are some of the conjugal unions that are included in the category of "disgraceful and base concubinage," in that they are considered as invalid, on the grounds that they are celebrated without employing the canonical form, despite the fact that they are recognized and approved of by the

¹²⁹The Code of Canon Law: Text and Commentary, p. 793, can. 1108:1-2.

people. The loss of their validity involves, as far as the canonists are concerned, the loss also of their sacramentality. The question that surfaces from this situation is that of the necessity of the identification of the canonically celebrated marriage with the sacramental marriage. In other words, is a sacramental marriage necessarily to be equated with the marriage celebrated with the canonical form?

The canonical form is the way by which the Church celebrates the commencement of Christian marriage. The point to realize is that this is only one way whereby the celebration of marriage can take place, and one which has been determined by the Church authorities, for that matter. For the reading of the New Testament gives no indication of a rite by which marriage should be celebrated.¹³⁰ The absence of a New Testament foundation, therefore, necessitates the knowledge of the provenance of the Church's practice. To begin with, has it always been the case that Christian marriages have been celebrated in church? There are two pieces of evidence which appear to endorse the view that such has been the case. The first is

¹³⁰Le Bras, Dictionnaire de Théologie Catholique vol. 36, col. 2255; Hans Dombois, "De Competentia Ecclesiae et Status," Periodica 67 (1978), p. 298.

the statement of St. Ignatius which states that Christians who wish to marry must "form their union with the approval of the bishop, that their marriage may be according to the Lord, and not after their own lust."¹³¹ However, as Regis-Claude Gerest observes, Ignatius' words must not be interpreted as if he was ordering the celebration of Christian marriage before the Church (in facie ecclesiae), rather what Ignatius is demanding is the consultation and approval of the bishop prior to the celebration of Christian marriage, a celebration which was conducted civilly.¹³² The second evidence comes from Tertullian who writes: "How shall we ever be able to describe the happiness of a marriage which the Church supports, which is confirmed in the eucharistic offering, and which is sealed by the blessing? Such a marriage is proclaimed by the angels and ratified by the Father in Heaven."¹³³ The impression created by this statement seems to be that marriage was already at this time celebrated in Church

¹³¹"Epistle of Ignatius to Polycarp," The Ante-Nicene Fathers vol. 1, ed. A. Cleveland Coxe, Alexander Roberts and James Donaldson (Grand Rapids, Michigan: Wm. B. Eerdmans Publishing Company, 1981), ch. 5, p. 95.

¹³²Regis-Claude Gerest, "Quand les chrétiens ne se marient pas à l'Eglise: Histoire des cinq premières siècles," Lumière et Vie 16 (1967), p. 11.

¹³³Tertullian, "Ad Uxorem 2, 9," Patrologia Latina vol. 1, ed. Jacques-Paul Migne (Paris: 1858-64) col. 1302, translation in J. Martos, Doors to the Sacred, p. 407.

during the eucharistic sacrifice, but such does not appear to have been the case. In fact no liturgical book of the time is known to contain "a wedding ceremony of any sort, and all other indications suggest that at this time Christian marriage was still regarded as a personal and family affair, something that was contracted privately but lived openly 'in the Lord'."¹³⁴ In his paraphrase of this text, Schillebeeckx states:

The marriage of baptized Christians is, by virtue of their baptism, a church marriage (Ecclesia conciliat), and one that is moreover firmly established in its adherence to the Christian way of life (to the Church) by the joint participation of the two partners in the liturgical celebration of the Christian community and by their being able to pray together at home. The angels are the witnesses of such a Christian married life, safeguarding its continued existence. The heavenly Father gives his consent and his blessing to such a marriage.¹³⁵

Apparently, therefore, Tertullian is not referring to marriage as a transient ceremony, rather he is referring to the various ways married life is supported, namely, the Church, the joint participation of the partners themselves in the eucharistic celebration coupled with the blessing

¹³⁴ Martos, Doors to the Sacred, p. 408.

¹³⁵ Schillebeeckx, Marriage, p. 254.

given weekly at this celebration, the protection of the angels, and God's sanction.

In fact, the earliest evidence available on this question, The Epistle to Diogenetus (ca. 180-220), referring to Christians, affirms that "they marry like all others" (gamousin hos pantes).¹³⁶ By "like all others" is not meant that there was one form by which marriage was celebrated, but that Christians married according to the form followed by the people of their environment.¹³⁷ In other words, there was no difference between the celebration of marriage between Christians and non-Christians. Schillebeeckx writes:

In the first Christian centuries, pagan converts to Christianity were for the most part already married when they became Christians. Initially, then marriage posed no problems for the church. The marriages of these pagan converts were brought within the Christian sphere of life by baptism. In the case of already baptized Christians who wished to marry, the idea of celebrating these marriages with a separate church ceremony, distinct from the normal civil marriage celebrated in the family or the immediate social circle, did not at first come to mind. Christians did much the same as their non-Christian fellows, the Greeks and the Romans and later the Germanic, Frankish, Celtic and

¹³⁶The Epistle to Diogenetus, trans. Henry G. Meecham (Manchester: Manchester University Press, 1949), section V.6, p. 18.

¹³⁷Schillebeeckx, Marriage, p. 244.

other peoples. The ceremonies and popular customs associated with marriage in contemporary society also formed the marriage ceremonies for baptized Christians, and of course many of these customs were eventually brought within the church's orbit.¹³⁸

2) The Church Authorities' Involvement in Matrimonial Matters

It was only gradually that the Church authorities involved themselves in the marriages of its Christians. What first constituted the motive for the Church's involvement in the marriages of its Christians was its pastoral care in its efforts to protect Christian marriages "from pagan influences of harmful kind and in particular from sacrifices to false gods."¹³⁹ Furthermore, the emergence of certain circumstances in the early Church necessitated the Church authorities' intervention in the marriages of its Christians. The first that must be mentioned in this regard is the case of slaves who became Christians. According to Roman law, slaves could not contract a valid marriage. Percy Ellwood Corbett states: "With slaves there is no conubium. Even between slaves there is no legal marriage, only a de facto relation called

¹³⁸Ibid., p. 233.

¹³⁹Ibid., p. 245.

contubernium."¹⁴⁰ Slaves, therefore, found themselves in an impossible situation as far as marriage was concerned, and one, in fact, that was diametrically opposed to Christian life. Something had to be done to address the situation especially of the slaves who had become converts, and this took the form of a permission granted by the bishops to capacitate the slaves to celebrate valid Christian marriages. However, in view of the prohibitive civil law, these marriages had to be kept secret from the civil authorities. "It was in this way that the so-called 'marriages of conscience' came into being."¹⁴¹ The second circumstance where the involvement of the bishop was necessary was the case of orphans. In virtue of the fact that, according to Roman law, "over and above the consent of the immediate parties, that of their paterfamilias was indispensable,"¹⁴² the marriages of orphans who came under the guardianship of bishops through their social pastoral functions found themselves in great difficulties owing to the unavailability of the required consent of the

¹⁴⁰Percy Ellwood Corbett, Roman Law of Marriage (Oxford: Clarendon Press, 1969), p. 30.

¹⁴¹Didascalia et Constitutiones Apostolorum vol. 1, 8, 32:5, ed. Francis Xavier Funk (Faderborn: Libraria F. Schoeningh, 1905) pt. 1, p. 535, 537; Schillebeeckx, Marriage, p. 247.

¹⁴²Corbett, Roman Law of Marriage, p. 57; Didascalia et Constitutiones Apostolorum vol. 1, 4:2, p. 218.

paterfamilias. The role of the paterfamilias for the marriages of these orphans, therefore, devolved upon the bishops themselves, thus enabling them to conclude the marriages of their protégés. All "this only confirms the view that marriage was a civil and family matter in which the father or the guardian was the real subject of the legal proceedings."¹⁴³ Other known cases where the bishop's intervention was found necessary were the marriages of the catechumens¹⁴⁴ and the clergy.¹⁴⁵ What must be realized is that all these conditions constituted exceptional cases and that prior to the eleventh century, there is no reference to an obligatory liturgy for marriages celebrated in church. The father's consent or the mutual consent of the immediate parties "according to the prevailing customs of the country continued to be the essential element in the constitution of a marriage and in the express words of Pope Nicholas I, the only essential element."¹⁴⁶ For Nicholas I declared:

¹⁴³Schillebeeckx, Marriage, p. 249-250.

¹⁴⁴Didascalia et Constitutiones Apostolorum vol. 1, p. 535.

¹⁴⁵F. Vacandart, "Célibat," Dictionnaire de Théologie Catholique vol. 3 (Paris: 1903), pp. 2068-2088.

¹⁴⁶Schillebeeckx, Marriage, p. 262.

...According to the laws, let the consent alone of those suffice concerning whose union there is question; and if by chance this consent alone be lacking in the marriage, all other things, even when solemnized with intercourse itself, are in vain.¹⁴⁷

On the other hand, the absence of any ceremony, civil or ecclesiastical or customary, did not compromise the validity of the marriage, provided that the mutual consent of the partners was present.¹⁴⁸

It was only in the fourth century that evidence of the Church authorities' somewhat deeper involvement in the marriages of Christians at large becomes available where prayers are said and blessings are given by the priests. Schillebeeckx suggests the origin of this new development when he writes:

This priestly blessing probably developed from the practice - highly regarded by families - of a priest, or especially a bishop, going to congratulate the family in which a marriage feast was celebrated. It goes without saying that the bride and bridegroom would ask the bishop for his blessing on their new state in life. This custom

¹⁴⁷ Denzinger and Schönmetzer, Enchiridion Symbolorum, The Sources of Catholic Dogma, p. 134, n. 334; Nicholas I, "Responsum ad Bulgaros," Patrologia Latina vol. 119, ed. Jacques-Paul Migne (Paris: 1858-1864), col. 980, c. 3.

¹⁴⁸ Schillebeeckx, Marriage, p. 256.

developed in the fourth century into an ecclesiastical ceremony.¹⁴⁹

The presence of a priest or bishop at a marriage feast was sometimes the result of an invitation by the couple,¹⁵⁰ and it was not always the case that the bishop or priest blessed the couple at this wedding feast, but they simply functioned as witnesses by signing the marriage registers (tabulae nuptiales).¹⁵¹ On the other hand, not all Christians invited their bishop or priest, nor did the bishop or priest go to congratulate every couple that happened to get married. What is most significant in all these developments, therefore, seems to be the fact that during the first ten centuries an obligatory marriage ceremony was as yet non-existent.

We have already cited the testimony of the Epistle to Diogenetus, but we shall, at this juncture, add the confirmation of a few Fathers of the Church to the effect that Christians had not, during the first ten centuries elaborated their own liturgy for marriage as yet.

¹⁴⁹Ibid., p. 250.

¹⁵⁰Mackin, What is Marriage, p. 78; Gerest, Lumière et Vie 16 (1967), p. 14.

¹⁵¹Gerest, Lumière et Vie 16 (1967), p. 14, footnote 22.

Athenagoras (ca. 193) states that each Christian had a wife "whom he married according to the laws made by you" (quam secundum leges a vobis positas duxit).¹⁵² Tertullian (ca. 222) wonders why Christians should be called to account as "harm doers" seeing that they were people "having the same habits, under the same necessities of existence" as the rest of the citizens, apart from the pagan religious services.¹⁵³ In a rather similar vein, Arnobius argues against the accusation "that from the time Christians began to exist in the world the universe has gone to ruin, that the human race has been visited with ill of many kinds," for Christians act like everyone else in everything, including matters concerning marriage. Arnobius asks: "In fine, do men themselves, whom an active energy with its first impulses has scattered over habitable lands, not form marriages with due rites?"¹⁵⁴ John Chrysostom (ca. 407)

¹⁵²Athenagoras, "Legatio pro Christianis," Patrologia Graeca vol. 6, ed. Jacques-Paul Migne (Paris: 1858-1864), col. 966.

¹⁵³Tertullian, "Apology," The Ante-Nicene Fathers vol. 1, ed. Cleveland Coxe, trans. Alexander Roberts and James Donaldson (Buffalo: The Christian Literature Publishing Co., 1885), p. 49; cf. Idem, "Apologetica," Patrologia Latina vol. 1, ed. Jacques-Paul Migne (Paris: 1858-1864), col. 490-495.

¹⁵⁴Arnobius, "Against the Heathen," The Ante-Nicene Fathers vol. 1, ed. Cleveland Cose, trans. Alexander Roberts and James Donaldson (Buffalo: The Christian Literature Publishing Company, 1885), pp. 413-414.

points out that Christians do not just behave as they wish for they are obliged to follow the laws of kings in everything, including the marrying of wives. Chrysostom states: "Kings make laws.... Whether we marry wives, whether we make wills, whether we have to buy slaves, houses, fields, or to do anything else, we do not do these things according to our own will, but according as they command."¹⁵⁵

From what has been said above, it seems abundantly clear that the provenance of the canonical form is neither from the New Testament nor from the practice of the early Church but merely from "ecclesiastical and not divine law" (publicitas in facie ecclesiae est ... mere iuris ecclesiastici et non divini).¹⁵⁶ In fact, it was only in the eleventh and twelfth centuries that the Church authorities' acquisition of complete jurisdiction in matrimonial matters occurred.¹⁵⁷

¹⁵⁵ John Chrysostom, "Ad Populum Antiochenum, Hom. 16," Patrologia Graeca vol. 49, ed. Jacques-Paul Migne (Paris: 1862), col. 164: "Reges ferunt leges....Sive uxores ducamus, sive testamenta faciamus, sive servos emere debeamus, sive domos, sive agros, sive quodlibet aliud facere, non ex propria facimus haec sententia, sed quomodocumque jusserint illi." [My translation].

¹⁵⁶ Hans Bombois, "De Competentia Ecclesiae et Status," Periodica 67 (1978), p. 298.

¹⁵⁷ Schillebeeckx, Marriage, p. 276.

3) The Consonance of Contemporary
Theology of Marriage With That of
Early Christianity

Although the elaboration of the notion of the sacrament of marriage was to come later¹⁵⁸ at this point in time, the marriage's sacramentality "was not based on elements in the formal constitution of marriage, but on the priestly liturgy surrounding it, namely the veiling or the priest's blessing of the marriage or the bride."¹⁵⁹ This is the understanding of the sacramentality of marriage which in practice, sad to say, is prevalent in the minds of most Christians and pastors to this day. But if we turn to the early Church we will find out that the sacramentality of marriage, i.e., "the holiness of Christian marriage was seen to be based on baptism."¹⁶⁰ The sacrament was the human reality of marriage, i.e., one celebrated civilly, but now experienced and lived 'in the Lord'. The only difference was that now the marriage was experienced by the baptized persons as members of the Church and believers in Christ as a result of their baptism. In early Christianity, therefore, it was not so much the liturgy of marriage that mattered most as the fact that the

¹⁵⁸Ibid., pp. 280-343.

¹⁵⁹Ibid., p. 278; Le Bras, Dictionnaire de Théologie Catholique vol. 36, col. 2256.

¹⁶⁰Schillebeeckx, Marriage, p. 251.

contractants were baptized members of the Church. Some of the members were already married civilly prior to their conversion, but baptism alone changed their marriage into a sacrament. Others married civilly posterior to their conversion, but again it was the fact that they were baptized that their marriage became a sacrament, and not by a marriage liturgy.

This concept of the sacramentality of marriage in early Christianity appears to be consonant with contemporary theology of marriage, where the emphasis is also on baptism whereby one becomes a member of the Church, the community of believers who confess and bear witness to Christ. Traditional theology used to teach that the main purpose of the Church was the salvation of the world, but contemporary theology has departed from this view: Walter Kasper states:

The Church's mission, which is rooted in the absolute claim of Christianity, is not so much to save the individual - who in principle can be saved outside its visible communion - as to represent and proclaim the love of God, to give testimony to hope, and so to be a sign among the nations.¹⁶¹

¹⁶¹Kasper, "Absoluteness of Christianity," Encyclopedia of Theology: The Concise Sacramentum Mundi, ed. Karl Rahner. Translated by John Griffiths, Francis (Footnote Continued)

Now, the Church carries out this duty mostly through its members who became such through baptism. This is why baptism also is not mainly for the salvation of the individual as traditional theology used to teach but rather for the proclamation of and testimony to the salvation of Christ through the activities of daily life. Donald L. Gelpi, commenting on Rahner in this regard writes:

Now since justification can take place outside the sacrament of baptism, it must be that justification through the sacrament possesses an added meaning of its own which is not found in extra-sacramental justification. This is in fact the case. Sacramental baptism adds to justification an explicitly social dimension. It implies a special relationship to the visible Church which is not found in those souls who possess grace but are not as yet baptized. This special relationship is nothing else than a share in the sacramental mission of the Church. It consists in so living as to manifest visibly to the world the grace of which Christ is the living sacramental symbol. If, therefore, the layman is the object of the pastoral care of the hierarchy, it is precisely because he must share with it a personal responsibility for the success or failure of the Church's salvific mission.¹⁶²

In virtue of their baptism, therefore, whatever moral activity in which Christians engage themselves in their day

(Footnote Continued)

McDonagh and David Smith (New York: The Crossroad Publishing Company, 1982), p. 204.

¹⁶²Donald L. Gelpi, Life and Light: A Guide to the Theology of Karl Rahner (New York: Sheed and Ward, 1966), p. 209.

to day life becomes, as long as they remain in relation to the Church, a testimony to Christ, a proclamation of salvation in Christ; it becomes the concretization of the Church's nature. This is precisely how the early Christians' marriage prior to their baptism could be differentiated from the same marriage posterior to their baptism. They now experienced marriage in a new way, 'in the Lord'.

It is of primordial importance to note that this new insight concerning the main purpose and function of the Church and the individual Christian as witness to and proclaimer of God's love to the world and not necessarily the salvation of the world or personal salvation enjoys the support and endorsement of the documents of the Second Vatican Council. "The principal duty of both men and women is to bear witness to Christ," declare the Fathers of the Council, "and this they are obliged to do by their life and their words, in the family, in their social group, and in the sphere of their profession."¹⁶³ With regard to the Church's function in the world, the Council Fathers declare:

¹⁶³ "Decree on the Church's Missionary Activity," Vatican Council II vol. I, p. 838, n.21.

Missionary activity is nothing else, and nothing less, than the manifestation of God's plan, its epiphany and realization in the world and in history; that by which God, through mission, clearly brings to its conclusion the history of salvation.¹⁶⁴

The Church's function, therefore, is to proclaim the manifestation and realization of God's eternal plan of salvation through Christ in history. Once again, Pope Paul VI referring to evangelization in our time made the following declaration:

It may be useful at this stage to make it clear that evangelizing means above all else bearing witness simply and clearly to God as he is revealed by Our Lord Jesus Christ, proclaiming that he has loved the world in his son and that in the Incarnate Word he has given existence to all creatures and has called men to eternal life.¹⁶⁵

It is this function of the Church that has reverberations in the Christian member. It differs from the work of personal salvation in view of the fact that salvation or grace does not necessarily involve membership in the Church, since this salvation or grace can be

¹⁶⁴Ibid., p. 823, n.9.

¹⁶⁵"Evangelization in the Modern World, 8 December, 1975," Vatican Council II vol. II: Conciliar and Post Conciliar Documents, ed. Austin Flannery (Boston: Daughters of St. Paul, 1982), p. 722, n.26.

acquired outside the Church. Whereas through baptism the Christian member participates in Christ's priesthood and is principally commissioned to proclaim the good news of God's salvation in Christ. The Christian member possesses this capacity as long as his or her relationship to the Church is retained. In the words of Rahner:

It is sufficient to ask why through the baptismal character a human being shares in the priesthood of Christ and how this participation can be distinguished from the one that derives from grace. The answer must surely be that it belongs to a man inasmuch as he is a member of the Church and remains in relation to the church; because the Church as the visible Church in the world of space and time (not only in the depth of the conscience sanctified by grace) continues the priestly function of Christ the high-priest.¹⁶⁶

Christians, as long as they remain in relationship to the Church, proclaim, in all their moral activities performed reflexively or unreflexively, God's salvation in Christ. As long as they remain in relationship to the Church, all their activities are not only salvific, sacramental (i.e. unofficial sacraments, that is, signs of grace) but also a proclamation of God's salvation in Christ. It will, therefore, be a contradiction in terms for Christians to decide that all or some of their activities of a given day

¹⁶⁶Rahner, Inquiries, p. 272; Luzbetak, Missiology 4 (1976), p. 207.

be not a proclamation of Christ's salvation. The only possibility for the cessation of their activities from being a proclamation is through the cessation of their belief in Christ, which is equivalent to their severance from the Church. When one of the activities in question is marriage, then it is not only salvific, sacramental (i.e. an official sacrament, for it is made official in the Church), but also a proclamation of God's salvation in Christ, provided that the Christians concerned remain in relationship to the Church. In other words, it also becomes the concretization of the Church's nature. Rahner puts it this way:

When a marriage takes place between baptised people in the Church it constitutes an element in the Church's role as basic sacrament, so that the parties actively share in and contribute to the Church's role as basic sacrament, for both give manifest expression to the unifying love of the grace of God, and a marriage of this kind between them achieves this precisely as an element in the social unity of the Church herself. Now because of this the marriage as an event of grace gives rise to a 'sacramental' event of grace in which this sign actively contributes to the irrevocable manifestation of God's pledge of grace to mankind, that pledge which is constantly in force and of which God himself never repents. And this manifestation is nothing else than the Church itself.¹⁶⁷

¹⁶⁷ Rahner, Theological Investigations vol. 10, p. 215.

c. Conclusions

If it is true to state that the New Testament does not support the absoluteness of the inseparability of contract and sacrament of marriages between two baptized persons, and if it is correct to affirm the non-necessity of the employment of the canonical form for the effectuation of a sacramental marriage, then it could be that these practices are more disciplinary or cultural than anything else. In such a case, the conflict between the progressive marriages and the teaching on the absolute inseparability of contract and sacrament may be said to represent a confrontation between two cultures.

1) Absolute or Relative Inseparability?

It appears that from our whole discussion thus far we should be in a position to arrive at a clear and definite conclusion with reference to the question about the absolute inseparability of contract and sacrament regarding the marriages between baptized persons. In the words of Orsy, "The overall answer to the question whether the contract can be separated from the sacrament is neither a plain yes nor an unqualified no."¹⁶⁸ One thing appears certain: absolute inseparability should be ruled out with

¹⁶⁸Orsy, Theological Studies 43 (1982), p. 394.

regard to marriages between baptized persons. Nevertheless, a distinction is necessary. Marriages between baptized believers enjoy automatic sacramentality, that is, inseparability of contract and sacrament should be attached to baptized believers' marriages. But marriages between baptized unbelievers do not enjoy automatic sacramentality, that is, separability of contract and sacrament should be assigned to baptized unbelievers' marriages. Apparently, therefore there is no longer absolute inseparability but only a relative inseparability. That is, with reference to baptized believers, insofar as they are actually in relationship to the Church, their marriages are automatically sacraments on the grounds that they are the actualization of the Church's nature. On the other hand, with reference to baptized unbelievers, insofar as their relationship to the Church has suffered severance, their marriages are not sacraments, in that they cannot be the concretization of the Church's nature, but most probably they do not lose their validity on that score because baptism does not incapacitate people from performing authentically human activities, including marriage.

2) Extent of Faith Necessary for Sacramentality

The necessity of faith for the valid reception of sacraments raises the question of the extent of faith sufficient for the effectuation of a sacrament. Such a

question bristles with great difficulties, in view of the fact that the discernment of a person's surrender to God is beyond the realm of human possibility.¹⁶⁹ Nor does the demand for an elaborate theological knowledge of the sacrament of marriage appear to be warranted.¹⁷⁰ For instance, the demand that both persons should know "that their union and marital love reflect and actualize the relationship of Christ and his Church"¹⁷¹ could be a demand to believe in a theological opinion and the attempt to make a list of doctrines that would determine the presence of faith is an exercise in futility. Cunningham expresses this point in these words:

As you can see the list just grows and grows to somewhat unrealistic proportions when one attempts to measure the content of faith. And there is also a danger in confusing every particular belief with faith or lack of particular belief with lack of faith. It is important then not to canonize any list of beliefs or any specific theological opinion or system in such a way that they become identical with faith. Theological extrinsicism as well as superficial canonical legalism are to be avoided when speaking of what is ultimately a profound mystery, the Mystical Body of Christ and the new

¹⁶⁹Ibid., p. 396.

¹⁷⁰Cunningham, Studia Canonica 15 (1981), p. 280.

¹⁷¹William Marrevée, "Is a Marriage 'in the Church' a Marriage 'in the Lord'?" Eglise et Théologie 8 (1977), p. 95.

People of God. A precise check list of beliefs in this regard is simply not possible.¹⁷²

It is for this reason that most theologians, refraining from making lists of doctrines to be believed in order to have the required faith, demand only that there be some faith though not a perfectly explicit one,¹⁷³ but "at least some minimal and elementary faith" (saltem fide quadam minima et elementari [my translation]).¹⁷⁴ Even more acceptable is the view expressed by the International Theological Commission when they write:

In the last analysis the real intention is born from and feeds on living faith. Where there is no trace of faith (in the sense of "belief" - being disposed to believe), and no desire for grace or salvation is found, then a real doubt arises as to whether there is the above mentioned general and truly sacramental intention and whether the contracted marriage is validly contracted or not. As was noted, the personal faith of the contracting parties does not constitute the sacramentality of matrimony, but the absence of personal faith compromises the validity of the sacrament.¹⁷⁵

¹⁷²Cunningham, Studia Canonica 15 (1981), p. 278.

¹⁷³J. Bernhard, "A propos de l'hypothèse concernant la notion 'Consommation Existentielle' du Mariage," Revue de Droit Canonique 20 (1970), p. 190.

¹⁷⁴Manzanares, Periodica 67 (1978), p. 54.

¹⁷⁵International Theological Commission, "Propositions on the Doctrine of Christian Marriage," Origins 8 (1978), p. 237; also in African Ecclesiastical Review 21 (1979), p. 377.

The Commission does not consider a given list of doctrines to be believed as necessary, but demand simply "being disposed to believe." Preparedness to believe whatever requires to be believed is sufficient. In that way, the Christians of the early Church who did not know the sacramentality of marriage or a list of other doctrines which developed only later in the history of Christianity, can still be said to have married sacramentally in that they possessed the minimal faith which caused them to remain in relationship to the Church and in that they were prepared to believe what they would be asked to. By the same token, the people of Africa who might find it difficult to learn even some of the essential doctrines owing to illiteracy, do not seem to have the sacramentality of their marriages compromised, in that they have the minimal and elementary faith and especially because of their readiness to believe whatever is to be believed, a condition which places them in a continued relationship to the Church.

3) The Autonomy of Marriage

There is no denying that marriage possesses a social dimension that must be taken into account. However, to all appearances, this sociality of the institution of marriage has become so overwhelming to the extent that there is a danger of almost losing sight of the quintessence of the

reality of marriage. What must be realized is the fact that, despite its sociality, marriage is apparently an independent reality as far as its validity is concerned. We have already referred to Nicholas I who captured this autonomous nature of marriage. Schillebeeckx, in this regard, states:

...Pope Nicholas I laid down that it was no sin if the liturgical ceremonies which had grown up around the form of marriage contracted civilly within the family (in fact the sacrament for Christians) did not take place, on condition that there had been a genuine mutual consent of the two baptized partners (marriage "in the Lord"). This formed the background to the¹⁷⁶entire patristic and medieval view of marriage.

It was on this basis that the validity and sacramentality of clandestine marriages, prior to their invalidation by the Council of Trent, were recognized.¹⁷⁷ As a matter of fact, the Council of Trent's involvement through its invalidation of clandestine marriages did not go unchallenged. Billuart reports that "there were in the Council a considerable number of Fathers and doctors who doubted whether the Church could invalidate clandestine

¹⁷⁶Schillebeeckx, Marriage, p. 273; cf. p. 256.

¹⁷⁷Bellarmino, "De Matrimonio, Bk. 1, c. 7," Opera Omnia vol. 5, p. 60; Denzinger and Schönmetzger, Enchiridion Symbolorum, The Sources of Catholic Dogma, p. 300, n.990.

marriages."¹⁷⁸ Prior to the Council of Trent's disciplinary measure, the ruling on clandestine marriages by the Fourth Council of Lateran involved not their validity but only their liceity.¹⁷⁹ Here lies the danger of ecclesiastical law. In Malawi, if you ate one chicken leg on Friday and made the mistake of dying before 1950, you would go to hell forever, but if you were born in 1970 and ate not only one but two chicken legs and two chicken wings after the abolition of the prohibition on meat on Friday in this country, you would not sin at all, by the same token, if you were born before the Council of Trent and married clandestinely you would not sin, but if you made the mistake of being born after Trent's ruling and married clandestinely and died in that state, you would go to hell forever, all depending on a human law. Bernard Haring does not believe that a human authority possesses the power to legislate in that manner, unless the core of the gospel is involved. Haring writes:

In my opinion, the Church should never impose any man-made law under threat of mortal sin, which

¹⁷⁸ Charles Renatus Billuart, Cursus Theologiae vo91. 10 (Paris, Lyons: Perisse Freres, Libraires, 1861), dissert. 7, a.12, p. 221: "...essent in concilio plures doctores qui dubitabant an ecclesia posset irritare matrimonia clandestina." [My translation].

¹⁷⁹ Denzinger and Schönmetzer, Enchiridion Symbolorum, n. 817.

means threat of eternal condemnation. The reason is that I cannot think of any positive disposition that is neither part of the Gospel nor of natural law yet could be so important as to be proportionate¹⁸⁰ to the threat of eternal punishment.

The point is that marriage seems to enjoy autonomy not only from the canonical form but also from most of the legal trappings that claim invalidating power. Bishop Jean-Claude Bouchard states:

It (married life) cannot be reduced to a purely Christian order, still less to an ecclesiastical order. It belongs to secular life, to the order of "earthly values," to use the terminology of Vatican II, and as such, it has a certain autonomy (my underlining). Even more, it is a most sacred natural right for every person, and therefore for every Christian, to marry and live one's family life in accordance with the particular culture of one's people - always, of course safeguarding the Gospel values and the Christian ideal of marriage."¹⁸¹

The sociality of marriage would appear to authorize, by and large, the legislation involving the marriage's liceity rather than its validity. Thus, let us suppose that, for one reason or another, all the people of one continent had

¹⁸⁰ Bernard Häring, Free and Faithful in Christ vol. 1: General Moral Theology (New York: The Crossroad Publishing Company, 1984), p. 413.

¹⁸¹ Jean-Claude Bouchard, "Culture and Collegiality," African Ecclesiastical Review 23 (1981), p. 30.

perished with the exception of one man and one woman, and if this couple met and decided to marry, there would not be so much of the sociality of marriage that would remain necessary. In the words of Palmer: "Civil and Church law have demanded that certain legalities be followed, and rightly so, since marriage is not a sheerly private affair but affects society." Palmer continues: "But the legal formalities are not constitutive elements of marriage, nor can the Church or state make them so."¹⁸² This only appears to indicate the inessentiality of the social requirements for the validity of marriage, despite their importance for its liceity. The problem is that authorities seem to get the wrong impression that a legislation under liceity is of less importance, and that in order to emphasize its importance the validity of the marriage must be involved, whereas there is the possibility for an authority to refuse its recognition of a marriage even under liceity and the couple would be obliged to comply, in that they may stand in need of the assistance of society when the circumstances foreseen by the ruling arise in the future. The ruling is there for the facilitation of the required assistance, e.g., inheritance or remarriage. However, the authority's refusal of its recognition of a

¹⁸²Palmer, Theological Studies 33 (1972), p. 657.

marriage might not necessarily imply the marriage's invalidity, just as the authority's recognition of a marriage might not necessarily suggest the marriage's validity.

The infringement of what seems to be the autonomy of marriage could, in the final analysis, be said to constitute the whole point of this dissertation: We believe that there are marriages that are valid and even sacramental before God, but the Church fails to recognize their validity and sacramentality. On the other hand, there could be marriages that are no longer existent to which the Church continues to accord its recognition. If the Church's recognition or non-recognition necessarily involved validity, the very possibility of this work would be ruled out, in the first place.

It must be remarked, however, that the autonomy referred to here would not preclude the possibility of the marriage's sacramentalization. The reason is that if sacraments are to be signs for, and understood by, human beings, it seems obvious that realities of this world, such as water or oil, will have to be utilized in their institution. The only difference between marriage and the other sacraments is that in the other sacraments natural realities are made use of in order to bring about something

new, something that did not belong to human practices before, whereas in the case of the sacrament of marriage a pre-existing human practice has been adopted by Christianity to become a sign of grace.

CHAPTER FOUR

THE AFRICAN LOCAL CHURCH AND THE PROGRESSIVE MARRIAGE

In the third chapter, we have attempted to show the presence of conflict between the customary marriage of the Yawo people and the missionary local theology of marriage, notably on the Yawo's conversion into Christianity. The conflict implies that the converts' reaction to the missionary local theology is one of resistance. In this chapter, we will try to find out what the response of the local magisterium is. To the extent that, apart from matters of detail, the marriages of the various African tribes possess great resemblances, we wish to find out the reactions not only of the local magisterium of Malawi but also of the rest of the African local magisterium to the said missionary local theology of marriage.

The members of the African local magisterium concerned here are, in the first place, those who belong to the region known as Eastern Africa. Seven episcopal conferences of the following countries, Ethiopia, Kenya, Malawi, Sudan, Tanzania, Uganda and Zambia have formed an association called the AMECEA (the Association of Member

Episcopal Conferences of Eastern Africa).¹ All the bishops of these conferences meet or are supposed to meet regularly to discuss matters of common interest relative to the Christian life of Christians in their respective dioceses. According to The African AMECEA comprises a membership of 83 bishops: Ethiopia has 3 African bishops and 5 missionary bishops, Kenya has 10 African bishops and 5 missionary bishops, Sudan has 6 African and one missionary bishop, Malawi has 5 African and 2 missionary bishops, Tanzania has 23 African and 2 missionary bishops, Uganda has 9 African and 3 missionary bishops, and Zambia has 6 African and 2 missionary bishops.²

Apparently, the AMECEA bishops have also contacts with other bishops belonging to conferences outside the AMECEA countries in so far as the bishops of the African continent and Madagascar have together in their turn formed a different association which is called SECAM (A Society of Episcopal Conferences of Africa and Madagascar) for the purpose of dealing with matters of common interest. Their statistics are not readily available.

¹Paulos Tzadua, "Family Life and the Christian Community," African Ecclesiastical Review 23 (1981), p. 70.

²"AMECEA Statistics," The African July (1981), p. 8.

Prior to the Synod of Bishops on Family Life in the Modern World held in Rome in 1980, the AMECEA bishops met several times and so did the SECAM bishops, in order to discuss together marriage problems in their respective areas. In preparation for the actual meeting of the said Synod, each member conference was requested to produce a statement on what they considered to be important issues of their country. A great number of conferences, in one way or another, mentioned the problem of the progressivity of the African customary marriage. All these statements were read at the Synod. When each bishop read his statement, he did so as a representative of the members of his conference which presumably approved the statement in his country of origin prior to his coming to the Synod. Often bishops explicitate this fact. Thus we hear, for instance, Peter Poreku Dery, Archbishop of Tamale, Ghana, declare: "I speak in the name of the Ghana Bishops' Conference."³ Maurice Otunga, Cardinal Archbishop of Nairobi, Kenya, declares: "I speak in the name of the episcopal conference of Kenya."⁴

³Peter Poreku Dery, "Christian and Customary Marriage in Ghana," African Ecclesiastical Review 23 (1981), p. 37.

⁴Maurice Otunga, "African Family Values," African Ecclesiastical Review 23 (1981), p. 33.

The discussion of the statements made by the various episcopal conferences are of great practical importance, in the sense that if there are any changes in the present practices in Christian marriages in favour of the African progressive marriage, it will be through these bishops that such changes will come about. It is, therefore necessary to have some knowledge of the mind of the bishops in this regard. This is why in this chapter we will profit, by and large, by the reflections made in these statements, without ignoring those made by other authors.

In the first place, we will have to see whether the marriage problems of the African Christians arising from their cultural practices have aroused the awareness of the African local magisterium. The idea is to discover whether these problems have gained the recognition of the African episcopate for their cultural nature, or whether they are dismissed merely as one of those instances where the baptismal grace has not been utilized for the mastery of the situation. In the second place, we will proceed to discuss what action in this regard the African local magisterium has taken or suggested to be taken for the solution of these problems and whether the suggested course of action exhibits a trend towards the formation of an African local theology of Christian marriage that

incarnates the African cultural elements into the Christian marriage.

A. IDENTIFYING THE SITUATION OF THE PROGRESSIVE MARRIAGE

1. The African Local Magisterium on the Progressivity of the Customary Marriage

In the normal circumstances, when a Yawo man wants to marry a woman, he begins with nothing other than marriage itself, while when a man of the western culture wants to marry he begins with engagement. Melvin Doucette is correct when, with reference to Zambia, he states that "engagement as such does not exist among our people, the first few years of marriage are considered as ukwishibana,"⁵ which means to know each other. The Yawo call this period a time for 'knowing each other's hearts'. But Doucette errs when he equates this period "to what we call an engagement in Europe."⁶ Chikopela asserts that "the Kwishibana Period is certainly not equivalent to the European engagement period."⁷ Apparently, many Africans do not see the point in waiting for such a long time previous

⁵Melvin Doucette, "A Marriage Catechumenate," African Ecclesiastical Review 14 (1972), p. 110.

⁶Ibid., p. 111.

⁷Chikopela, African Ecclesiastical Review 14 (1972), p. 328.

to the commencement of cohabitation. If the purpose of engagement is to learn each other's characters, the Africans believe that this can effectively be achieved through marriage itself. You do not learn how to swim by sitting on a dry rock or by walking along the bank of a swimming pool, rather you have to plunge into the pool itself.

If engagement period is not entirely ruled out for all marriages, its purpose is different from that of the western engagement. Traditionally, engagement period is a period when the commencement of cohabitation is impeded by certain circumstances. For instance, when a man does not have the money to start a family with, he will choose his future wife before going out of the country to become a migrant worker. Thus for the Yawo, the real meaning of engagement is to forestall or to choose beforehand. A man chooses a future wife before anyone else chooses her during his absence as a migrant worker. But marriages which begin with the so called engagement period are only an exception to the rule, for normally marriage begins immediately after the completion of the marriage negotiations, at least as far as the Yawo are concerned. An engagement for an engagement's sake is meaningless and does not, therefore, exist for the Yawo people.

Normally, therefore, marriage begins not with engagement but with marriage, marriage in the phase of acceptability, the epainogamy, without, however, attaining its maturity on the same day of its inception. Bishop Andreas Kaseba, speaking in the name of the episcopal conference of Zaire states:

The formation of the marriage bond through various stages. The importance attached to the marriage alliance by the lineage community explains the great care that it takes in the development and formation of the matrimonial bond. It is a very gradual development, a living process, which unfolds stage by stage, each one following on the preceding one, right up to the arrival of the bride at the home of the bridegroom. After the first contacts and agreements between the parties there follows the public acknowledgement (the exchange of consent among the future partners and their families) of the intended union, which excludes any other unions.

Bishop Kaseba says that "usually, marriage is not concluded in just one ceremony, at just one moment of time."⁹ Further on, he writes:

⁸Andreas Kaseba, "The Marriage Bond as the Result of a Process," African Ecclesiastical Review 23 (1981), p. 40.

⁹John Njenga, "Marriage in Stages," African Ecclesiastical Review 28 (1986), p. 200: "The African marriage, by and large, is performed in successive stages." Benezeri Kitembo, Laurent Magesa and Aylward Shorter, African Christian Marriage, (London and Dublin: Geoffrey Chapman, 1977), p. 7: "Customary marriage is usually not
(Footnote Continued)

This process is a dynamic whole which creates the alliance. The unfolding of these stages is something basic and typical. It is a matter of a process that makes up a dynamic and existential unity - and it is the whole process that makes the marriage a reality.¹⁰

Of great interest to us here is the concept of the progressivity of marriage which Bishop Kaseba expresses in his statements. He portrays the African marriage as a living reality which grows gradually towards its maturity. After the marriage negotiations, the marriage gains its public sanction. While the distinction between the stages can be made, their separation must be ruled out, for it is the whole process taken as one that constitutes the reality that we know as marriage. Right from the first stage, the marriage excludes other unions, stressing the idea of marriage in earnest. Bishop Kaseba recognizes the fact that "the actual number of these stages in various ethnic groups" may differ, but the concept of progressivity is present in them all and this "gradual ripening of the union is always taken with utmost seriousness."¹¹ It is a

(Footnote Continued)

tied to a specific moment in time or to a single ceremony. It is a process involving a whole series of rituals and exchanges and it is usually potentially polygamous."

¹⁰Ibid.

¹¹Ibid.

procedure that the people cannot lightly omit in view of the great importance they attach to it.

The progressivity of the African marriage is also expressed by Bishop Henry Karlen when he states that "marriages come into being in the course of protracted negotiations between the families of the bridegroom and the bride. Various stages in the negotiations are marked by various ceremonies."¹² Here we note the difference in the number of ceremonies required by a progressive marriage of a given ethnic group. Thus, for instance, while the Yawo have three stages in their marriage, the performance of the marriage ritual occurs only in the phase of ratification. Among the people Bishop Karlen is describing, the performance of the ceremonies occurs at each and every stage that the customary marriage has. Nevertheless, the idea of progressivity is not lacking, rather it forms an essential element of the customary marriage. Once again, the progressivity of the customary marriage of the Mwera people of Tanzania is described by Joseph Ntepeka.¹³ On the other hand, Laurean Cardinal Rugambwa makes an allusion

¹²Henry Karlen, "Canonical Form and Traditional Marriage," African Ecclesiastical Review 23 (1981), p. 59.

¹³Joseph Ntepeka, "Traditional Marriage," African Ecclesiastical Review 22 (1980), p. 160.

to it when he states that "the customs and traditions concerning the choice of partners, manner of contracting marriage...are deeply embedded in the traditions of the tribes." The advent of Christianity and political independence has not been able to abolish them, so that "these customs and traditions continue to be observed even in the new African nations"¹⁴ and also in Christianity itself.

Despite the fact that fertility is invoked as the reason for the progressivity of the African marriage, one could say that, in the final analysis, the belief in the permanence or indissolubility of marriage is the reason of the progressivity of the customary marriage. There are two concepts that militate against each other: the high regard for fertility on the one hand and the belief in the indissolubility of marriage on the other. The fear of a possible conflict between the two concepts of permanence or indissolubility and of the desire for children engenders the progressivity of the African marriage. In view of their high regard for reproduction, people are afraid to precipitate the marriage's maturity or completion in case the marriage itself proves unfruitful. This is why the

¹⁴Laurean Rugambwa, "Responsibility of Local Churches," African Ecclesiastical Review 23 (1981), p. 28.

reproduction itself has become the element of the effectuation of marriage's maturity or completion. From the fact that the discovery of the presence of reproduction is itself a gradual process, the whole reality of the African marriage has also itself become progressive.

The absolute indissolubility of the Christian marriage corroborates even further the practice of a progressive marriage. Archbishop Peter Poreku Dery speaking in the name of the episcopal conference of Ghana writes:

Many Ghanaians often delay or avoid altogether the sacramental marriage because of its indissolubility. This indissolubility takes on a different connotation in the mind of the Ghanaian, which is quite different from the indissolubility of the traditional or customary marriage. This new type of indissolubility engenders fear in the Ghanaian. Such a fear is further encouraged by the extended traditional family. Children are essential to African traditional marriage. Catholics are therefore afraid to enter into this new type of indissoluble sacramental marriage, which neither guarantees them children nor permits subsequent marriage to ensure the presence of children in marriage.¹⁵

Alluding to the same idea, Archbishop James Chiona puts this question in the mouth of young adults: "To ensure

¹⁵Peter Poreku Dery, "Christian and Customary Marriage in Ghana," African Ecclesiastical Review 23 (1981), pp. 38-39.

faithfulness, is it not wise to stay together for some years before marrying in church?"¹⁶ The allusion here is to the practice of the phase of acceptability and therefore to the progressivity of marriage. The young adults are asking why their marriage cannot proceed in stages so as to ensure its stability. Bishop J. Njenga, in turn, expresses his experience of frequent disappointments in his pastoral work owing to the postponement of church marriage by many of his Christians¹⁷ as a result of the fear created by the concepts of fertility and the absolute indissolubility of Christian marriage.

To all appearances, this notion of the progressivity of the African marriages was presented by one African episcopal conference to the Committee of Canonists responsible for the new marriage law in Rome. The canonists were informed of the difficulty in, if not the impossibility of, the determination of the exact moment for the occurrence of a definitive consent. In response the canonists stated that after a careful examination of the information, it became clear that "at a certain stage a

¹⁶James Chiona, "Pre-Marriage and Marriage and Catechesis," African Ecclesiastical Review 23 (1981), p. 50.

¹⁷J. Njenga, "Customary African Marriage," African Ecclesiastical Review 16 (1974), p. 115.

true consent is given, so that all the previous acts can be considered as preparatory to the marriage."¹⁸ From the response, one gets the impression that those who were examining the information had already formed their normative model into which the African marriage had to fit by hook or by crook. The end result is that we are sadly presented with a graphic picture of total misunderstanding of the progressivity of the African marriage. On the other hand, those who have, to some degree, captured the notion of the African marriage have a different story to tell. Joseph Franz Thiel represents the category of such people. He writes:

Unlike European marriage, the African variety is not legalized in a few minutes. There is no one moment of time that can be accounted as deciding its full institutionalization. African marriages occur as a process over a long time, and often over several years. It is even arguable that marriage is not necessarily fixed ultimately by the birth of a child. Many tribes allow the couple to sleep together as soon as the bargaining over the bridewealth has reached a certain stage and the bride's family has received certain gifts. But this stage of the proceedings does not yet determine the permanent lineage. A significant step towards realization of the marriage is made when the bride leaves her family and enters her husband's house, or when the man enters the woman's. This can be seen as the point when the marriage proper begins. But even

¹⁸ Communications 9 (1977), p. 124: "Quod in aliquo stadio verus consensus habetur, ita ut omnes actus praecedentes considerari possint tamquam praeparatorii ad matrimonium." [My translation].

in this phase the marriage is still under test. Only with the gradual payment of the bridewealth, the accompanying ceremonies, and the birth of children, is the bond gradually confirmed and a stable marriage thought to develop.¹⁹

2. The African Local Magisterium on the Validity of the Progressive Marriage

It has already been pointed out that the advent of Christianity and the Yawo's conversion into it meant that their progressive marriage acquired an additional phase over and above the original three customary phases. The celebration of the marriage in church now became the fourth phase in the development of the Yawo marriage. This apparently is also true of the marriages of the rest of the African ethnic groups. But the African local magisterium are not unaware of the mentality of their Christians with regard to the validity of their marriages as is demonstrated by the following affirmations. Bishop Poreku, referring to the Christians married only according to their custom says that "whereas the Ghanaian society regard them as validly married, the Church frowns upon them as people living in concubinage." Further on, he states that "customary marriage, in the minds of Ghanaians, including

¹⁹ Joseph Franz Thiel, Concilium 6 (1970), p. 18.

Catholics, is the real marriage."²⁰ Bishop Njenga says that Christians "considered themselves married properly" regardless of the fact that the canonical form was not observed.²¹ In a similar vein Bishop Karlen states that almost "in every case" Christians contract a customary marriage prior to any civil or church marriage. "From the time of their traditional marriage, even Catholics consider themselves to be properly married," whereas the church marriage is often celebrated a number of years after the customary marriage.²² Lufuluabo remarks that it is only the priests who believe that their Christians who have contracted marriage only according to their custom live in concubinage, but the Christians consider themselves as validly married so that any unfaithfulness in the customary marriage by any of the partners is regarded as adultery in the same way as the unfaithfulness in a Christian marriage is regarded.²³

²⁰Poreku, African Ecclesiastical Review 23 (1981), p. 38.

²¹Njenga, African Ecclesiastical Review 16 (1974), p. 115.

²²Karlen, African Ecclesiastical Review 23 (1981), pp. 58-59.

²³Lufuluabo, Revue du Clergé Africain 24 (1964), p. 361.

The Christians view the celebration of a church marriage as a mere adjunct to the real marriage which is the customary marriage. Bishop Njenga says that Christians regard the church marriage merely as the solemnization "of an already existing marriage." As far as the Africans are concerned, the customary marriage is more important than the canonical one.²⁴ Bishop Poreku states that the Christians' view of the church ceremony is not that of a celebration of marriage, "but rather a condition for the reception of the sacraments - a rule of the clergy, a simple blessing, a foreign importation."²⁵ The importance that Christians attach to their customary marriage is such that in many cases the Christians withhold their recognition of a marriage celebrated in church in the event that the traditional ceremonies have not taken place prior to the Church ceremonies, so says Michael Kpakula, the vicar apostolic of Monrovia, Liberia, in the name of the episcopal conference of the Gambia, Liberia and Sierra Leone.²⁶ As a matter of fact, this applies also to Malawi. However, since in the customary marriage of the Yawo the

²⁴Njenga, African Ecclesiastical Review 16 (1974), p. 115.

²⁵Poreku, African Ecclesiastical Review 23 (1981), p. 38.

²⁶Michel Kpakula, "Marriage Problems and the Local Churches," African Ecclesiastical Review 23 (1981), p. 97.

ceremonies take place only in the second stage, which is an advanced stage, the Christians withhold their recognition of a marriage on the supposition that what represents a ceremony in the first stage has not occurred: this is the meeting of the marriage guardians (angoswe) during the marriage negotiations when the guardians (angoswe) come to gain the acquaintance of each other as to who on each side assumes the responsibility of the marriage under discussion. To be sure, this assumption of responsibility will have to be ritualized on the arrival of the phase of ratification. It is on these grounds that the Church in Malawi has been forced to toe the line, so that on the first registration of a marriage, one of the most important questions that must receive an affirmative answer, if the marriage is to be recognized by the people, is that of the occurrence of this meeting by the marriage guardians (angoswe). This course of action represents a recognition, and a wise recognition for that matter, of the phase of acceptability of the Yawo marriage even by the Church. To this end, the episcopal conference of Malawi ordered that in the formulation of the said question, the proper term representing maternal uncle, who is the person who assumes

the duty of guardianship, should be employed instead of any other vague term.²⁷

In view of the progressivity of the African marriage, each stage has its own degree of validity whereby one stage enjoys a higher degree of validity than the previous one. By the same token, the stability of the customary marriage is also progressive. One stage possesses a higher degree of stability than the stage prior to it.²⁸ However, in the final stage which is attained through the birth and presence of offspring, we are dealing more with the marriage's stability than with its validity.

3. The African Local Magisterium on the Fertility of the Progressive Marriage

It has been indicated in the second chapter that one of the features considered as of very great importance in the discussion of the African marriage is the question of fertility. It remains now to find out whether the African local magisterium is also aware of this problem. It can already be affirmed at the outset that the African local

²⁷Episcopal Conference of Malawi (ECM), A Compendium of the Decisions Taken by the Episcopal Conference of Malawi (ECM) (Lilongwe: Likuni Press and Publishing House, 1984), p. 61.

²⁸R.A. Hochwalt, "Are Customary Marriages Valid," African Ecclesiastical Review 8 (1966), p. 235.

magisterium is certainly wide awake to the problem. Kpakula, the vicar apostolic of Monrovia speaks of fertility in terms of an end of the traditional marriage. He states that "the end of our traditional marriages is the procreation of children." The completion or establishment of the marriage cannot be considered as having been attained in the absence of offspring in the marriage. He says that such an absence of offspring "leads normally to the termination of the marriage bond." Kpakula expressly recognizes the fact that fertility constitutes a problem area in regard to the Christian marriage when he concedes that "this traditional marital factor has profound influence and repercussion on our Christian marriages."²⁹ Doucette, on his part, has realized that the African marriage differs from the Christian marriage in this that what constitutes marriage for the Africans is not consummation, rather it is the birth and presence of offspring in the marriage. It is on these grounds that he begins to wonder whether the Church could not "consider a childless marriage invalid," in view of the fact that fertility "is a pre-condition for a real marriage" as far

²⁹ Kpakula, African Ecclesiastical Review 23 (1981), p. 96.

as the Africans are concerned.³⁰ The idea of fertility as a pre-condition for the African marriage is also echoed by archbishop Francis Arinze who expresses the unlikelihood of the marriage's occurrence on the supposition that the partners were aware of the unfruitfulness of their marriage prior to its celebration.³¹ The so-called concubinage, which we have called epainogamy or the marriage in the phase of acceptability is, according to the view of J. Lebreche, a "means" for the ascertainment of the presence of fertility in a marriage.³² For infertility, according to Lufuluabo, constitutes an insurmountable predicament for the great majority of Africans, inasmuch as they cannot bring themselves to remain for the rest of their lives in an unfruitful marriage.³³ The point is that such a marriage will not survive for long, but is bound to terminate in divorce. On the other hand, the presence of

³⁰Doucette, African Ecclesiastical Review 14 (1972), p. 111.

³¹Francis Arinze, "Polygamy and Childlessness," African Ecclesiastical Review 23 (1981), p. 98.

³²J. Labreche, "Catholics and Natural Marriage," African Ecclesiastical Review 11 (1969), p. 144.

³³Lufuluabo, Revue du Clergé Africain 24 (1969), p. 395.

offspring tends to accord to the marriage a greater stability than it ever experienced before.³⁴

What must be taken into account is the fact that the number of children in a marriage is also of great consequence, in that people do not just want one or two children, rather they want a large number of children. Bishop C. Gatimu bears this statement out when he writes that "it has been a long standing African tradition to love children and to have large families."³⁵ The affirmation to the effect that the establishment of marriage is attained through the birth and presence of offspring must be understood in terms of a large number of children. This is why bishop Njenga does not hesitate to assert that "it should be noted that in traditional African life, having a big family and keeping it stable were correlatives."³⁶ It is also on this account that the majority of African people have nothing to do with the concept of family planning.³⁷

³⁴Ibid., p. 396.

³⁵C. Gatimu, "Christian Marriage and the Christian Family," African Ecclesiastical Review 16 (1974), p. 109.

³⁶Njenga, African Ecclesiastical Review 16 (1974), p. 118.

³⁷Samuel J.K. Kamau, "Consequences of Birth Control," African Ecclesiastical Review 16 (1974), p. 130.

Thus, while the western marriage stresses the element of consummation, the African marriage lays its emphasis on the concept of fertility. It is interesting to note that some Catholic bishops are reported to have brought "this difference to the papal commission revising the marriage law," inasmuch as the completion or rather the establishment of marriage among the Africans is not effectuated through consummation but through the birth and presence of offspring.³⁸ But all indications are that the bishops' recommendation went completely unheeded, insofar as no trace of it appears in the revised code of Church law.

B. ENCOUNTERING THE SITUATION OF THE PROGRESSIVE MARRIAGE

In the previous section it has been demonstrated that the African local magisterium are not unaware of the problem of customary marriage in relation to the Christian marriage. The bishops have reported what their Christians say and do in the realm of marriage. But what must be realized is that what the bishops say their Christians say is what the bishops themselves also believe. After all, they are the veritable sons of their own culture! In the meantime, it remains to see how the bishops encounter the

³⁸Mackin, Marriage in the Catholic Church: What is Marriage?, p. 30.

problem. We will divide the section into three parts. While in the previous section the recognition of the validity of the customary marriage was more or less implicit, in the first part of this section we shall find that the bishops themselves more or less explicitly affirm the validity of the human reality of the African marriage. In the second part we shall find that there are bishops who go so far as to affirm more or less the sacramentality of the human reality of the customary marriage. The third part rejects misnomers applied to the progressive marriage.

1. The African Local Magisterium's Recognition of the Human Reality of the Progressive Marriage

For a long time the doctrine of Christian marriage was considered as fixed so as to allow of no further discussion, but the theological climate has changed in such a way that the possibility for such a discussion is recognized. The possibility for further discussion is grounded in the mutability of ecclesiastical law upon which hinges the majority of the practices of Christian marriage. Joseph Hardy, the Superior General of the Society of African Missions refers to this mutability as "the historical relativity of ecclesiastical law."³⁹ Bishop

³⁹ Joseph Hardy, "Missionary Expectations Concerning the Synod," African Ecclesiastical Review 23 (1981), p. 25.

Monsengwo Pasinya Laurent, apparently representing the episcopal conference of Zaire, sees this possibility as grounded in the distinction between "doctrinal elements of christian marriage" that have a claim to essentiality and permanency and those that are merely "contingent and perfectible." The necessity of this distinction is further enhanced by the fact that the final word "on the interpretation of certain important scriptural texts and on certain developments in the practice of the Church throughout the centuries has not yet been spoken."⁴⁰ Archbishop Bernard Yago, representative of the episcopal conference of Ivory Coast, grounds the possibility for further discussion on the question of marriage on the avoidance of exaggerated "rigidity on points of the Church's teaching which concern details of discipline and canon law tied more to cultural situations than to the Gospel."⁴¹

It is precisely in virtue of this possibility for the incorporation of western cultural elements into the Christian marriage that a demand is today being made for

⁴⁰ Monsengwo Pasinya Laurent, "The Properties of Christian Marriage," African Ecclesiastical Review 23 (1981), p. 16.

⁴¹ Bernard Yago, "Marriage and Family in the Modern World," African Ecclesiastical Review 23 (1981), p. 17.

the recognition of African cultural elements in the African Christian marriage. Bishop Jean-Claude Bouchard states that the point is not the Africanization of the Church, "for the Church is in Africa and is African! It is only a matter of accepting this reality and of allowing it to live and express itself."⁴² The sacramental reality of the African Christian marriage must take into account "human realities as they actually exist in different societies and cultures."⁴³

Speaking in the name of the episcopal conference of Gabon, Bishop Cyriaque Obamba denies the presence of opposition between the African marriage and the gospel on the grounds of the marriage's progressivity.⁴⁴ This is why "the episcopal conference of Gabon believes this form of marriage can and even should be lived 'in the Lord' by the Gabonese Christians."⁴⁵ Apparently, the bishop here is not asserting the actual sacramentality of the African marriage but appeals for its recognition so that it can be

⁴²Jean-Claude Bouchard, "Culture and Collegiality," African Ecclesiastical Review 23 (1981), p. 31.

⁴³Ibid., p. 30.

⁴⁴Cyriaque Obamba, "Marriage in Stages 'Lived in the Lord'," African Ecclesiastical Review 23 (1981), p. 48.

⁴⁵Ibid., p. 47.

considered as a sacrament. A similar appeal is made by Bishop Poreku who believes that such a recognition would make for the synchronization of the customary and the Christian marriage,⁴⁶ avoiding a dichotomy in the process. Yet another appeal is made by Archbishop Barthelemy Batantu, who deputizes for the Episcopal conference of Congo. In view of the fact that many of the Christians who find themselves involved in the progressive marriages do not cease to practice their Christianity, and often they are the most active, Archbishop Batantu asks the Church for the permission to enable such Christians to receive sacraments. This is an implicit request for the recognition of the validity of the epainogamy or progressive marriage prior to its celebration "according to the regular canonical form."⁴⁷ Other bishops, however, accord their explicit recognition of the progressive marriage in unequivocal terms. The episcopal conference of Mali, represented by Bishop Joseph Perrot expresses its recognition of the validity of the progressive marriage in the following manner: "The episcopal conference of Mali recognizes the special character of marriage in its

⁴⁶Poreku, African Ecclesiastical Review 23 (1981), p. 39.

⁴⁷Barthelemy Batantu, "Progressive Marriage and Admission to Sacraments," African Ecclesiastical Review 23 (1981), p. 43.

country, where marriage is performed by a series of successive steps."⁴⁸

The affirmations of the African local magisterium on the progressive marriage are clear. Regardless of the few who might think otherwise, the above statements demonstrate that the great majority of the African bishops are of the view that the progressive marriage is even for Christians a true and valid marriage. Consequently, Christians who have contracted marriage only according to their customs are not living in sin as is usually believed and asserted.

2. The African Local Magisterium's Recognition of the Sacramentality of the Progressive Marriage

While the great majority of the African bishops express their explicit recognition for the validity of the customary marriage, there is a considerable number of them who go so far as affirming its sacramentality in one form or another. Some of them view the customary marriage as a reality which has still to be converted into a sacrament,

⁴⁸ Joseph Perrot, "Marriage: A Series of Successive Stages in Community," African Ecclesiastical Review 23 (1981), p. 44. Joseph Tomko, "Inculturation and African Marriage," African Ecclesiastical Review 28 (1986), p. 163: Cardinal Tomko, speaking in his own name in 1986 takes the traditional view of the progressive marriage. He writes: "Likewise, the so-called 'trial marriages' are not compatible with the principles of the Gospel and with the doctrine of the Church."

whereas others assert its sacramentality as already present even in the marriage's present form. We will begin with the discussion of the view of the first group prior to the examination of the view of those who recognize the sacramentality of the progressive marriage in its present state.

a. The Progressive Marriage as a Valid Human Reality Requiring Conversion?

Bishop Obamba affirms the necessity of "the Church's intervention" for the identification of "the customary marriage with Christian marriage."⁴⁹ Therefore, in the name of the episcopal conference he represents he makes a request for faculties for the discernment of "necessary conditions that would make the 'progressive marriage' of African Christians not only legitimate for them but also a way of sanctification."⁵⁰ In other words, for Bishop Obamba, the sacramentality of the progressive marriage is a quality still to be achieved. Representing the Church in Upper Volta, Paul Cardinal Zoungrana believes that marriages contracted in the customary way, provided the rite is precise, could be recognized as sacramental. The

⁴⁹ Obamba, African Ecclesiastical Review 23 (1981), p. 48.

⁵⁰ Ibid., p. 49.

same would apply to civil marriages.⁵¹ Prior to recognizing progressive marriage as a sacrament, Archbishop Sarah asks that an "objective," "serious" and "patient" research be made.⁵²

What is common in the various statements made by the above mentioned bishops is the fact that the progressive marriages contracted by the African Christians are as yet not sacramental. Their sacramentality would still have to be acquired in one way or another. In the words of Archbishop Poreku, despite the fact of the elevation of marriage to the dignity of a sacrament by Christ, "we have not yet succeeded in Africa in transforming or raising our traditional African marriage into church or sacramental marriage."⁵³ We must keep reminding ourselves that what the bishops call progressive marriages is what has erroneously been dubbed as concubinage or what we have called epainogamy or marriages in the phase of acceptability.

⁵¹Paul Zoungrana, "Protecting Families Against Dangers," African Ecclesiastical Review 23 (1981), p. 111.

⁵²Sarah, African Ecclesiastical Review 23 (1981), p. 99.

⁵³Poreku, African Ecclesiastical Review 23 (1981), p. 38.

Much as the bishops recognize the validity of the progressive marriage, they are unsure of the manner of the marriage's transition to the realm of sacramentality. They, therefore, require clarification of the marriage's "passage from the human reality to the sacramental reality." Some bishops believe that its attainment to sacramentality would require prior purification from what they call "unchristian elements,"⁵⁴ although no example of what these unchristian elements are is given. There are certain authors who, for the marriage to gain recognition as a sacrament, simply advocate the removal of the canonical form.⁵⁵ There are yet other authors who propose that the sacramentality of the natural marriage be attained through an "evolutionary process" whereby the Church would accord its recognition to the progressive marriage prior to the recognition of its sacramentality.⁵⁶ The problem with

⁵⁴Brian Hearne, "The Christian Family and the Kingdom of God," African Ecclesiastical Review 23 (1981), p. 5.

⁵⁵H. Lijding, "Tribal Marriage of Catholics," African Ecclesiastical Review 7 (1965), p. 38.

⁵⁶Roland Tremblay, "Customary Marriage and Valid Marriage," African Ecclesiastical Review 24 (1982), p. 142. John Njenga, "Marriage in Successive Stages," African Ecclesiastical Review 28 (1986), p. 203. Bishop John Njenga, speaking in his own name in 1986 seems to take the view of the possible conversion of the progressive marriage into a sacrament. Bishop Njenga writes: "A Church wedding could be arranged after one of the stages - even the third, provided all parties concerned are involved."

this procedure is the dichotomization of the reality of marriage. The same accusation would be levelled against the view which regards the progressive marriage as "a kind of novitiate to prepare for the sacrament,"⁵⁷ and against the method of "the marriage catechumenate."⁵⁸

Therefore, when we consider the whole question in terms of a transition from the progressive marriage to a sacramental marriage, or when we begin to think in terms of elevating the human reality of marriage contracted by two baptized and practicing Christians to the dignity of a sacrament, it becomes impossible to avoid the dichotomization of the whole reality of marriage. For in such a case we are supposed to have a good marriage in the natural realm which requires conversion into a good marriage in the supernatural realm. Contemporary theology would most likely consider such a dichotomy as simply untenable.

b. The Progressive Marriage as a Sacramental Reality from the First

We now come to the second group of the African local magisterium who do not seem to require the conversion of

⁵⁷Labreche, African Ecclesiastical Review 11 (1969), p. 147.

⁵⁸Doucette, African Ecclesiastical Review 14 (1972), p. 114.

the human reality of the African progressive marriage, in that they appear to perceive the presence of sacramentality in the marriage from the first. The vicar apostolic of Monrovia, Kpakula affirms that "it is primarily marriage lived in a given culture that is purified and perfected by Christ when he makes it a sacrament for those who believe in him."⁵⁹ The 'sacramentalization' of marriage occurs according to the culture in which the marriage is lived. Archbishop Jean Zoa, speaking for Cameroon believes that it is not presumptuous "to hope that these rites which constitute marriage in traditional society should be recognized for their value and sanctioned by the Church."⁶⁰ In other words, there is no need for changing anything in the traditional rites for the marriage to acquire sacramentality. Deputizing for the episcopal conference of Chad, Jean-Claude Bouchard writes:

We are sure that the sacrament of marriage is no other reality than (the) human marriage prepared and lived in a constant conversion to Christ, following a certain progression and certain

⁵⁹Kpakula, African Ecclesiastical Review 23 (1981), p. 97.

⁶⁰Jean Zoa, "The Role of the Extended Family," African Ecclesiastical Review 23 (1981), p. 82.

aspects that⁶¹ can be defined by the episcopal conference.

Thus, the marriage does not have to discard its progressivity for its acquisition of sacramentality, while the determination of the liturgical aspects becomes the responsibility of the respective episcopal conferences. Bishop Njenga, in turn, does not find any convincing reason why "those who marry according to traditional customs do not duly fulfil the sacrament of matrimony."⁶² In view of the fact that the culture from which the marriage rite originates is of no consequence for the effectuation of the matrimonial sacrament, the bishop calls for the integration "of the Church blessing and the local customary rites into one marriage celebration."⁶³

It is interesting to note that a number of authors have made their contribution in support of this view of the sacramentality of the progressive marriage, i.e., the so-called trial marriage or concubinage, taken by the African local magisterium. Brian Hearne, for instance,

⁶¹Bouchard, African Ecclesiastical Review 23 (1981), p. 32.

⁶²Njenga, African Ecclesiastical Review 16 (1974), p. 120.

⁶³Ibid., p. 121.

asserts the untenability of the exclusion of the redemptive and purificatory powers found in church marriages from "a marriage contracted outside the Church or between people who are not Christians."⁶⁴ Further on he writes: "There is nothing intrinsically impossible in two Christians living a truly sacramental marriage after a so-called 'civil marriage': this is equally true of customary marriage."⁶⁵ Christy Burke states that the so-called church arrangement of the marriage of a "couple who have lived together in a customary or legal marriage" does not imply the marriage's acquisition of something essentially new, but, correctly speaking, "they seek the sign of their union rather than its reality, because that is already present in their lives."⁶⁶ The marriage is already a sacrament.

In virtue of the fact that the progressive marriage contracted by two baptized and practicing Christians is already a sacrament, this group of the African local magisterium advocates, for the marriage's celebration, the

⁶⁴Brian Hearne, "Marriage, or Human Love as Sacrament," African Ecclesiastical Review 15 (1973), p. 17.

⁶⁵Ibid., p. 18.

⁶⁶Christy Burke, "Marriage and the Family: Some Pastoral Problems," African Ecclesiastical Review 22 (1980), p. 275.

synchronization of the rites of the customary and the sacramental marriage for the elimination of a dichotomy between the two forms of marriage. For instance, the episcopal conference of Mali accepts "that the Christian community, through the mediation of a member properly nominated, could be the privileged witness of the ordinary celebration of the sacrament of marriage."⁶⁷ More or less the same view is expressed by Bishop Poreku when he states that "the two (customary and Christian marriages) should be synchronized" by allowing the consent to be given before either "a parish priest, his representative, or some other Catholic elders."⁶⁸ In a similar vein, Archbishop Gabriel Zubeir Wako, speaking for Sudan, writes:

We would have to shift the emphasis from the priest to the community elders. In the customary marriage, these are the people who ratify and bless marriages, and they still bless them before the Church celebration. Their judgment before the community affects also marriages contracted in church.⁶⁹

⁶⁷Perrot, African Ecclesiastical Review 23 (1981), p. 45.

⁶⁸Poreku, African Ecclesiastical Review 23 (1981), p. 38.

⁶⁹Gabriel Zubeir Wako, "The Marriage Rite in Africa," African Ecclesiastical Review 23 (1981), p. 58.

This is reminiscent of what has already been said about the Yawo that no marriage, not even the church marriage, can be recognized by the community without first gaining the recognition of the marriage guardians (angoswe). It is to such like people that the Archbishop is referring.

3. Rejection of Misnomers Applied to the Progressive Marriage

Whichever group of the African local magisterium it may be, whether it is a group of those who consider the progressive marriage between practicing Christians as a reality requiring conversion into a sacrament or whether it is a group of those who regard the progressive marriage as already enjoying sacramentality, the application of such appellations as "prenuptial marriage," "engagement," "trial marriage," "irregular unions," "illicit unions," "concubinage," "courtship," "pre-marital union," "marriages of public sinners," "kulowana," and other such designations, would be considered as an utterly vituperative and insulting misnomer by the great majority of the members of the African local magisterium. In view of the fact that the stages of the progressive marriage "are an integral part of the ritual process through which the marriage bond is matured," in the African cultures, Bishop Kaseba

describes the employment of these terms as "quite wrong."⁷⁰ By virtue of these misnomers, Batantu feels compelled to put the following question: "Must we always consider as simple concubinage marriages which are recognized by customary or civil law?" Prior to the arrival of Christianity, Africans never looked upon such marriages as sinful. "It is, thanks to the pastors of the church, that Christians have come to develop a bad conscience about this."⁷¹ "Public sinners" as a description of the couples who live in a progressive marriage is, according to Archbishop Zoa "a phrase that needs to be abolished!"⁷²

Many authors have also joined in the condemnation of the employment of these terms. Jan P. Heijke, for instance, finds it difficult "to speak of illicit premarital relations" in reference to the progressive marriage. "The word loses much of its meaning in the case of an arrangement which is arrived at step by step."⁷³ Mike Singleton, on his part, simply states that as a

⁷⁰Kaseba, African Ecclesiastical Review 23 (1981), p. 41.

⁷¹Batantu, African Ecclesiastical Review 23 (1981), p. 41.

⁷²Zoa, African Ecclesiastical Review 23 (1981), p. 103.

⁷³Heijke, Pro Mundi Vita: Dossiers 1, (1986), p. 4.

description of the progressive marriage of African couples, "'trial marriage' is a misnomer. It is a term coined by those for whom marriage...suddenly starts with an unconditional surrender for life."⁷⁴ Obviously, the employment of these misnomers is the result of ignorance of the African cultures by those who use them.

C. CONCLUSION

It is abundantly clear that the African local magisterium is aware of the problem of the customary marriage. They recognize that this marriage is characterized by its progressivity whose establishment is arrived at by the birth and presence of offspring. However, it is not sure how they regard fertility with regard to the constitution of the marriage. Some appear to consider fertility as a precondition, while others regard it as the essence of the marriage insofar as upon it hinges the validity of the marriage. The problem with such an understanding is that it gives the impression that prior to the fulfilment of the precondition or of the essential element, the marriage is in the meantime invalid, with the result that the couples are living in an illicit union. It appears, therefore, better to consider fertility as the

⁷⁴Mike Singleton, SEDOS 15 (1980), p. 274.

establishment of marriage whereby the marriage reaches maturity and stability, which is not the same as validity.

A great majority of the African local magisterium seem to recognize the validity of the progressive marriage. They also realize that with the coming of Christianity, church marriage, as far as the people are concerned, is a mere accidental adjunct, while the progressive marriage as Bishop Bouchard observes, "is the real marriage."⁷⁵ It is on this score that those bishops who go so far as recognizing the presence of sacramentality in the progressive marriages of practicing Christians call for a synchronization in the celebration of these marriages. One only wonders when one finds out that, after all these nice things the bishops have said about the progressive marriage, the same bishops, at their meeting held in Yaounde, Cameroon, from 29th June to 5th July, 1981, are able to declare that "couples who have been married only according to customary law are not to be admitted to the sacraments until they have regularized their situation."⁷⁶ This appears to be a contradiction.

⁷⁵Bouchard, African Ecclesiastical Review 23 (1981), p. 31.

⁷⁶SECAM, "Recommendations and Conclusions on Christian Family and Marriage in Africa Today," African Ecclesiastical Review 23 (1981), p. 370.

On the other hand, the statements of the bishops who go so far as to accord sacramentality to the progressive marriage do so only by way of recommendations. They are not giving a ruling which their Christians must live by here and now. Rather, they are simply presenting their views at the Synod of the Bishops in Rome in the hope of being heard by the authorities in Rome. To their mind, the final decision would rest with Rome. In the absence of such a decision, therefore, the bishops would in the meantime abide by the present practice of denying sacraments to those who have married progressively or to those who have not married in Church employing the canonical form. On this showing, perhaps it is easy to understand why the bishops, at their meeting in Yaounde, Cameroon, made their statement which seems to be a contradiction to what they had stated in Rome.

CHAPTER FIVE

THE POSSIBILITY OF AN AFRICAN LOCAL THEOLOGY OF CHRISTIAN MARRIAGE

The discussion in Chapter Four has indicated the African local magisterium's awareness of the fact, as well as their recognition, of the progressive marriage of the African Christian couples, regardless of the absence of the canonical form, which for them simply puts them in a good light before the priests and permits them to approach the sacraments. If we are not mistaken, the African magisterium, on their part, do not only seem to agree with their Christians on the validity of the progressive marriages, but they appear to go so far as to believe in the possibility of their prospective sacramentalization. Furthermore a good number of the members of the African local magisterium seem to take the view that these progressive marriages already enjoy sacramentality in their present state. They think that this sacramentality should simply be recognized by the authorities of Church for what it is. In this way, the resistance to the teaching on the absolute inseparability of contract and sacrament in which the sacramentality is said to be effected through the employment of the canonical form, seems to find its continuance in the African local magisterium themselves. Is there any possibility of incorporating the African

progressive marriage into the gospel? This is the question that will occupy our attention in this fifth chapter.

On the hypothesis of the correctness of the conclusion we arrived at in the third chapter to the effect that the conflict between the African progressive marriage and the teaching on the absolute inseparability of contract and sacrament represents a confrontation between two cultures, then the incorporation or inculturation of the progressive marriage into the gospel seems to be a real possibility. Since inculturation, whereby a local theology is constructed, is essentially the interaction between the gospel and culture, in this chapter we will attempt to examine what may be considered as the essential message that the gospel intends to convey, what values the African progressive marriage has to offer, what may be the possibilities of the inculturation of the African progressive marriage, and what effects will be experienced in the event that inculturation is or is not permitted to occur.

A. THE GOSPEL MESSAGE IN ITS ESSENTIALITY

The identification of the essential gospel message is of primordial importance in the question of inculturation, in that such a message sets the criterion whereby culture may be judged. However, the identification itself is not such an easy enterprise. As a matter of fact, it has

already taxed the minds of many theologians. This is demonstrated by the fact that, in their effort to respond to the question as to what constitutes the essence of the gospel message, they have not been able to reach unanimity. The question presupposes that there is such a supracultural, unchanging gospel core, identifiable and separable from the cultural forms in which it is embodied. Some missiologists and theologians, however, in view of the difficulty of separating the so-called gospel core from the cultural forms in which it always finds itself, dismiss the idea of ever being able to identify it. On the other hand, other theologians affirm the existence of such a gospel core, but despite the fact that they advocate its identifiability, they are not in agreement on its identity.¹ Krikor Haleblian quotes Willowbank Report which he considers as offering the most specific statement on the question of the identity of the gospel core in the following terms:

We recognize as central the themes of God as Creator, the universality of sin, Jesus Christ as Son of God, Lord of all, and Saviour through his atoning death and risen life, the necessity of conversion, the coming of the Holy Spirit and his transforming power, the fellowship and mission of

¹Krikor Haleblian, "The Problem of Contextualization," Missiology 11 (1983), p. 101.

the Christian church, and the hope of Christ's return.²

Pope Paul VI seems to be of the same view of the identifiability of the gospel core. However, instead of going through the whole gospel in search for various important doctrines which constitute the core, the pope finds it as enshrined in the great commandment of the love of God and the love of neighbour on which, according to Jesus, "depend all the law and the prophets" (Matt.22:37-40; Lk. 10:27). Pope Paul VI states:

Evangelization, therefore, includes the preaching of the promises made by God in the new covenant through Jesus Christ, the preaching of the love of God for us and of our love for God. It includes the preaching of fraternal love for all men, that is the capacity to bestow gifts and pardon, to practice self denial and to come to the aid of our brethren. This, inspired by the love of God, is the kernel of the gospel.³

For practical purposes, it would appear that Paul VI has captured what in reality constitutes the core of the gospel message. For the good message that Christ came to announce to the world was none other than the message of our salvation. But salvation is the result of God's love for

²Ibid.

³Pope Paul VI, "Evangelization in the Modern World," Vatican Council II, Vol. II, ed. Flannery, p. 723, n.28.

the human being and the human being's love for God mostly expressed when the human being loves another human being. In any case, the mutual love of God and the human being is what we call grace which in effect is the beginning of salvation as long as we are on earth. All other doctrines should, in the final analysis, lead us to this saving love. In this regard, Harnack is reported to have maintained that "the core of the Christian gospel when stripped of the superstitious accretions already present in the New Testament, was simply and solely a summons to love God and one's neighbour."⁴ In a similar vein, Rahner affirms that "...the whole truth of the gospel is still hidden and in germ in what he (man) finds most easily as a deed and then as a truth, viz. in the love of one's neighbour."⁵

There is a multiplicity of references that could be cited to illustrate the supremacy of love in the gospel message. The following are just a few of them taken at random. James describes the love of the neighbour as the supreme (or royal: R.S.V.) law of scripture: "Well, the

⁴Christopher Butler, The Theology of Vatican II (Westminster, Maryland: Christian Classics Inc., 1981), p. vii.

⁵Rahner, "Reflections on the Unity of the Love of Neighbour and the Love of God," Theological Investigations, Vol. 6, trans. Karl-H and Boniface Kruger (New York: The Crossroad Publishing Company, 1982), p. 233.

right thing to do is to keep the supreme law of scripture: 'You must love your neighbour as yourself' (James 2:8). While the attainment of salvation depends on our love for God, in practice, this love is expressed by our love for the neighbour. The claim to the effect that we love God when the love of the neighbour is neglected, is considered as unwarranted. "Anyone who says, 'I love God,' but hates his brother is a liar, since a man who does not love the brother that he can see cannot love God whom he has never seen" (1John 4:20). On the love of God and the love of the neighbour "hang the whole law and the prophets also" (Matt. 22:40). Jesus claims the commandment of the love of neighbour as his own. He says, "I give you a new commandment: love one another" (John 13:34). "This is my commandment: 'I give you a new commandment: love one another' (John 13:34). "This is my commandment: love one another" (John 15:12). The love of the neighbour implies service. Jesus declares that the service that one person does to another is service rendered to Christ himself. "I tell you solemnly, in so far as you did this to one of the least of these brothers of mine, you did it to me." "I tell you solemnly, in so far as you neglected to do this to one of the least of these, you neglected to do it to me" (Matt. 25:40, 45). Jesus teaches that reconciliation with the neighbour has priority even over the offering of a sacrifice (Matt. 5:23-25). Saint Paul declares the

excellence of love over the possession of all types of charisms that can be imagined, for no charism can stand comparison with love. In fact, all charisms are trash before the virtue of love. "In short, there are three things that last: faith, hope and love; and the greatest of these is love" (1Cor. 13).

B. IDENTIFYING SOME OF THE VALUES OF THE PROGRESSIVE MARRIAGE

It is of great importance to realize that the call for inculturation is not just for the sake of inculturation. In other words, not every element can constitute a factor for the construction of a local theology for the simple reason that the element belongs to a culture. In a culture, there is most often a mixture of negative and positive elements. There are elements that humanize or promote the human dignity and elements that dehumanize or contribute to the degradation of the human dignity. Obviously, the dehumanizing cultural elements cannot become components of a local theology, in that they do not measure up to the requirements of the gospel message. As a matter of fact, the gospel tends, in such circumstances, to operate for the purification of culture from its dehumanizing elements. As the Second Vatican Council teaches:

The good news of Christ continually renews the life and culture of fallen man; it combats and removes the error and evil which flow from the

ever-present attraction of sin. It never ceases to purify and elevate the morality of peoples. It takes the spiritual qualities and endowments of every age and nation, and with supernatural riches it causes them to blossom, as it were, from within; it fortifies, completes and restores them in Christ. In this way the Church carries out its mission and in that very act it stimulates and advances human and civil culture, as well as contributing by its activity, including liturgical activity, to man's interior freedom.

The utilization of the positive elements, on the other hand, would be legitimate. The question, therefore, is whether the Yawo progressive marriage contains or does not contain identifiable humanizing elements for the construction of a local theology. In this section we wish to express the belief in the presence of some positive elements in the progressive marriage. Accordingly, we will discuss the emulation and growth in love experienced in this progressive marriage, the respect this marriage has for the stability of marriage, and how it profits by, and fosters, community life.

1. Emulation and Growth in Love

When the Africans come together in marriage, they do not do so like dead stones without any feeling of mutual

⁶"Pastoral Constitution on the Church in the Modern World," Vatican Council II: Conciliar and Post Conciliar Documents vol. I, p. 963, n. 58.

attraction. Rather, they marry because they are attracted to each other, they like each other, they love each other. When marriage in earnest has commenced in the phase of acceptability, the couple know that their marriage is still young and tender and therefore not very strong. They realize that, by and large, they themselves are the people who, in the first place, can make it grow strong, can make it work. They thus realize that the success of their marriage will depend upon the love they exercise towards each other in its multifarious manifestations. The husband must be satisfied with the kind of treatment that he receives from his wife just as the husband's treatment of the wife must be to her satisfaction. By reason of their desire to make the marriage work, each partner strives to please the other to the best of his or her ability. They know that a multiplication of instances which are a cause of displeasure to the other may signal the collapse of the young marriage. In this way, between the husband and the wife, there emerges a sort of competition and emulation that assists growth in their mutual love and compatibility. This competition does not cease with the phase of acceptability, rather, it continues in the second phase and in the phase after it, so that when the marriage attains the phase of establishment, the couple's love and compatibility are hopefully well established, as the name of the last phase itself implies.

2. Respect for the Stability of Marriage

While the western marriage has what are called witnesses, the Yawo progressive marriage has guardians (angoswe). We have attempted to describe in Chapter Two (C.1.b.; C.2.c.) who these people and their duties are. In short, the brother and the maternal uncle of each of the partners are the proper guardians (angoswe) of marriage. The duties of guardians (angoswe) are many and apparently very commendable. Despite the fact the mutual love of the partners themselves constitute the essence of marriage, circumstances do often arise which tend to disturb and even destroy this love. The continuance of this mutual love very often also depends upon the support of the guardians (angoswe), in that when need arises they act as the counsellors of the couple in order to prevent the breakdown of the marriage. As often as the couple find themselves in marital problems, which they have failed to solve themselves, they have recourse to the guardians (angoswe) for guidance and assistance. The guardians are prepared to walk long distances in the rain, in the heat, in the cold, back and forth, as often as difficulties arise in their clients' marriages and as long as the couples live. The only reason why they are prepared to endure all this is that they want to prevent the disintegration of the marriage. In the event that one guardian or the other dies, he is replaced by a more or less equivalent relative

who assumes all the duties of his predecessor. It is precisely in view of the laboriousness and the lifelong nature of the duties of the guardians (angoswe), that the Yawo feel that only interested relatives will be able to carry them out. As if to make sure that a couple receive the guidance and assistance they need, the progressive marriage of the Yawo has not only one guardian (ngoswe) for each partner but two, that is to say, one junior and one senior guardian (ngoswe) for each, four in all. This disposition appears to demonstrate the respect the Yawo have for the stability of marriage. Furthermore, the very progressivity of the customary marriage seems to imply respect for its stability, in that the advance from one stage to the other is supposed to indicate the couple's contentment with the marriage situation of the previous stage.

3. The Fostering of Community Life

The communitarian character of the African society in general seems to be common knowledge. It is generally referred to as the African extended family. Among the Yawo including many matrilineal societies it is referred to as

the sorority-group. The bishops of Africa emphasized this point in Rome at the Synod of Bishops on Christian family.⁷ African communitarianism takes many forms of which we can only mention some.

When marriage is about to take place, the community already becomes involved even in the choice of partners.⁸ Bishop Albert Setele, speaking in the name of the episcopal conference of Mozambique remarks that this is not because "individual freedom is ignored, but because of the difficulty young people have in judging rightly in matters of love, the clan cannot allow this vitally important matter to become a private affair belonging only to the two people who want to get married."⁹ In order to ascertain the correctness of the choice, the elders make investigations relative to the qualities not only of the young people intending to marry but also those of their background, that is, of the families from which the candidates come.¹⁰

⁷Brian Hearne, "Editorial," African Ecclesiastical Review 23 (1981), p. 1.

⁸Henry Karlen, "Canonical Form and Traditional Marriage," African Ecclesiastical Review 23 (1981), p. 59.

⁹Albert Setele, "Catechesis for Marriage and Family Life," African Ecclesiastical Review 23 (1981), p. 55.

¹⁰Joseph Ntepeka, "Traditional Marriage Among the Mwera Tribe," African Ecclesiastical Review 22 (1980), p. 159.

The commencement of the marriage results, at one and the same time, in the unification of the two extended families of the partners. In the words of Bishop Robert Sarah, speaking for the episcopal conference of the Popular Revolutionary Republic of Guinea, "The African conjugal 'yes' binds the man to his wife and to the whole family of his wife; it equally binds the wife to her husband and to the entire family of her husband."¹¹ By family is intended to be understood the extended family. "As a personal and a communitarian act," says Bishop M'sanda Tsinda Hata, representing the episcopal conference of Zaire, "the marriage contract is precisely a covenant and a pact concluded between two persons and their respective clans...."¹² In this way the African family is not confined to parents and children, rather, "it is the whole network of relationships included in what is called the extended family,"¹³ writes Archbishop Maurice Otunga as a representative of the episcopal conference of Kenya. The significance of the rite of the Yawo marriage consists

¹¹Robert Sarah, "Polygamy," African Ecclesiastical Review 23 (1981), p. 102.

¹²M'sanda Tsinda Hata, "African Marriage: Personal and Communitarian," African Ecclesiastical Review 23 (1981), p. 36.

¹³Maurice Otunga, "African Values," African Ecclesiastical Review 23 (1981), p. 34.

precisely in this unification of the sorority-groups (mbumba) rather than in that of the partners themselves (cf. Chapter Two C.2.b.).

The African communitarianism is not merely a theoretical idea, rather, it is experienced, when the need arises, in real life through "cooperation and mutual services."¹⁴ For instance, when a child becomes an orphan, which in the Yawo society implies the death of its mother especially, one female relative will be asked to volunteer to look after the child. The customary education of children "is not the task of the parents alone,"¹⁵ in that other relatives also give their assistance. Old people have no problem finding one relative or the other to care for them in the village. When a wife is sick, one of the members of the community will volunteer to cook for the husband. This comes in handy particularly in a society where it is not the custom for men to cook in the village. But perhaps more important for the couple is the contribution the community makes to the stability of their

¹⁴Aylward Shorter, African Culture and the Christian Church: An Introduction to Social and Pastoral Anthropology (London, Dublin: Geoffrey Chapman, 1973), p. 178.

¹⁵Hata, African Ecclesiastical Review 23 (1981), p. 37.

marriage, when it is in danger of a breakdown, in that they participate in keeping the couple together in addition to the assistance the couple receive from their proper guardians (angoswe). More could be said about the various ways the Africans demonstrate their communitarian spirit. Bishop Cyriaque Obamba, deputizing the episcopal conference of Gabon, states, "This family solidarity is the first way in which Africans live the love of Christ in their society."¹⁶ Similarly, Aylward Shorter writes, "This is a step in the direction of Christ's teaching that Christian love must transcend his family circle and be all embracing."¹⁷

One problem with respect to the Yawo progressive marriage requires special attention. This concerns the duties of the guardians (angoswe). Obviously their responsibilities are many and particularly burdensome. They require that the guardian be diligent and self sacrificing in order to be able to carry them all out, in that very often the stability of his clients' marriage depends on him. A guardian may sometimes fail in his duty.

¹⁶Cyriaque Obamba, "Marriage in Stages Lived 'in the Lord'," African Ecclesiastical Review 23 (1981), pp. 47-48.

¹⁷Shorter, African Culture and the Christian Church, p. 178.

However, the possibility of remedying the situation resides in the promptitude with which the sorority-group recognizes the guardian's negligence and acts on it. In view of the fact that women in a matrilineal society of the Yawo are themselves an effective power to reckon with, they are in a position to arrange the replacement of the unfit guardian by a more diligent one, a course which will save the marriage from experiencing a breakdown.

C. THE POSSIBILITY OF THE INCULTURATION OF THE PROGRESSIVE MARRIAGE

If the above mentioned qualities of the African marriage are genuine, if, that is, they humanize the members of the society in which they are practiced instead of dehumanizing them, then they are not opposed to the gospel message. If such is the case, what does Christianity teach about culture that possesses genuine values? Is it not precisely in these circumstances that inculturation becomes permissible, if not obligatory? In this section, therefore, we will try to describe inculturation according to the meaning we attach to it here, we will discuss what may be the right attitudes to be taken towards culture, and then we will proceed to suggest the possibility of recognizing the Yawo progressive marriage.

1. Inculturation Described

The term inculturation is a new one, and is employed here with an ecclesiastical connotation. It must therefore be distinguished from enculturation employed in the subject of social anthropology. Francisco F. Claver somewhat naively believes that the distinction between the two terms lies merely in their spelling when he states: "Enculturation is, generally among anthropologists, the process of learning a new cultural tradition, hence synonymous with socialization. Ecclesiastical usage spells the term 'inculturation'. I prefer the former spelling since the term is already in wide use among anthropologists."¹⁸ In order to show that enculturation is different from inculturation we present the definition of the latter as proposed by Pope John Paul II when he says: "Inculturation is 'the incarnation of the Gospel in native cultures - and also the introduction of these cultures into the life of the Church.'"¹⁹ Ary A. Roest Crollius spells out even more clearly the distinction between the terms in the following terms:

For the sake of clarity, we propose to consider enculturation as a technical term in cultural

¹⁸Francisco F. Claver, "Notes on Enculturation (Building up the Local Church)," SEDOS 16 (1980), p. 294.

¹⁹Pope John Paul II, Encyclical Epistle: Slavorum Apostoli, trans. Canadian Conference of Catholic Bishops (Ottawa: Vatican Polyglot Press, 1985), p. 35, n.21.

anthropology for indicating the learning experience by which an individual is initiated and grows into his culture, while reserving the term inculturation to denote the process by which the Church becomes inserted in a given culture. Acculturation could then also retain its anthropological signification, as synonymous with "culture-contact," and is better not confounded with "inculturation."²⁰

We will take the liberty of citing another statement of Crollius in which he articulates further the distinction between inculturation and enculturation. He writes:

The transposition from the anthropological "enculturation" to the missiological "inculturation" can be considered as an application of the principle of analogy. Just as we say that the individual becomes inserted into his own culture (becomes encultured) we can speak of the Church becoming inserted into a given culture (becomes inculturated). Analogy does not only express a similitude but also a difference. The main difference between enculturation and inculturation is that in the first case, the individual does not yet have a culture, and acquires his culture in the process of enculturation, whereas the Church, though it is bound to no particular culture, does not enter into a given culture unless already linked with elements of another culture.²¹

It seems clear, therefore, that enculturation is not to be equated with inculturation. Enculturation speaks of an

²⁰Ary A. Roest Crollius, "What Is So New About Inculturation?" Gregorianum 59 (1978), p. 725.

²¹Ibid., p. 726.

individual who as yet does not have a culture but will eventually acquire it among his/her own people. The Church is not an individual, nor is it without cultural elements at the moment of its contact with people of the mission lands despite the fact that it is not indissolubly attached to any one culture. A different term "inculturation" is therefore chosen to express the process by which mutual impact between the Church and a given culture occurs. In the meantime, acculturation is different from inculturation and enculturation, in that it refers to groups of individuals with different cultures who "come into continuous first hand contact with subsequent changes in the original patterns of either or both groups."²²

2. The Possible Right Attitudes

a. The Recognition of the Possibility of Inculturation

In Section B we have attempted to demonstrate the presence of values in the Yawo culture. Although there are many approaches to the African cultural values, here we wish to examine which of these approaches are the right ones after the discovery of the genuineness of these values has been made. In other words, we want to enquire what

²²M.J. Herskovits, Man and His Works (New York: Alfred A. Knopf, 1970), p. 523.

Christianity teaches with respect to cultural values more especially with the advent of the Second Vatican Council. Perhaps, it will not be far too wide of the mark to state that, in the past, both theoretically (doctrinally) and practically the evangelizers' attitude towards culture tended to be more or less negative despite some of the statements made by the authorities of the Church. To be sure, the practice of the Church was more negative than its teaching in relation to culture. Nevertheless, with the coming of the Second Vatican Council, it must be affirmed that the theoretical (doctrinal) attitude of the Church is more positive than ever before. This seems to give, at least at the theoretical level, the possibility of recognition to the Yawo customary marriage. But first let us see the Church's recognition of culture as such.

Over the last two decades or so, the authorities of the Church and the theologians have been singing in concert the praises of non-Christian religions and of culture in general, showing thereby that Christianity is not opposed to non-Christian religions or culture. The second Vatican Council took the unprecedented step that a council was ever known to have taken in relation to the non-Christian religions. The Council recognized the presence of "true and holy" elements in the non-Christian religions. It announced its respect for "the manner of life and conduct,

the precepts and doctrines" of the non-Christians insofar as they contain the "truth which enlightens all men," despite the differences that might exist between their doctrines and the Church's teaching.²³ In contrast to the past local theology of the missionaries, the Council declares that it suppresses nothing "from the temporal welfare of any people. Rather she fosters and takes to herself, insofar as they are good, the abilities, the resources and customs of peoples."²⁴ The Council also does not hesitate to assert "the legitimate autonomy of human culture."²⁵

The fact that culture possesses some values, as the Second Vatican Council seems to confirm, makes it easy to understand how right were the converts, whose culture was being destructured wholesale, in mounting a resistance to all attempts at its suppression. It is as if they were acting under the inspiration of the Holy Spirit who did not

²³"Declaration on the Relation of the Church to Non-Christian Religions," Vatican Council II: The Conciliar and Post Conciliar Documents, Vol. 1, ed. Austin Flannery (New York: Costello Publishing Company, 1975), p. 739, n.2. (Hereafter cited as Vatican Council II, Vol. 1, ed. Flannery).

²⁴"Dogmatic Constitution on the Church," Vatican Council II, Vol. 1, p. 364, n.13.

²⁵"Pastoral Constitution on the Church in the Modern World," Vatican Council II, Vol. 1, p. 964, n.59.

want to see the destruction of, at least, their good customs. A similar type of resistance is exhibited by some African writers. Speaking of Bennet Malekebu, Baird Chisunzi, Alexander Kumbanga and Jeffrey Chipengule, Malawian Christian writers, who have collected the customs of their cultures and put them into a written form for the use of future generations, Audrey Lawson states:

They have tried to produce a record which shall be, however incomplete, trustworthy and unbiased. Though Christians, they do not despise the customs of their pagan ancestors. They believe that they and their children will not find a new way of life by forgetting all their traditions, and in this belief they wish to save what they can from oblivion.²⁶

The recognition of the presence of values in culture will tend to engender in us a special attitude towards it. Aylward Shorter gives a number of possible attitudes that can be taken towards African traditional religion, but his explanation is applicable to culture in general. We shall examine them briefly and try to find out the best attitude which, after the establishment of the culture's salvific value, Christianity should take towards the culture which it encounters in its task of evangelization. Shorter calls

²⁶ Audrey Lawson, "Preface," Makolo Athu (Our Ancestors: My Translation), Benet Malekebu, et al. (Zomba: The Nyasaland Education Department, 1949), p. 5.

the first possible attitude the "anti-pagan approach"²⁷ whereby anything that belongs to the African culture is singled out for condemnation insofar as it is regarded as the work of the devil. This is an attitude of the local theology of the missionaries which we have already had occasion to speak about. It is an approach that cannot be recommended. The second possible attitude is what Shorter calls "the insufficiency approach." This seems to be the attitude which recognizes the presence of good elements in the African culture, while at the same time every effort is made to show that Christianity is "superior and that it completes and develops it at every point." But as Shorter points out, despite the superiority of Christianity in many respects and despite the insufficiency of the African culture, it by no means implies "that Christianity in the western form speaks to the real needs of the Africans."²⁸ At any rate, the superiority of Christianity in many respects does not necessarily reflect the moral superiority of Christians in the sight of God. Nor does it suggest that the African behaviour resulting from their culture counts for nothing before God in every respect or that it

²⁷Aylward Shorter, African Christian Theology: Adaptation or Incarnation? (London: Geoffrey Chapman, 1975), p. 157.

²⁸Ibid.

is necessarily inferior. In this connection, Eugene Hillman writes:

All upright moral behaviour - and Christians certainly have no monopoly on this - is therefore a manifestation of God's grace at work among men of all times and places. This understanding of grace prevents us from imagining, even without any convincing evidence, that Christians are somehow morally better than the rest of men - as though Christians experience a kind²⁹ of love which is not found among non-Christians.

Shorter's third possibility is what is termed "the seeds of the Gospel approach."³⁰ It is one which is espoused by the Second Vatican Council when it speaks about the values found in cultures as providing "a certain kind of preparation for the acceptance of the message of the Gospel and can be infused with divine charity by him who came to save the world."³¹ There is a similarity between this approach and that of the insufficiency approach in that both approaches recognize the presence of values in culture. However, there is this difference between them. The insufficiency approach tends to be negative through its

²⁹Eugene Hillman, "Pluriformity in Ethics: A Modern Missionary Problem," Missiology 1 (1973), p. 68.

³⁰Shorter, African Christian Theology, p. 158.

³¹"Church in the Modern World," Vatican Council II, Vol. 1, ed. Flannery, p. 962, n. 57.

stress on the inferiority of culture, while the preparation for the gospel approach has a positive tendency, in that it views culture's values as contributing to the gospel in the form of preparation for its acceptance.³² The danger involved in the preparation of the gospel approach, however, is the manner in which the values of culture are regarded. The values of culture as a preparation for the acceptance of the gospel can be viewed as merely transient means towards an end. Culture's values are appreciated only in the actual work of preparation. Once the acceptance of the gospel has been achieved, they do not possess any permanency inasmuch as their utility ceases with the gospel's acceptance. Therefore they are denied the opportunity of making a contribution to the Christianity of the future.³³ In view of the weaknesses exhibited in the previous approaches, Shorter proposes an alternative. He states:

The only realistic approach is the dialogical approach - an interchange which takes account of all the factors. It recognizes the truth of the anticipation of Christianity by African traditional religion and of the so-called 'the seeds of the Gospel', but it also takes account of those elements of the Christian tradition which do not have an obvious echo in African tradition as well as elements in African

³²Shorter, African Christian Theology, p. 158.

³³Ibid., pp. 158-159.

tradition which are either indifferent or which could offer new insights. Such elements would be, for example, African formulations which are superior to current Christian formulations or insights that could reawaken or draw out dormant and latent themes in the Christian tradition.³⁴

For Shorter, therefore, the best alternative resides in a dialogical approach in which Christianity is called upon to recognize the presence of the seeds of the gospel in culture, which, in the process of mutual fecundation, become the culture's contribution to Christianity, while Christianity's contribution takes the form of those elements that do not have an echo in culture. Also, not to be ruled out is the possibility of the rousing from dormancy and the evoking from latency, through cultural formulations, of themes present in Christianity. The Sacred Congregation for Catholic Education, on its part, makes its contribution to the discussion when it states:

It is extremely important, then, that the Catholic educator reflect on the profound relationship that exists between culture and the Church. For the Church influences culture and is, in turn, conditioned by culture. It also embraces everything in human culture which is compatible with Revelation and which it needs in order to proclaim the message of Christ and to express it more adequately according to the cultural characteristics of each people and each age. The close relationship between culture and

³⁴Ibid., p. 159.

the life of the Church is an especially clear manifestation of the unity that exists between creation and redemption.³⁵

The recognition of the presence in culture of seeds of the gospel, of elements compatible with the revelation, of salvific values, demands that the authorities of the Church listen to culture. The possibility of salvation to occur through culture is an indication that Christ is present in culture, for "salvation cannot be gained without reference to God and to Christ since it must in its origin, history, and fulfillment be a theistic and Christian salvation."³⁶ This is true in view of the fact that Jesus Christ is the universal cause of salvation. Thus, "all men are related to Jesus by means of the faith that is necessary for salvation,"³⁷ a saving faith which is also found in non-Christians. Therefore, granted that Scripture holds the first place, the authorities of the Church will not hear Christ only in Scripture where he is heard speaking through the biblical cultures of his own people, rather, the

³⁵"Lay Catholics in Schools: Witness to Faith," Vatican Council II: The Conciliar and Post Conciliar Documents, Vol. II, ed. Austin Flannery (Boston: Daughters of St. Paul, 1982), pp. 536-637, n.20 (Hereafter cited as Vatican Council II, Vol. II, ed. Flannery).

³⁶Rahner, Theological Investigations, Vol. 16, p. 218.

³⁷Ibid., p. 217.

listening Church must also hear "the voice of the same Christ in human socio-cultural situations" where he is no longer confined to "a single human life-time, lived in a particular culture or set of cultures."³⁸ It is within this perspective that Joseph J. Spae proposes that to the four classical praeambula fidei, namely, "Scripture, tradition, magisterium, sensus fidei fidelium," there must now, at this eleventh hour, be added "a fifth one, sensus fidei infidelium" which he describes as "that uncanny way in which non-Christians and their religions hold up a mirror of our self-image and pronounce upon Christians their spirit-filled logos parakleseos," the word of exhortation which can become part of our tradition insofar as "it contributes to the consolidation of our faith (Col.2:7)."³⁹ Thus, the work of evangelization can no longer be conceived of as simply "bringing Christ to culture," but it must also mean "finding Christ already active in the culture." The great respect that is demanded for culture has a Christological foundation. "It grows out of the belief that the risen Christ's salvific activity in

³⁸Shorter, African Christian Theology, p. 143.

³⁹Joseph J. Spae, "Missiology as Local Theology and Interreligious Encounter," Missiology 7 (1979), p. 496.

bringing about the kingdom of God is already going on before our arrival."⁴⁰

The implications of this understanding are that the missionary has the tremendous duty of applying himself/herself with assiduity to the study not only of the language of the converts, in the case of expatriates, but also of their culture. The full effectiveness of his/her work of evangelization cannot be achieved in the absence of an adequate knowledge of the culture of the society in which such work is going on. The missionary's "lack of cultural understanding and ethnocentrism lead him into confusion, so that he has trouble sorting out what is bad from what is merely different from his own customs." His/her lack of the mentality of the members of a particular society incapacitates him/her from assigning the right meanings to the customs he/she criticises, and causes him/her to assign to them meanings that are derived from his/her own Western perceptions.⁴¹ The Second Vatican Council stresses the importance of the knowledge of culture for the work of evangelization by ordering the inclusion of cultural studies in the programme for priestly training,

⁴⁰Schreiter, Constructing Local Theologies, p. 29.

⁴¹Taber, Practical Anthropology 17 (1970), p. 145.

"so that priestly training will always answer the pastoral requirements of the particular area in which the ministry is to be exercised."⁴² Referring to this order, Pope Paul VI states:

These general requirements for priestly training, both pastoral and practical, which have been laid down by the Council, must be accompanied with a desire to face up to the particular nation's own way of thinking and acting. Therefore, the minds of the students must be opened and refined so that they will better understand and appreciate the culture of their own people; in philosophy and theology they should examine the relationship between the traditions and religion of their homeland and Christianity. In the same way, priestly formation must take account of the pastoral needs of the region; the student must learn the history, goal and method of missionary activity as well as the peculiar social, economic and cultural conditions of their own people.⁴³

Pope Paul VI commends the African cultural studies that have already taken place, and points out that what in the past appeared to be strange to the foreign mind is today being found to be full of riches and deserving of further study. He writes:

⁴²"Decree on the Training of Priests," Vatican Council II, Vol. I, ed. Flannery, p. 708, n.1.

⁴³Pope Paul VI, "Africae Terrarum: A Message from Pope Paul VI to the Countries of Africa," African Ecclesiastical Review 10 (1968), p. 73.

We have always been glad to see the flourishing state of African studies, and we see with satisfaction that the knowledge of her history and tradition is spreading. This, if done with openness and objectivity, cannot fail to lead to a more exact evaluation of Africa's past and present. Thus, the more recent ethnic history of peoples of Africa, though lacking in written documents, is seen to be very complex, yet rich in individuality and spiritual and social experiences, to which specialists are fruitfully directing their analysis and further research. Many customs and rites, once considered to be strange, are seen today, in the light of ethnological science, as integral parts of various social systems, worthy of study and commanding respect.⁴⁴

b. The Need for Kenosis

It is inculturation as defined here, one that is different from enculturation, that we meant when we said that the elements discovered by listening to Christ speaking through culture had to be introduced into the core of the gospel through a process known today as "inculturation." Such an inculturation will necessitate a form of kenosis both on the part of the evangelized and on the part of the missionary. Kenosis is required on the part of the evangelized in view of the fact that not all the elements of their culture are compatible with the core of the gospel message, although their presence in culture does not impair its salvific value, insofar as it is not

⁴⁴Ibid.

necessary that all elements of a culture be compatible with the gospel for the culture to be salvific. Thus, in the event of a confrontation between the gospel and culture, it is the gospel that gets the upper hand. "The power of the Gospel everywhere transforms and regenerates. When that power enters into a culture, it is no surprise that it rectifies many of its elements."⁴⁵ Along the same line of thought, the Second Vatican Council has this to say:

The good news of Christ continually renews the life and culture of fallen man; it combats and removes the error and evil which flow from the ever-present attraction of sin. It never ceases to purify and elevate the morality of peoples. It takes the spiritual qualities and endowments of every age and nation, and with supernatural riches it causes them to blossom, as it were, from within; it fortifies, completes and restores them in Christ.⁴⁶

Kenosis is also required on the part of the Church through the missionaries. When the Church comes into contact with a new people, the gospel message which it delivers to them is already embodied in the cultural elements of the western civilization, together forming the local theology of the missionaries. In the event of a

⁴⁵"Catechesis in Our Time," Vatican Council II, Vol. II, ed. Flannery, p. 794, n.53.

⁴⁶"Church in the Modern World," Vatican Council II, Vol. I, ed. Flannery, p. 963, n.58.

clash between the missionaries' cultural elements and those of the converts, the missionaries should not impose their customs on the converts, rather, they should be prepared to forgo their customs in favour of those of the converts. In this way, they will be following in the footsteps of the Master. "To communicate with man, God became man, thus himself observing the basic law of human communication, indeed utilizing the wave-length of the recipient of his message."⁴⁷ "Just as Christ 'emptied himself' (Phil.2:6-7) of the ways most natural to Him (the Son of God became the Son of Man), so the missionary must be willing to sacrifice his ways and values in favour of those of his people."⁴⁸ Inculturation has not yet occurred when no cultural elements have gained acceptance into the Church. The Church is not yet incultured as long as it refuses to incorporate elements of a people's culture, even when these elements do not exhibit any manifest incompatibility to the core of the gospel. There is no inculturation when the Church imposes cultural elements of the western civilization at all costs despite the presence of indigenous alternatives. Only when the Church undergoes a kenosis is there a possibility of the formation of a local

⁴⁷Luzbetak, Missiology 4 (1976), p. 209.

⁴⁸Luzbetak, Church and Cultures, p. 348.

theology or a contextual theology, which assures the effectiveness of evangelization.

c. Listening to the Local Community for the Construction of a Local Theology

We wish to point out that we employ the terms "local theology" and "contextual theology" somewhat interchangeably. We have already seen how Schreiter defines local theology as the interaction among gospel, church tradition and culture. Haleblan defines contextual theology or contextualization in the following terms:

That discipline which deals with the essential nature of the gospel, its cross-cultural communication, and the development and fostering of local theologies and indigenous church forms. In this definition, we see the ⁴⁹supracultural, the transcultural, and the cultural.

Thus, it does not appear that there is much difference between Schreiter's and Haleblan's definitions especially if we understand what Haleblan means by supracultural, transcultural and cultural. He explains:

The "supracultural" is the "framework" revealed in the Bible, the "transcultural" is the tradition or the lessons learned through history,

⁴⁹Haleblan, Missiology 11 (1983), p. 97.

and the specific development of theology in a local situation is termed "cultural."⁵⁰

What is important to note in both these definitions is the involvement of culture for the formation of a local theology or for contextualization to occur. But Haleblan adds that local theology responds to the gospel in terms of traditional culture, whereas contextual theology or "contextualization, while not ignoring this, takes into account the process of secularity, technology and the struggle for human justice, which characterize the historical moment of nations in the Third World."⁵¹ For Haleblan, therefore, contextual theology differs from local theology in that the former goes beyond mere traditional culture by including secularity, technology and the struggle for human justice. Probably, the difference between the two theologies could be narrowed down or eliminated altogether if we understood what is meant by culture. Joseph Omoregbe says that "Culture is the rational self-adjustment of people of exigencies and the circumstances of its existential situation." Culture "embraces the totality of a people's way of life in

⁵⁰Ibid.

⁵¹Ibid., p. 97:- quoted from Theological Education Fund, Ministry in Context: The Third Mandate Programme of the Theological Education Fund (1970-1972), (Bromley, Kent, United Kingdom: New Life Press), p. 20.

response to the needs and circumstances of its existential situation."⁵² Much in the same way, Luzbetak describes culture in the following manner:

By "culture" we mean the set of socially-shared ideas that a given society (or segment of it, in the case of subcultures) has for being a success in life and for solving human problems. Cultures are a set of answers for human needs at any given moment of time of any social group. "Culture" refers to the socially-shared solutions to the various human needs in the given physical, social, or ideational environment: needs that are biological, economic, social, psychological, aesthetic, scientific, spiritual - or whatever the human need may be. Some of the "solutions" offered in a given culture will be panhuman; some peculiar to a particular⁵³ society or only to a particular segment of it.

According to these descriptions of what constitutes culture, it would appear that Haleblan's "process of secularity, technology and the struggle for human justice" by which, to his mind, contextual theology is distinguished from local theology, in that these aspects of human life do not belong to culture, are as a matter of fact part of culture. These aspects are either solutions to human needs or questions requiring an answer by society and therefore

⁵²Joseph Omoregbe, "Is Polygamy Incompatible with Christianity?" African Ecclesiastical Review 21 (1979), p. 20.

⁵³Luzbetak, Missiology 4 (1976), p. 214.

culture. In any case, this appears to be the view of Schreiter who seems to identify local theology with contextual theology when he affirms that "There is now a realization that all theologies have contexts, interests, relationships of power, special concerns - and to pretend that this is not the case is to be blind."⁵⁴

By listening to Christ speaking through culture inculturation occurs. Through inculturation the construction of a contextual or local theology is rendered possible. By the fact that local theology takes into account the importance of culture, it implies that the community in which such a local theology has been generated plays the role of theologian, the role of the practical theologian, one, that is, who puts the resultant local theology into practice. Referring to this local theology Joseph J. Spae writes:

Schreiter defines local theology as the expression of the dynamic interaction of gospel, church and culture. This definition implies that there must be a theory of culture to help elucidate one's own identity, a strong sense of and penetration into the Scriptures, as well as a theory of tradition and its use. All this takes place within the context of a community-as-theologian, because real theology is the expression of that community's faith and praxis

⁵⁴Schreiter, Constructing Local Theologies, p. 4.

even though the actual construction of theology
may be ⁵⁵done by professionals serving the
community.

It is precisely on this account that, in the construction of a local theology, it is necessary to listen to culture, which in effect is the community in which cultural behaviour occurs. They are the people who will shed light on the form their particular local theology will take. For the actual construction of the local theology, therefore, the professional theologian must avail him/herself of the resources that the community provides. Many a time and often it will be the case that the local theology has already been constructed by the community, as far as the practical level is concerned. The professional theologian has only to articulate this theology at the theoretical level.

The dependence on the community-as-theologian for the construction of local theology implies a plurality of theologies. The fact that there is a plurality of communities suggests a plurality of cultures from which the formation of local theologies becomes a real possibility. Such does not seem to have always been the view of the

⁵⁵Spaer, Missiology 7 (1979), p. 482.

Church. For a long time, the Church has, in its work of evangelization, acted in a manner which has given the impression that the unity of human nature required that there equally be a unity of culture, the culture of the West. In this regard, Nsolo Mijere remarks that "It has been the tendency of the Church to assume that the western ways and values are universally natural and normal which must be accepted by all progressive people in the world."⁵⁶ In the meantime, the other African author, Nya Kwiawon Taryor, tells us what was done to the African cultural values when he writes: "The African cultural pattern and value system were assaulted and rejected by the colonial power and the Church."⁵⁷ With such a mentality "Westerners have had the monopoly of expression for so long that they have become insensitive to the views of other peoples" and they have difficulties in accepting the existence of other cultures apart from their own.⁵⁸ The result was to impose their culture on people who had their own culture because the western culture was supposed to be normative. This

⁵⁶Nsolo Mijere, "Recommended Books," African Ecclesiastical Review 18 (1976), p. 181.

⁵⁷Nya Kwiawon Taryor, The Impact of the African Tradition on African Christianity (Chicago: The Strugglers' Community Press, 1984), p. 82.

⁵⁸Jan P. Heijke, "Marriage in Africa," Pro Mundi Vita: Dossiers (Africa Dossiers n.36), (1986), p. 2.

classicist view which accords normativity to any one culture is no longer tenable. In this regard Bernard Lonergan writes:

Finally, human individuals differ from one another not only through individuation by matter but also in their mentalities, their characters, their ways of life. For human concepts and human courses of action are products and expressions of acts of understanding, human understanding develops over time, such development is cumulative, and each cumulative development responds to the human and environmental conditions of its place and time. Classicism itself was one very notable and indeed noble instance of such cumulative development, but its claim to be the one⁵⁹ culture of mankind can no longer be entertained.

Nor can any culture claim to be normative on the grounds that it is the Christian culture, for "no single culture has become the Christian culture, just as no man has become a perfect follower of Christ: none of us. We are all "pagans" trying sometimes to become Christians."⁶⁰

In contrast to the classicist view, today "we speak of a plurality of cultures."⁶¹ While in the past evangeliza-

⁵⁹ Bernard Lonergan, Method in Theology, (New York: The Seabury Press, 1979), p. 302.

⁶⁰ Hillman, Missiology 1 (1973), p. 62.

⁶¹ "Pastoral Constitution on the Church in the Modern
(Footnote Continued)

tion meant the elimination of the African cultures in favour of the western culture, today "pluralism is no longer regarded as an evil to be combatted but as a fact that has to be taken into account."⁶² Plurality of cultures is not the creation of the devil, rather it is something desired by God "who made men beings with culture, in many ways the same but in many ways different as individuals and as members of distinct social groups."⁶³ Plurality and diversity of cultures do not necessarily jeopardize the unity of the Church, provided that the diversity is a diversity-in-unity as Aylward Shorter points out. He writes:

The distinction between pluralism and diversity is important. Pluralism is not a mere diversity, but diversity-in-unity. Error and enmity produce the wrong kind of diversity, scattering people and keeping them apart. Pluralism, on the other hand, signifies, in this context, that many elements are brought together in unity. In fact, talk of unity presupposes pluralism, since it would otherwise have no meaning. Unity of what? Diversity-in-unity suggest a richness, an

(Footnote Continued)

World," Documents of Vatican II, ed. Walter M. Abbott (London: Geoffrey Chapman, 1966), 259, n.53.

⁶²"General Catechetical Directory," Vatican Council II, Vol. II, ed. Flannery, p. 532, n.3.

⁶³Luzbetak, Missiology 4 (1976), p. 210.

organized unity, patterned on the organic unity of the Trinity itself.⁶⁴

Unity does not necessarily mean identity. It is a common occurrence that unity results from the combination of different elements. Saint Paul gives a classic example in which he demonstrates that the unity of the body is not impaired by the fact of the multiplicity of its members, despite the fact that each member has a different function, and therefore a different behaviour (1Cor. 12:12-27). In fact, absolute unity or identity, in the case of a human being, for instance, is utter monstrosity. To attempt to impose absolute unity or identity in the Church, in matters that are not inconsistent with the core of the gospel message, is to create monstrosity. Catholic unity must be such that it respects legitimate diversity, and Catholic diversity must be such that it respects unity.⁶⁵ In the work of evangelization, therefore, the Church must not impose unity in the form of "a mentality of any particular

⁶⁴Shorter, African Christian Theology, p. 152.

⁶⁵"Address of Pope Paul VI to the Oriental Rite Bishops, in St. Anne's Church, Jerusalem, January, 1964," Bulletin of the White Fathers, Petit Echo 2 (1964), quoted by Shorter, African Christian Theology (London: Geoffrey Chapman, 1975), p. 153.

culture upon another - the Western mentality, for instance, in the case of Africans and Asians...."⁶⁶ when there is an alternative that serves an equally good, if not better, purpose to a given community.

The task of evangelization is to enable Africans to become African Christians, Indians to become Indian Christians, Japanese to become Japanese Christians and Chinese to become Chinese Christians in lieu of turning them "into American or European Christians."⁶⁷ The achievement of this goal, despite the suppressive efforts of the past, must be considered as a real possibility especially by virtue of the contemporary theological climate that recognizes not only the valuableness of cultures but also the salvific nature of cultures, as well as by virtue of the Church's repeated claims to catholicity. The Second Vatican Council, speaking of the catholic mission of the Church says: "Destined to extend to all regions of the earth, it (the Church) enters into human history, though it transcends at once all times and all racial boundaries."⁶⁸ The Council also states:

⁶⁶Luzbetak, Missiology 4 (1976), p. 215.

⁶⁷Luzbetak, Church and Cultures, p. 344.

⁶⁸"Dogmatic Constitution on the Church," Vatican Council II, Vol. I, ed. Flannery, p. 360, n.9.

Nevertheless, the Church has been sent to all ages and nations and, therefore, is not tied exclusively and indissolubly to any race or nation, to any one particular way of life, or to any customary practices, ancient or modern. The Church is faithful to its tradition 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.⁶⁹

The inclusion of these non-western peoples into the Christian community which involves inculturation is a great manifestation of that catholicity which is the legitimate claim of the Church.

But as we have repeatedly pointed out, such an inculturation necessitates the study of culture. Unfortunately, as in many other aspects, Dr. Lyndon Harries' words appear to retain their validity even today when he states that "official action by missions in promoting the Christian ideal of marriage has never been initially or directly related in principle to what missions have learned about African indigenous marriage."⁷⁰

⁶⁹ "Pastoral Constitution on the Church in the Modern World," Vatican Council II, Vol. I, ed. Flannery, pp. 962-963, n. 58.

⁷⁰ Philip Mitchell, "The Survey of African Marriage and Family Life," Africa 24 (1954), p. 154. Quoting Dr. Lyndon Harries.

3. The Possibility of Recognizing the Progressive Marriage

In view of the fact that the progressive marriage may have some values and considering that the teaching of Christianity is in favour of the incorporation of a people's cultural values into the gospel, it seems that the recognition of the progressive marriage is a possibility. In the following paragraphs, therefore, we intend to discuss the possibility of recognizing progressive marriages between believing baptized persons and between unbelieving baptized persons and in the next sub-section we will discuss marriages between a believing baptized person and a non-Christian, i.e., marriages with the disparity of cult.

a. Marriages Between Believing Baptized Persons and Between Unbelieving Baptized Persons

There is, as it were, a move in contemporary theological circles calling for the recognition of marriages of baptized believers celebrated without the canonical form. Theologians almost unanimously reject the traditional description of these marriages as "base and disgraceful concubinage." These are marriages which in the West are called civil marriages. Kasper states that despite the fact that civil marriages are not canonically valid, it does not imply "that they are valueless from the

human and Christian point of view."⁷¹ Rather, they call for recognition of their "human values."⁷² A. Dequien affirms the validity of civil marriage contracted by baptized persons, independent of the Church and the Church could not rightly consider such a marriage as if it did not exist, i.e, as if it were invalid and sinful.⁷³ Orsy, in turn, states that in virtue of the validity of civil marriages, the partners are bound to fidelity just as in any other marriage "and the Church is bound to accept the reality of that union, to recognize it for what it is. It must not declare it null and void without further ado."⁷⁴ Like Kasper, Flatten admits the invalidity of civil marriage from a canonical point of view, but he acknowledges the presence of some value in it.⁷⁵ "The marriage of a Catholic entered into merely civilly is not

⁷¹Kasper, Theology of Christian Marriage, p. 79.

⁷²Ibid., p. 78.

⁷³A. Dequien, "Propositions d'Amérique latine: sur le mariage," Informations Catholiques Internationales 202 (1963), p. 32.

⁷⁴Orsy, Theological Studies 43 (1982), p. 395.

⁷⁵Flatten, Periodica 67 (1978), p. 215: "Matrimonium catholici mere civiliter initum non est omnino nihil." [My translation].

absolutely nothing," (non est omnino nihil)⁷⁶ "it is not entirely nothing" (non est prorsus nihil).⁷⁷ Beguerie and Beraudy warn that while the religious ceremony of marriage is extolled, civil marriage must never be discounted to the extent of expropriating its validity.⁷⁸ Finally, Vandenberghe calls for the Church's recognition of the customary marriages of baptized believers, so that, despite the fact that they have not married sacramentally, i.e., according to the canonical form, they can in virtue of the validity of their customary marriage, be admitted to the sacraments.⁷⁹ In other words, Vandenberghe accepts the validity of the customary marriage contracted by baptized believers, but considers its sacramentality as compromised on the grounds of the canonical form's absence.

Thus, there is a feeling among theologians of the presence of some sort of validity in civil marriages. Some theologians, because they are used to the canonical form as an essential element for the validity of marriage, tend to

⁷⁶Ibid., p. 216. [My translation].

⁷⁷Ibid., p. 217. [My translation].

⁷⁸Beguerie and Beraudy, La Maison Dieu 127 (1976), p. 24.

⁷⁹Vandenberghe, "Contributions à la pastorale du mariage en Afrique," Orientations Pastorales 119 (1968), p. 242.

compare civil marriage to the marriage celebrated canonically and come to the obvious conclusion, as far as they are concerned, that, despite the presence of some value in civil marriages, they are not canonically valid. It is almost tantamount to attributing to the civil marriage a validity that is inferior to that acquired through the canonical form. Others, however, just ignore the canonical form and assign validity to the marriage in their civil form independent of the Church. At any rate, despite the fact that the civil marriages enjoy genuine validity, these theologians are not prepared to go so far as to attribute sacramentality to them. The marriages are valid merely as human realities and no more.

While in the West the baptized believers, when they do not want to employ the canonical form, resort to the civil marriage, in Africa, the baptized believers in the same situation have recourse to the customary marriage, but with this difference that the Africans' marriages are celebrated with progression, which appears to place them in an even worse condition for their recognition. The question is: Are the civil marriages and the progressive marriages of the baptized believers sacramental in the strict sense of the term? From all the principles that we have laid down in the above discussions, the response to this question would probably be in the affirmative.

The fact that the gospel did not dictate one form whereby marriage should be celebrated appears to imply that any marriage form could be employed provided that it was not dehumanizing. The present canonical form is not Christian, i.e., it is not evangelical. It originates from ancient German and Roman cultures.⁸⁰ Now one culture cannot claim the monopoly of possessing the best form for the marriages of all people. In other words, it would seem most unfair to dispossess other cultures of their forms of marriage and impose upon them one form from a foreign culture. This is so much true when it is realized that marriage enjoys autonomy to the extent that any form can serve the purpose, in view of the fact that no form including the canonical form constitutes the essence nor the sacramentality of marriage. Nicholas I had told us that mutual consent was sufficient, and by consent we must understand "affectus" in the sense of "love"⁸¹ insofar as this is what consent is all about. It was precisely this inessentiality of a canonical form and the essentiality of consent (affectus) that facilitated clandestine sacramental marriages prior to the Council of Trent's Tametsi. While

⁸⁰Shorter, African Culture and the Christian Church, p. 183.

⁸¹Charlton T. Lewis and Charles Short, A Latin Dictionary (Oxford: Clarendon Press, 1966), s.v. affectus.

it is consent (affectus) that constitutes the human reality of marriage, apparently it is baptism that brings about marriage's sacramentality. We have pointed out that in the early Church, marriages of converts became sacraments in virtue of baptism. "Marriage 'in the Lord' in the first centuries of Christianity meant, as did for St. Paul, marrying a fellow Christian."⁸² By the same token, today, the statement that marriage has taken place in church would essentially mean the occurrence of marriage between baptized believers, regardless of the type of the ceremony employed in the celebration of the marriage. This marriage would become a sacrament ex opere operato in the contemporary theological sense of the term, which is in sharp contrast to the traditional explanation. Traditional theology affirmed that sacraments conferred grace ex opere operato. Yet, for the sacraments to become fruitful to the recipient opus operantis, in the sense of the recipient's good disposition, was necessary.⁸³ One begins to wonder where the grace produced ex opere operato goes in the case where the recipient is badly disposed. On the other hand contemporary theology affirms, e.g., that when two baptized

⁸²Hervé, Manuale Theologiae Dogmaticae vol. 3, p. 439 ff, nos. 414 ff.

⁸³Schillebeeckx, Marriage, pp. 251-252.

persons are united in marriage, that marriage is a sacrament ex opere operato, but explains the term ex opere operato differently. Comparing the terms opus operantis and ex opere operato, Rahner explains:

First of all it must be calmly and candidly recognized that the difference is not at all as radical as a rather mediocre theology would have it. Supernatural activity where grace is conferred and promised to us by God, infallibly on his part, and sacramental activity, are not identical. The second is only one of the possible kinds of the first. And as regards our question itself, the answer can only be that in the first case the sign (the prayer, repentance, in other words what the individual as such privately does), to which God has attached his grace, is itself intrinsically fragile, vulnerable, capable that is of becoming invalid of itself, and of being for its own part deprived of the character of visible expression of God's promise of grace. In the second case the sign has an irrevocable eschatological validity; in itself it is the sign of the eternal irrevocable covenant of God with men, a sign which so shares in the eternity and irrevocability of God's salvific will, that the sign itself can never lose the quality of being the visible expression of God's consenting answer to man. It can meet with refusal from man, who can reject the word of God and let it stand against him. But since Christ, and only since him, man can no longer prevent this word's being permanently addressed to him, calling him and not being withdrawn; or that this word summoning him to grace is irrevocably present⁸⁴ in the sacramental sign, inseparable from it.

⁸⁴Rahner, Inquiries, p. 210-211.

Briefly stated, therefore, ex opere operato suggests that the sacrament is a 'sure' sign, a permanent manifestation of God's promise of grace. Regardless of the disposition of the recipient, the sacrament continues to possess the irrevocability of God's grace, that is, it can never be prevented from being an irrevocable expression, a visible promise of God's salvific will, irrespective of whether or not we honour it with our recognition. That could be what happens to the African progressive marriage between baptized believers. It could be a visible proclamation or manifestation of the irrevocability of God's grace, whether or not we accord it our recognition.

Therefore when two baptized Yawo persons who have faith marry according to their customary form, which is the progressive form, their marriage might be recognized as a sacrament, in that as long as they remain in relationship to the Church, their marriage would be the actualization of the Church's nature, and no human authority could arbitrarily deny the presence of the sacramentality in the progressive marriage in that the validity and the sacramentality of marriage, in virtue of the marriage's autonomy, would be independent of any human law. In the words of Michel Legrain, "There is no Christian marriage, but Christians who marry and give a Christian significance

to their marriage."⁸⁵ In this way, the Yawo would not lose their right to marry on the grounds of a canonical form.

We therefore would concur with the view of the members of the African local magisterium who, as it has been pointed out in Chapter Four, appear to assert that the progressive marriage or the marriage in the phase of acceptability or in one word, the epainogamy does not require conversion into a sacrament, but that it has already acquired sacramentality by the fact of its taking place between two baptized believers. The present canon law does not recognize the progressive marriages. Nevertheless, canon law would be under strict obligation to bring itself to accept them in that their sacramentality seems to be a fait accompli. As Singleton writes:

It is perhaps still unavoidable that one continues to act for a while as if the problem were how to bridge the gap between customary marriage and the sacrament of matrimony. But to have realised that man made the gap is to accept that he can unmake it. All the Church has to do in fact is to catch up ritually with what happens to be the case. For where Catholics are doing their level best to make Christ count for themselves and for others, in keeping with what their culture has to offer in the way of

⁸⁵ Michel Legrain, Mariage Chrétien Modèle Unique? Questions Venus d'Afrique (Paris: Chalet, 1978), p. 103: "Il n'y a pas un mariage chrétien, mais des chrétiens qui se marient et donnent signification chrétien à leur mariage." [My translation.]

relatively authentic kinship patterns, there ipso facto the 'res sacramenti' is being realised. All that remains is for the Church to ritually ratify this Christian state of affairs....⁸⁶

By 'Church' here Singleton means the authorities in the Church. Otherwise, it must be made clear that these customary marriages are sanctioned by the Church, if by 'church' is understood the people of God. For the Church which in practical life really matters for the African are the people of God surrounding him or her, and not the Church in France or the Church in Rome. To be sure, the Africans must recognize their solidarity with the Churches in other continents. But for matters of day to day life such as the customary marriage, it is the people of God who constitute their immediate environment who matter most. When these people approve the marriage of a couple, then the sociality of marriage appears to have been adequately fulfilled. Thus, this would take care of the possible objection that might be raised to the effect that the sociality of marriage requires, albeit only for liceity, that the Church sanctions it.

⁸⁶Singleton, "Polygamy and Tyre Pressures: The Sacramentality of Customary Marriage," New Blackfriars 56 (1975), p. 48.

Since sacramentality seems to depend on baptism and on the continuance of the baptized persons' relationship to the Church, it becomes difficult to see the relevance of the question about the intention not to receive a sacrament, despite the fact that some theologians are of the view that such an intention operates for the removal of the sacramentality of the marriage. If the sacramentality of marriage is understood in the way we have articulated here, it becomes clear that such an intention would operate effectively only with the severance of a person's relationship to the Church through the loss of faith. The effective intention in the case of marriage seems to be that of remaining a believer. In the words of the International Theological Commission already quoted above: "In the last analysis the real intention is born from and feeds on living faith." The Christians of the Early Church did not even think of receiving the sacrament of marriage⁸⁷ especially when the very notion of the sacramentality of marriage had not yet been developed as it is today. Nevertheless, the sacramentality of their marriages cannot be put in doubt, on that score. This means that, in the case of baptized believers, the teaching on inseparability

⁸⁷Gerest, Lumière et Vie 16 (1967), p. 9.

of contract and sacrament apart from its absoluteness, retains its applicability.

However, the teaching of the Church appears inconsistent with itself by denying the sacramentality of the marriages celebrated validly in a customary way by the Yawo baptized believers just because the canonical form has not been observed. Yet if the Yawo had remained non-Christian, the validity of their marriage would have been recognized even by the Church, and if they had become Christians in their marriage, it would not have required another celebration. The validity of the marriage prior to conversion would have been accepted by the Church, and the marriage would have become a sacrament not by virtue of any canonical form but simply by virtue of the subsequent baptism and the spouses' continuance in their relationship to the Church. Somewhat a similar contradiction seems to be reflected in the statement of the International Theological Commission, a consultative body to the Vatican Congregation for the Doctrine of the Faith. The Commission spells out what is essential for the effectuation of a sacrament:

The intimate connection between baptism, faith and the church must be stressed. Only in this way will it be clear that matrimony between the baptized is "in itself" a true sacrament, that

is, not by force of some sort of automatic process, but through its own internal nature.⁸⁸

When the persons in question are baptized, and have faith with the result that they remain in relationship to the Church, their marriage acquires sacramentality "in itself," "through its own nature." The contradiction surfaces when the Commission states that the Church cannot recognize the marriage of baptized persons who have all the above mentioned qualities, "if they are not united by the sacrament of matrimony."⁸⁹ The implication here is that the persons have not used the canonical form. How can the authorities of the Church fail to recognize a marriage in which all the essential elements are fulfilled just because of a nonessential element like the canonical form has not been observed?

The progressive marriage of the Yawo people in particular and of the African people in general, even when it is as yet in the phase of acceptability is already a true marriage, and not KULOWANA or base and disgraceful concubinage or trial marriage or such like misnomers. When

⁸⁸International Theological Commission, Origins 8 (1978), p. 237.

⁸⁹Ibid., p. 238.

such a marriage has been entered into by baptized believers, i.e., in its African form, the canonical form notwithstanding, may be said to enjoy, regardless of the Church law's recognition or non-recognition of it, full sacramentality. This African marriage, on the basis of contemporary sacramental theology, is in the situation answering to the description made by Singleton in a form of questions which now should be read as plain statements. Singleton states that the gap artificially made between the sacramental marriage and the African progressive marriage is a cause of suffering to the African Church in particular and to the Church Universal. He continues:

But what if this suffering is self inflicted? It would not be the first time in her history that the Church had imagined she was being a 'fool for Christ's sake' when in fact she was simply making a fool of herself. What if the gap between customary marriage and Christian marriage were an ethnocentric illusion, generated by less than adequate understanding of sacramentality, revelation and the natural law? The possibility must be faced even at the risk of losing face. What if, having adopted a different set of postulates, it suddenly seemed plausible that the res sacramenti, the whole point of the sacrament of marriage, had been realised without our realising it, in a customary marriage between African Catholics? Even to make these suppositions might seem outrageous. But the suggestion that Anglicans can 'really say mass' would have sounded even more outlandish until the

recent shift in sacramental theology made it more than an acceptable hypothesis.⁹⁰

The African progressive marriage is an innocent cultural feature and not an evil. It is a response to the African needs of their existential situation, and therefore, a response to the on-going revelation of the Spirit in their day to day life. The progressive marriage has only to be recognized for what it is: When it has been entered into by baptized believers it becomes a sacrament, a proclamation of the unifying love of the Church.

It is interesting to note the recent, rather sympathetic attitude towards the progressive marriage of the African people taken by the Working Document on The Role of the Christian Family in the World of Today. After disapproving many other types of marriages in the Church today, the Document states:

Outside the above-mentioned phenomena of universal occurrence, there remains "matrimony by transference;" this custom is found among many tribes of Africa. It signifies a slow preparation to matrimony which is assiduously watched over and followed up by the parents and/or the leaders themselves of the tribe and which looks to the stability of marriage constructed on sure foundations. Now since in such a case the wedding celebration is an event

⁹⁰ Singleton, New Blackfriars 56 (1975), p. 438-439.

with which the whole tribe is concerned, some sort of pastoral adaptation of canonical⁹¹ norms is required on behalf of Catholic spouses.

We must repeatedly correct the usual misunderstanding of the African progressive marriage by the Western people which has once again appeared in the above quoted passage. It is utterly incorrect to describe prior stages of the African marriage as preparations. The so-called preparations are in fact stages of a veritable marriage. That is precisely why it is called a progressive marriage. In any case, if these words of the Working Document are not to become another occasion for lip-service, they call for immediate implementation. In the meantime, the African progressive marriage could be said to continue to enjoy its sacramentality, while it awaits its belated recognition.

As for the unbelieving baptized Africans, it seems that their progressive marriage could be recognized as valid in that baptism does not appear to incapacitate them from marrying inasmuch as marriage is a human reality. However, this marriage would seemingly not be a sacrament, not on the grounds that the canonical form has not been

⁹¹Working Document: The Role of the Christian Family of the World of Today, n. 16.

employed, but rather on the grounds that the partners lack faith which is considered today as necessary for the reception of sacraments, as we have already seen in Chapter Three (B.3.a.).

b) The Sacramentality of Marriages With the Disparity of Cult

From the fact that not all people in Malawi have been converted into Christianity, the possibility of marriages with the disparity of cult is very real, in that some Christians are bound to find their spouses from among the non-Christian members. The question that arises is about the sacramentality of such marriages. The difficulty of the question can be gathered from the opposing views from different traditional theological quarters. There are theologians who affirm the sacramentality of such marriages at least with reference to the Christian party and there are other theologians who deny it.

Billuart denies the sacramentality of marriages with the disparity of cult, on the grounds that just as a contract cannot be in one and not in the other, by the same token, a sacrament cannot be in one and not in the other since the contract and the sacrament are one and the same

thing.⁹² Gonet's argument against the sacramentality of marriages with the disparity of cult lies in the fact that the unbaptized person is incapacitated from becoming a minister of the sacrament through lack of a baptismal character. The unbaptized person's capacity to administer baptism cannot be taken as an argument for the capacity to administer the sacrament of marriage, in that the capacity to baptize is derived from the necessity of baptism for salvation, which is not the case with other sacraments.⁹³ These are just a few of the theologians who oppose the sacramentality of marriages with the disparity of cult.

The present practice of the Church is also in opposition to the sacramentality of marriages with the disparity of cult, and has placed an impediment to such marriages which, however, appear to have a cultural origin, as Palmer explains:

Ambrose of Milan is the first, to my knowledge, to direct himself explicitly to our disparity of cult, whether all marriages are from God. He is evidently considering the case of disparity of cult, marriage of a Christian with a pagan. To

⁹²Billuart, Cursus Theologiae, d.1, a.5, pet. 7, vol. 10, pp. 99-100.

⁹³Gonet, Clypeus Theologiae Thomisticae, d.2, a.2, n.56, vol. 6, p. 801.

appreciate the mentality of the Church towards such marriages and her reluctance to grant dispensations, we must return to the covenant idea of marriage, shared by pagans as well as Christians.

Marriage was held to be a sharing of the whole of life, a participation in rights divine as well as human. The hearth liturgy initiated the woman into the religion of her husband, so that a community of life and worship might result. Disparity of cult was as much an impediment to covenant marriage as disparity of civil or social status. A free man could not marry a slave, unless the slave was first emancipated; otherwise there would be lack of parity in the marriage. In this context we can understand the Church's attitude to a marriage between a Christian and a pagan where the disparity was far more radical than that of social status. How could the God of the Christians be witness and guarantor of such a misalliance? Ambrose believes that God is not the witness because He is not the author, in the strict sense, of all marriages.⁹⁴

On the other hand, there is a considerable number of theologians who affirm the sacramentality of marriages with the disparity of cult at least on the part of the baptized persons. Tanquerey, in this regard, argues that the baptized person makes a real contract which in a Christian is always raised to the dignity of a sacrament. Moreover, the baptized person is capable of receiving sacramental grace of which he or she would be deprived in the absence

⁹⁴Palmer, Theological Studies 33 (1972), p. 652.

of the sacramentality.⁹⁵ The "common saying that marriage is not lame"⁹⁶ is dismissed by Tanquerey as groundless or unproven.⁹⁷ Giovanni Perrone argues for the sacramentality of marriages with the disparity of cult first on the basis that just as an unbaptized person can become a minister of baptism in case of necessity, so too with regard to this type of marriage the non-Christian can become a minister apparently because the occurrence of such a marriage is a sign of necessity, and secondly, on the basis that there is no contradiction that one person does not receive a sacrament by reason of the person's incapacity, while the other receives the sacrament by reason of his or her capacity.⁹⁸ Like Perrone, Christian Pesch affirms the sacramentality of marriages with the disparity of cult in that the non-Christian is capable of acting as minister, but Pesch adds that it is on this account that the Church

⁹⁵Tanquerey, Synopsis Theologiae Moralis vol. 1, p. 490, n.832.

⁹⁶Aquinas, Supplementum Summae Theologiae, Q.47, a.4c.

⁹⁷Tanquerey, Synopsis Theologiae Moralis vol. 1, p. 490, n.832.

⁹⁸Giovanni Perrone, De Matrimonio Christiano vol. 3 (Rome: Typis S. Congregationis de Propanda Fide, 1858), p. 306-307.

has control over such marriages. Despite the unity of the contract and consequently of the sacramentality, the contract can have a different effect in one from that in another.⁹⁹ Michael Rosset advocates the sacramentality on the grounds that the Church has power over such marriages precisely on the basis of the sacramentality rather than on the basis of the baptized person's membership in the Church. Moreover, the sacramentality is derived from the fact that Christ imposed a sacrament on all the Christians who want to marry. The absence of sacramentality would have resulted in the deprivation of sacramental grace from the Christian.¹⁰⁰ Over and above the argument that the non-Christian can function as a minister, and that the Christian is capable of sacramental grace, Ludovic Lercher points out that the sacrament of marriage is virtually double: there is a double matter and a double form, and has a double sacramental effect in the baptized persons, whereas if only one baptized person is involved, there will

⁹⁹Christian Pesch, Praelectiones Dogmaticae vol. 7: De Sacramentis Pars II: De Sacramento Paenitentiae, De Extrema Unctione, de ordine, de Matrimonio (Friburg: Herder, 1900), pp. 332-333, n. 728; A. Martin, Le Mariage: Precis Théologique et Canonique (Rennes: Imprimerie H. Riou-Reuze, 1936), p. 63.

¹⁰⁰Rosset, De Sacramento Matrimonii vol. 1, pp. 284-285, n.347.

be a single sacramental effect instead of the double effect.¹⁰¹

The sacramentality of the marriages with the disparity of cult is confirmed by the teaching of Pope Innocent III in his response to a question put to him on this point by the bishop of Tiberias. Innocent III declared: "The sacrament of marriage exists between believing and unbelieving spouses as the Apostle points out when he says: 'If any brother has an unbelieving wife, and she consents to live with him, let him not put her away'" (ICor. 7:12).¹⁰² As Orsy observes, "Paul speaks of a mysterious force operating inside the union, even if only one of the partners is a believer," namely the sanctification of the non-Christian partner and of their children,¹⁰³ albeit the sanctification referred to here is not of a moral nature but of membership in the Christian community in the sense that some benefit is derived from the holiness of the community,¹⁰⁴ such as the good example from the Christian

¹⁰¹Ludovic Lercher, Institutiones Theologiae Dogmaticae vol. 4:2, pp. 354-355, n.757.

¹⁰²Denzinger and Schonmetzer, Enchiridion Symbolorum, The Sources of Catholic Dogma, p. 159, n.407.

¹⁰³Orsy, Theological Studies 43 (1982), p. 380.

¹⁰⁴Ibid., footnote n.2.

partner. We do not, however, believe that sacramentality can be proved from Paul's words, apart from the good example and the possibility of one partner acting independently from the other as an individual.

From a contemporary theological perspective, there would probably be no difficulty in affirming the sacramentality of the marriages with the disparity of cult, at least on the part of the baptized spouse, in virtue of contemporary understanding of the sacramentality of marriage. The statement that "marriage is not lame" on which many theologians base their opposition to the sacramentality of the marriages with the disparity of cult stems from the reification of marriage whereby marriage is conceived of as a physical reality which cannot be divided without destroying its unity. However, such a reification is certainly erroneous, in that marriage is not a physical reality, rather it is a relationship between two individual persons of the opposite sex. The expression of such a relationship is not identical, in the sense that when one expresses the relationship, for instance, through the purchase of clothes, the other will express it through the cooking of food and so on. The baptized person expresses the relationship not only as a member of humanity but also as a member of the Church, that is, as one empowered to participate in the apostolic mission of the Church through

baptism. Whatever the baptized person does is not only for personal salvation but becomes also the proclamation of and testimony to God's salvific will. Thus all the activities of a baptized person in his or her marriage are the actualization of what is specific to the Church: he or she manifests that love which unites God and humanity.¹⁰⁵ That is precisely what the sacrament of marriage signifies. Therefore, when the Yawo baptized person in particular and the African baptized person in general are involved in marriages with the disparity of cult, these marriages are most probably sacramental as far as the baptized parties are concerned.

c. The Inculturated Progressive Marriage

If the Yawo progressive were to be accorded recognition in the light of and in response to the ideas suggested in the foregoing discussions, the following proposition could be made.

First, as far as the sacramentality of marriage is concerned:

¹⁰⁵Rahner, Theological Investigations vol. 10, p. 213.

a) In the case where the spouses are all believing baptized persons, both the validity and the sacramentality of their marriage could be recognized from the point of view of both parties, on the grounds that in their condition as believers they both give a Christian significance to their marriage and actualize the nature of church which is itself the embodiment of Christ.

b) With regard to spouses of whom only one is a believing baptized person while the other is a non-Christian, the validity of the marriage could be recognized from the point of view of both parties. However, as far as the sacramentality is concerned, the marriage would probably be sacramental only from the point of view of the believing baptized spouse, in that this person alone gives a Christian significance to it and actualizes the nature of the Church, in the process.

c) Concerning spouses who are both unbelieving baptized persons, recognition could be accorded to the validity of their progressive marriage in so far as it is a human reality, in that the reception of baptism does not appear to incapacitate them from operating as human beings in the same way as other unbelieving human beings who are not baptized do. On the other hand, apparently, the sacramentality of such a marriage could not be recognized in view of the absence of faith which today seems to be accepted as necessary for the reception of sacraments. It

is not evident that these unbelieving spouses give a Christian significance to their marriage.

Secondly, as far as the form is concerned, the progressive form could be recognized. With specific reference to the Yawo, the marriage would proceed from the phase of acceptability to the phase of ratification to the phase of establishment. In the progressive form, the role of the community especially that of the guardians (angoswe) would be given due prominence. Through their counselling and dedication in various aspects of their clients' marriages, they make an indubitable contribution to the stability of marriage. Marriage guardians among the Yawo are almost indispensable.

Thirdly, in view of the progressivity of the African marriage, the sign too would be progressive, that is, there would be a number of signs depending possibly upon the number of stages the marriage has. Thus, among the Yawo where we have suggested that there are three stages, there would also be an equal number of signs. In the phase of acceptability the sign would be the personal agreement of the spouses and the communitarian agreement. In the phase of ratification, the sign would consist in the communion meal. Finally, in the phase of establishment the sign would be the birth and presence of the required offspring.

D. THE EFFECTS OF THE INCULTURATION OF THE AFRICAN
PROGRESSIVE MARRIAGE

What is the whole purpose for the call for inculturation? In other words, what good can be derived from inculturation, or what disadvantage would be experienced in the disregard of it? These are the kind of questions we shall be attempting to answer in this section. We, therefore, intend to discuss the question of the exercise of some fundamental rights with respect to the customary marriage and the question of the effectiveness of the work of evangelization with regard to marriage in the case where inculturation is or is not permitted to occur.

1. The Exercise of Certain Fundamental Rights

a. The Right to Culture

The fact that the marriages of the Africans who were converted into Christianity had to be contracted only through the employment of the canonical form implied the cessation of their processual procedures. The suppression of this cultural practice in marriages was not something to be surprised about, in that Christianity's task, in this regard, was supposed to be the purification of the culture of the African people from what was viewed as its pagan marriage practices. The point is that the understanding of the time was that everything pagan was by its nature evil and had, therefore, to be eliminated and superseded by the practices of the new teaching about marriage which they

were making every effort to introduce into the society. In the words of Joseph Omoregbe, the European Christians "demanded that if peoples of non-European cultures wished to become Christians they must adopt the only form of marriage allowed by the European culture, and adapted to the European society."¹⁰⁶ This understanding, however, went counter to the official teaching of Christianity about culture. Pope Pius XII put it this way:

The right to existence, the right to the respect from others, the right to one's own good name the right to one's own culture and national character...(these) are exigencies of the law of nations dictated by nature itself.¹⁰⁷

¹⁰⁶ Joseph Omoregbe, "Is Polygamy Compatible with Christianity?" African Ecclesiastical Review 21 (1979), pp. 365-366.

¹⁰⁷ Pius XII, Allocution, December 6, 1953, Acta Apostolicae Sedis 40 (1953), 794-803, trans. in Louis Luzbetak, Church and Cultures (Techny: Divine Word Publications, 1970), p. 342. Pius XII did not invent this teaching, for Christianity had it for centuries, even if it may have been dormant for some time. We quote Pius XII because he has articulated this old teaching so well, and because at the time of his writing the practice of missionaries in mission lands still contradicted this teaching. Nor did the practice cease with Pius XII's statement. As a matter of fact, it is in existence even now so that his words would be still instructive today.

As Louis J. Luzbetak observes, Pius XII places great importance on a person's right to culture in that he equates this right with a person's right to his or her very existence. "To deprive a people of this right would be a flagrant violation of justice, whether it be done by a selfish capitalist, a fanatical Communist, or a well-meaning missionary."¹⁰⁸ Human existence is not lived in the abstract, rather it is lived in the concrete, which implies that a person lives in a society somewhere, which in turn implies the possession of a culture. The fact that the missionaries believed in the wickedness of everything non-Christian is simply one of the many examples where the official teaching does not always tally with its practice.

At any rate, here is an area where the Yawo people are already at a disadvantage, in that their conversion into Christianity is made to demand at the same time the abandonment of the customary marriage of their culture. Despite the fact that there is apparently nothing that is intrinsically evil in marrying according to custom, becoming a Christian turns it into a sinful practice to be avoided. This already would constitute the deprivation of

¹⁰⁸Louis Luzbetak, Church and Cultures: An Applied Anthropology for the Religious Worker (Techny: Divine Word Publications, 1970), p. 34.

their natural right which is a violation of justice. Such a deprivation would be just the opposite of what missionaries should be doing. The work of evangelization does not involve the destruction or suppression of the cultures of converts. The missionaries' duty is rather to bring to the converts' consciousness their right to their culture. The teaching of the Second Vatican Council in this regard is loud and clear where this duty is strongly affirmed. The Council states that "energetic efforts must also be expended to make everyone conscious of his right to his culture and of the duty to develop himself culturally and to assist others."¹⁰⁹ The only condition is that culture preserves the rights of the individual and those of the community. Once the preservation of these rights is assured, culture "demands, respect and enjoys a certain inviolability."¹¹⁰

b. The Right to Marry

Another of the inalienable rights that human beings enjoy is the right to marry. Through the exercise of this right the possibility of the continuation of the human race

¹⁰⁹ "Pastoral Constitution on the Church in the Modern World," The Documents of Vatican II, ed. Walter M. Abbott (London: Geoffrey Chapman, 1966), 267, n.60.

¹¹⁰ Ibid., p. 265, n.59.

is assured. For those who wish and can exercise this right, therefore, there should be no obstacle placed in their way to prevent them from using it. The authorities of the Church have on many occasions reminded us of the inalienability of this right. Pope Pius XI affirms this right on the grounds of the marriage's institution by God, so that its laws "can in no way be subject to human wills or to any contrary pact made even by the contracting parties themselves."¹¹¹ The Pope states: "let us first recall this immutable, inviolable, and fundamental truth: Matrimony was not instituted or reestablished by men but by God."¹¹² This Pius XI said in his Encyclical, Casti Connubii of December 31, 1930 and he repeated the same idea in his Encyclical, Divini Redemptoris of March 19, 1937.¹¹³ In the same vein, Pope Pius XII, in his allocution to the newlyweds on August 20, 1941 said:

In the first place, if the right to marriage is considered, Our Predecessors, Leo XIII and Pius XI, already taught that "no human law can deprive man of the natural and primordial right to marriage." Such a right, indeed, since it was given to man directly by the Author of nature, the Supreme Legislator, cannot be denied to

¹¹¹Papal Teachings: Matrimony, ed. Benedictine Monks of Solesmes, trans. Michael J. Byrnes (Boston: Daughters of St. Paul, 1963), p. 221, n.267.

¹¹²Ibid.

¹¹³Ibid., p. 298, n.411.

anyone, unless it be proved that he had either freely renounced it or that he be incapable of contracting marriage because of a mental or bodily defect.¹¹⁴

Prior to the introduction of the so called forma canonica for centuries the Church authorities, despite the crimes resulting from the abuse of the practice of clandestine marriages, "refused to apply the one really effective control, the refusal to accept as valid any marriage whose creating consent had not been exchanged before her own and the state's authorized witnesses,"¹¹⁵ so says Theodore Mackin, and he goes on to give the reason for this attitude on the part of the Church authorities:

Why this reluctance and even refusal? They came from the Churches sense of limitation in her own authority. To marry is a man's and woman's most fundamental right. Not only must any reason for limiting the exercise of this right be a surpassingly serious one, but there was the

¹¹⁴Ibid., p. 332, n.468.

¹¹⁵Theodore Mackin, What is Marriage? (New York: Paulist Press, 1982), pp. 195-196. John Baptist Sequeira, Tout Mariage entre Baptisés Est-Il Nécessairement Sacramentel? Etude historique, théologique, et canonique sur le lien entre baptême et mariage (Paris: Editions du Cerf, 1986), p. 493. Sequeira remarks that the exemption of non-Catholics from the canonical form in order to assure the validity of their marriages formed through the employment of any other form is a good illustration of how the authorities of the Church in this case preserve the fundamental right to marry.

question whether, if it were agreed to set conditions to the right to marry, the conditions could be guarded effectively. The Church acknowledged that no one but the spouses can create the marriage, and this by their own acts of consent. Should she - indeed could she - invent a new condition for the validity of the consent, one that admittedly came not from divine revelation, not from Catholic tradition, and certainly not from legal precedent? Voiding the efficacy of otherwise sufficient marital consent as a punishment for violating the law would be a disproportionate sanction. Decreeing persons to be legally incapable of creating a marriage only because they refused to have a positively imposed form of witness also seemed disproportionate, since all declarations of legal incapacity had until that time been grounded in either positive divine law (for example, the incapacity of a married man to marry bigamously) or in natural law (the incapacity of an impotent man for marrying).¹¹⁶

Thus, in view of the fact that the creation of marriage depended on the partners' own acts of consent and that to marry was one of the most fundamental rights of a human being, for centuries, the authorities of the Church were hard put to it to find a sufficient reason to warrant the setting of a condition that would invalidate a clandestine marriage, in the absence of authority from divine revelation, from Catholic tradition or from legal precedent. They preferred the continuation of clandestine marriage, despite its weaknesses, in order to preserve the people's right to marry. It was only with the coming of

¹¹⁶Ibid., p. 196.

the Council of Trent in its Decree, Tametsi, that we witness a change of policy. While the validity of clandestine marriages was recognized by this decree,¹¹⁷ marriages were henceforth to follow the forma canonica for validity.¹¹⁸ This provision was extended through a subsequent decree, Ne Temere, which ordered to "let what has been disposed in it begin to have the force of law everywhere."¹¹⁹

Through the introduction of the forma canonica, the canonical form, by the Council of Trent and especially through its extension by the decree, Ne Temere, the priority of the right to marry has, for the Yawo people, not only been downgraded but their very right to marry seems to be placed in jeopardy. By reason of their culture, the Yawo marriage is progressive. Inasmuch as they cannot most often bring themselves to comply with the abrupt fashion of the canonical form, they find themselves in a condition where they can only marry according to their

¹¹⁷Henricus Denzinger et Adolfus Schönmetzer, eds. Enchiridion Symbolorum, Definitionum et Declarationum de Rebus Fidei et Morum, (Friburg: Herder, 1976), n.990.

¹¹⁸*Ibid.*, n.992.

¹¹⁹Henry Denzinger, ed., The Sources of Catholic Dogma, trans. Roy J. Defarrari (St. Louis 2, Mo.: B. Herder Book Company, 1957), p. 514, n.2070:3.

culture. But insofar as they have been converted into Christianity, the authorities of the Church do not recognize their marriage as valid in virtue of the ruling of the forma canonica. Their marriage is not only not recognized, but it is considered as sinful. What Waldemar Molinski says of the impediments of marriage seems to be applicable to the employment of the canonical form. Waldemar Molinski believes that the matrimonial impediments in force today call for "adaptation in the light of present-day pastoral needs, so that the natural right to marry may be limited as little as possible and only as far as necessary."¹²⁰ The necessity of uniformity in the area of matrimonial impediments or the canonical form cannot be safely affirmed. In the words of Molinski, "it seems questionable whether the principle of the utmost possible legislative uniformity for the whole Church should apply to matrimonial impediments"¹²¹ or to the use of the canonical form. This is true especially when it is a question of a natural right such as the right to marry as opposed to a human positive law. What must be taken into consideration, as Jean-Marie Aubert points out, is the fact that "the

¹²⁰Waldemar Molinski, "Marriage: Institution and Sacrament," The Concise Sacramentum Mundi, ed. Karl Rahner (New York: The Crossroad Publishing Company, 1982), p. 922.

¹²¹Ibid.

juridical and liturgical solemnities (here the canonical form) cannot of themselves go against the natural right which retains its priority over the determinations of positive law."¹²² Edward Schillebeeckx has something to say to the same effect when he states that "the priority of natural right of man to a valid marriage would be asserted in any case of conflict between this and the right of the Church."¹²³

The priority of the natural right to marry must, however, not be viewed as if absoluteness was being accorded to it. For "although the right to marriage is one of the most fundamental human rights, it is not absolute."¹²⁴ The issue here is not the absoluteness of the right to marry, rather it is the absoluteness which has been accorded to the canonical form. Two Catholics cannot by any manner of means marry except through the use of the

¹²²Jean-marie Aubert, "Foi et sacrement dans le mariage," La Maison-Dieu 104 (1970), p. 138, n.21:- "...les solennités juridiques et liturgiques (ici la forme canonique) ne peuvent de soi aller contre le droit naturel qui conserve sa priorité contre les déterminations du droit positif." [My translation].

¹²³Edward Schillebeeckx, Marriage: Human Reality and Saving Mystery (London: Sheed and Ward, 1984), p. 369.

¹²⁴Thomas P. Doyle, "Marriage," The Code of Canon Law: Text and Commentary (New York, Mahwah: Paulist Press, 1985), p. 743.

canonical form. Despite the fact that the authorities of the Church recognize marriages of two non-Christian Yawo as valid, legitimate,¹²⁵ something good and not sinful, the marriage of two Christian Yawo performed in the very same customary way becomes illegitimate and sinful on the grounds of their conversion to Christianity. The Yawo Christians are considered as guilty people in their marriage by virtue of their reception of baptism. In other words, baptism appears to cause them to become sinners, something which would not have been the case, if only they exercised extra care to avoid the reception of baptism. The illogicality of the whole affair seems quite obvious. Are they really guilty before God or are they guilty merely before the enactors of a law which, to all intents and purposes, appears to deprive them of their inalienable right to marry? While both the believing and the unbelieving baptized spouses are adversely affected by the ruling of the canonical form, the latter are more affected than the former, in that their severance from the Church implies that they stand no chance of marrying validly for the rest of their lives. They cannot marry validly in the Church because they no longer want to belong to it. They cannot marry validly outside the Church, because, by reason

¹²⁵ Dominic M. Prümmer, Handbook of Moral Theology (Cork: Mercier Press Limited, 1963), p. 399, n.837.

of their baptism, they are supposed to employ the canonical form, which as a matter of fact they do not employ. Their right to marry seems to be absolutely denied to them.

c. The Right to Religious Freedom

When the inseparability of contract and sacrament is conceived of as absolute, it seems to infringe upon religious freedom more especially with respect to the unbelieving baptized persons. Christianity has for a long time taught religious freedom. But the emphasis seems to have been laid on the religious freedom of Christians in so far as it is attacked by outsiders, such as when a government made laws that were considered as compromising the Christians' freedom in one aspect of their religion or another. The Second Vatican Council expressed the government's duty in this regard in the following terms: "Therefore, government is to assume the safeguard of the religious freedom of all citizens, in an effective manner, by its just laws and by other appropriate means."¹²⁶ Equally constant emphasis has been laid on the religious freedom of non-Christians when they were confronted by Christian evangelizers. This has been enshrined in 1983

¹²⁶ "Declaration on Religious Freedom," The Documents of Vatican II, ed. Walter M. Abbott (London, Dublin: Geoffrey Chapman, 1966), p. 685, n. 6.

Code in Canon 748:2 where it is stated: "Persons cannot ever be forced by anyone to embrace the Catholic faith against their conscience." The Second Vatican Council puts it this way:

However, in spreading religious faith and in introducing religious practices, everyone ought at all times to refrain from any manner of action which might seem to carry a hint of coercion or a kind of persuasion that would be dishonorable or unworthy, especially when dealing with poor or uneducated people. Such a manner of action would be considered an abuse of one's own right and a violation of the right of others.¹²⁷

Worthy of note is the Council's recognition of the Church's own failures in this regard when it states that "In the life of the people of God as it has made its pilgrim way through the vicissitudes of human history, there have at times appeared ways of acting which were less in accord with the spirit of the gospel and even opposed to it."¹²⁸ Even the very concept of religious freedom was rather restricted as is demonstrated by past affirmations such as the following: "However, a true freedom of conscience and of worship is a right of choosing and professing that true and sole religion imposed by God and

¹²⁷Ibid., p. 682, n. 5.

¹²⁸Ibid., p. 692, n. 12.

proposed by the magisterium of the Church."¹²⁹ Thus, religious freedom was conceived as the ability to choose to become a Catholic as opposed to the contemporary understanding in which religious freedom is recognized as belonging to all people. In the words of Walter M. Abbott: "Hence the unbeliever or the atheist makes with equal right this claim to immunity from coercion in religious matters."¹³⁰ But even more explicitly the Council declares:

This Vatican Synod declares that the human person has a right to religious freedom. This freedom means that all men are to be immune from coercion on the part of individuals or of social groups and of any human power, in such wise that in matter religious no one is to be forced to act in a manner contrary to his own beliefs. Nor is anyone to be restrained from acting in accordance with his own beliefs, whether privately or publicly, whether alone or ¹³¹in association with other, within due limits.

¹²⁹M.J. Hervé, Manuale Theologiae Dogmaticae vol. 1: De Revelatione Christiana, De Ecclesia Christi, De Fontibus Revelationis (Paris: Apud Berche et Pagis, 1952), p. 532, n. 547.

¹³⁰Walter M. Abbot, Documents of Vatican II, ed. Walter M. Abbot (London, Dublin: Geoffrey Chapman, 1966), p. 678, footnote 5.

¹³¹"Declaration on Religious Freedom," The Documents of Vatican II, ed. Walter M. Abbott, pp. 678-679, n.2.

This statement gives us to understand that religious freedom is enjoyed by all people and by all religions.

What is most remarkable in the whole document on religious freedom is the Council's silence, or at least the absence of explicit statements, with reference to the religious freedom of Christians in relation to the authorities of the Church. Walter M. Abbott observes that "Nowhere does the declaration touch the issue of freedom within the Church."¹³² Does this silence imply that even the Second Vatican Council supports "a juridical concept of the baptismal character" which "seems to reduce every baptized person - even the unbeliever - into a property of the Church, over whom she can exercise her rights and sanctions?"¹³³ Theologians tend to believe that such is not the intention of the Council, considering that it regards religious freedom as founded on "the very dignity of the human person as this dignity is known through

¹³²Abbott, The Documents of Vatican II, ed. Walter M. Abbott, p. 695, footnote 58.

¹³³P.A. Liégé, "La Liberté religieuse, impératif de la Mission," Parole et Mission 7 (1964), pp. 537-538. "Une conception juridique du caractère baptismal semble faire de tout baptisé - même non croyant - une propriété d'Eglise, sur qui elle peut exercer des droits et des sanctions." [My translation].

the revealed Word of God and by reason itself."¹³⁴ John Baptist Sequeira, for instance, affirms that "the baptized persons do not lose their natural right by the fact of their baptism."¹³⁵

However, in a system which supports the absolute inseparability of contract and sacrament, the unbelieving baptized spouses are apparently forced into the reception of a sacrament of which they are incapable and which they do not want. Freedom implies the ability to choose between two or more options. However, as long as the authorities of the Church do not provide other means whereby the unbelieving baptized spouses could marry validly outside the sacrament and outside the canonical form, then the authorities would most probably be exerting their psychological and sociological pressure upon the spouses. "But even a psychological constraint violates human dignity..."¹³⁶ Human beings cannot be said to be acting

¹³⁴"Declaration on Religious Freedom," The Documents of Vatican II, ed. Walter M. Abbott, p. 679, n. 2.

¹³⁵John Baptist Sequeira, Tout Mariage entre Baptisés Est-Il Nécessairement Sacramentel? Etude historique, théologique et canonique sur le lien entre baptême et mariage (Paris: Editions du Cerf, 1985), p. 491. "Les Baptisés ne perdent pas leur droits natifs par le fait de leur baptême." [My translation].

¹³⁶*Ibid.*, p. 489. "Or même une contrainte
(Footnote Continued)

"in keeping with their own nature unless they enjoy immunity from external coercion as well as psychological freedom."¹³⁷ It appears, therefore, that on the basis of human dignity expressed in the form of religious freedom, the unbelieving baptized persons should be able to marry outside the sacrament and without the canonical form. Consequently, the teaching on the inseparability of contract and sacrament would not be absolute but only relative. Despite the fact the Second Vatican Council has eloquently affirmed religious freedom, Heinz Robert Schlette remarks that "the seriousness of the Council's statements with regard to religious liberty in particular will be measured by the readiness of the Church itself to allow room for religious freedom within its own walls."¹³⁸ The case of the absolute inseparability of contract and sacrament with regard to the unbelieving baptized spouses' ability to marry validly outside the Church seems to be one

(Footnote Continued)

psychologique viole la dignité humaine..." [My translation]

¹³⁷ "Declaration on Religious Freedom," The Documents of Vatican II, ed. Walter Abbott, p. 679, n. 2.

¹³⁸ Heinz Robert Schlette, "Religious Freedom," Encyclopedia of Theology: The Concise Sacramentum Mundi, ed. Karl Rahner, trans. John Griffiths, Francis McDonagh, and David Smith (New York: The Crossroad Publishing Company, 1982), p. 1406.

good instance in which the teaching on religious freedom could be demonstrated.

2. The Effectiveness of Evangelization

The Church has been commissioned by Christ to go and make disciples of all nations (Matt. 28:19) so that they might bear witness to the good news of salvation (Acts 1:8). The missionaries are sent to the mission lands precisely to carry out this duty. But there are instances in which the effectiveness of their work of evangelization seems to be seriously hampered. For example, in view of the instantaneousness of Christian marriage whereby the celebration of marriage is completed in a matter of minutes as opposed to the long process required before the African customary marriage achieves its completion, the Yawo people are caught up in a dilemma. In practice, however, the majority of the Yawo Christians opt for their customary marriages performed in their respective villages before their celebration in church. Since they remain in the customary marriage for a long period ranging from one to three or more years, and since the authorities of the Church do not recognize the validity of such customary marriages when they are entered into by Christians, it follows that these Christians are barred from the reception of sacraments for as long as they remain in their customary marriage. This implies that a great number of Christians

are unable to receive the sacraments. In Zomba Diocese where I come from, for instance, parish priests report that from 75% to 95% of the marriages celebrated in church begin with the long period of customary marriage. The same situation is experienced in other parts of Africa. Peter Poreku Dery, Archbishop of Tamale in Ghana, reports that "almost 70% of all baptized adult Catholics are not married according to Church laws... The evident end result is that almost 70% of adult Catholics cannot and do not share fully in the sacramental life of the Church."¹³⁹ Joseph Hardy, Superior General of the Society of African Missions, says that "the process of evangelization" seems to be obstructed by "the present practice of the Church." He goes on: "One has only to think that in some Christian communities 85% of the baptized are excluded from sacramental sharing, especially in the Eucharist," because of what is called the "irregular matrimonial situation."¹⁴⁰ Melvin Doucette, speaking of a parish in Zambia states that "65% of all unions are outside the church, and only 35% have been solemnized in Church. However, among the 35% listed we

¹³⁹Peter Poreku Dery, "Christian and Customary Marriage in Ghana," African Ecclesiastical Review 23 (1981), p. 24.

¹⁴⁰Joseph Hardy, "Missionary Expectations Concerning the Synod," African Ecclesiastical Review 23 (1981), pp. 37-38.

have included those divorced and those in polygamy. So, those properly married and still faithful to the Christian commitment number less than 20%."¹⁴¹ Probably, some of these 65% would, as the term goes, "regularize their marriages," while the rest would just stop practicing the Catholic religion. In the meantime, however, only about 20% of the adult Catholics are in good marriages. Now as Doucette observes, "when 80% of our Catholics are barred from receiving the sacraments because of their marital situation it is not difficult to see that the Church is not too far from catastrophe."¹⁴² To cite one more example of this sad matrimonial situation, we take the statement of Henry Karlen, Bishop of Bulawayo in Zimbabwe. Bishop Karlen writes:

The low percentage of Catholics who celebrate their marriages in the forma canonica has been a matter of increasing concern to the Episcopal Conference in Zimbabwe. In areas where Christianity is well established, about 40% of couples who are married according to custom will later marry in Church; in other areas the figure is as low as 10%; in remote areas, 5% or less. A similar situation prevails in other Southern African countries. The people contract marriage according to their traditional, customary law, normally in every case prior to any civil or Christian marriage. From the time of their traditional marriage, even Catholics consider

¹⁴¹Melvin Doucette, "A Marriage Catechumenate," African Ecclesiastical Review 14 (1972), p. 112.

¹⁴²Ibid., p. 114.

themselves to be properly married. They are, nevertheless, aware that they cannot receive the Eucharist as long as they remain unmarried in the eyes of the Church. If it takes place at all, the Church marriage is often celebrated years after the traditional marriage and this rite loses its meaning for the couple, and many Catholics consider that a Church marriage contributes little, if anything, in itself to the married state. At best it regularizes a couple's position before the priest and provides access to the Eucharist.¹⁴³

From the above examples, it is abundantly clear that the effectiveness of the work of evangelization is badly affected. Despite the fact that grace is not tied to sacraments alone, the missionaries' local theology of Christian marriage, which is heavily dependent on canon law, prevents the African Christians from participating in the sacramental life of the Church. What must be taken into account is the fact that communality is characteristic of the Africans. They like to do things together and for the good of the community. Their exclusion from the sacramental life of the Church, therefore, has a demoralizing effect to the extent that many baptized persons feel so "marginalised with regard to the life of the Church because of their marriage situation."¹⁴⁴ It is

¹⁴³Henry Karlen, "Canonical Form and Traditional Marriage," African Ecclesiastical Review 23 (1981), pp. 58-59.

¹⁴⁴Hardy, African Ecclesiastical Review 23 (1981), 25.

just fortunate that a good number of the Yawo Christians and many other Africans have a degree of heroism to enable them to continue practicing their religion until the day their marriage is canonically celebrated in church. There is another group of Catholics who are affected by their exclusion from participation in the sacramental life of the Church because of their marital situation and who become so discouraged and despondent that they stop practicing their religion in the meantime until the time when they are visited for the sake of encouraging them to arrange canonically their marital situation. It will normally be a longer time for the Christians who stopped practicing their religion to return to the sacraments than for those who continue practicing it despite their uncanonical marital situation. But there is yet a third group of Christians who are so demoralized that they drop the practice of their religion altogether with no hope of arranging their marriages and resuming their participation in the sacramental life of the Church. All this is the effect of the missionaries' local theology of Christian marriage which is imbued with canon law inspired by the western culture. There is nothing wrong that the laws of marriage should be influenced by the western culture. What is wrong is the imposition of the western culture on a people of a different culture. It is in this perspective that Doucette demands the change or adaptation of the law which

excommunicates 80% of the Christians in that it has become a hindrance rather than a help in the work of the evangelization of a people.¹⁴⁵ In these circumstances, we must begin to seriously wonder whether the Church legislation is serving its purpose. We seem to have here a situation where it can sadly be said that people are made for the law in lieu of the law for the people; that people are made for marriage in lieu of marriage for the people.

The change or adaptation of the law that Doucette is suggesting seems to be in order, for the effectiveness of the work of evangelization does not lie in the submission of every convert to a law that has as its provenance the missionaries' own culture. Rather, the missionaries will have made an excellent success in the work of evangelization, if the converts are enabled to apply the gospel message to their problems utilizing the converts' own cultural principles. In this connection, Charles R. Taber writes:

But, after all, the true measure of a missionary's success must be the way the national Christians, in his absence, go ahead in applying biblical principles sensitively and intelligently to their own problem, and make the fullest possible use of the cultural materials at hand in

¹⁴⁵Doucette, African Ecclesiastical Review 14 (1972), p. 116.

the establishment of the church. For in the final analysis, the indigenous church is not exhaustively defined by the traditional "three selves": self-support, self-government, self-propagation; even more importantly, it must be, at the level of cultural forms self-designed.¹⁴⁶

In a similar vein, Luzbetak advocates dialogue between the gospel and culture for the effectiveness of evangelization, pointing out the suspiciousness of any approach that does not take cognizance of the cultural dimension of the proclamation of the gospel. He states: "In fact, any approach that is not culturally relevant and actually geared into the particular life-way of the people is both theologically as well as scientifically suspect." On the other hand "the cross-cultural approach to the apostolate constitutes not only the least disorganizing but also the most effective."¹⁴⁷ The fact that the local theology of the missionaries does not take cognizance of culture seems to be precisely the reason for the ineffectiveness of the work of evangelization in the African continent in general and in Malawi in particular. This is especially true in the question of marriage which has become perhaps the

¹⁴⁶Charles R. Taber, "The Missionary: Wrecker, Builder, or Catalyst?" Practical Anthropology 17 (1970), p. 152.

¹⁴⁷Luzbetak, Church and Cultures, p. 344.

greatest source of problems of evangelization through the disregard of culture. Although marriage is not the only area where culture has been overlooked, it is to be believed that the problems of evangelization would have been reduced to a minimum, if consideration was taken of the traditional matrimonial customs of the people. There would not be the situation where on Sundays you had a full church but with a great number of Christians who could not approach the sacraments, or where the church could be described as the Church of old people and children just because the young adults found themselves involved in matrimonial problems.

E. CONCLUSION

The call for a local theology, which by its very nature involves inculturation, has a great significance, in that inculturation implies the exercise of a people's natural rights. Through this exercise a people's human dignity is enabled to express itself. The denial of inculturation would therefore appear to represent the denial of a people's dignity as human persons, in the sense that, for instance in our case, it is tantamount to denying them their natural right to marry and their right to culture. On this showing, it would appear that inculturation is itself a natural right. Thus failure in inculturation and failure in religious freedom would lead to the dehumanization of a people, which in turn would cause the

people concerned unnecessary sufferings. This would go counter to what has been referred to as the core of the gospel, i.e. the commandment of love. For as Saint Paul affirms: "all commandments...are summed up in this single command: 'You must love your neighbour as yourself.'" And he goes on to explain: "Love is the one thing that cannot hurt your neighbour; that is why it is the answer to every one of the commandments" (Rom. 13:9-10). On the other hand, inculturation would not hurt or cause sufferings to a people, rather it would represent a recognition of their human dignity through the recognition of their inalienable rights.

Furthermore, Christianity, with respect to marriage, would be more meaningful to the Africans, in that it would contain practices that they understood better, and would not look like a foreign importation. In this way, the Church would presumably be enriched, not in the sense that other cultures would also have to follow the African practices, but rather in the sense that the Church as a whole would also contain values as expressed by the Africans. While other cultures made their own contribution, the practices would represent the African contribution of their unique form of values to the Church. And the catholicity of the Church would be manifested, in the process.

CHAPTER SIX

CONCLUDING REMARKS

A. A YAWO RESISTANCE TO CHRISTIAN MARRIAGE?

Despite the fact that there is a number of issues that could arise from the progressive marriage of the Yawo people in particular and of the Africans in general, in Chapter Three we singled out one important issue which becomes a problem area on their conversion into Christianity. The issue concerns the conflict arising from the very progressivity of the African marriages in connection with the teaching on the absolute inseparability of contract and sacrament, a conflict which is enhanced by locating the marriage's sacramentality in the canonical form. We attempted to demonstrate that the teaching of the absolute inseparability of contract and sacrament had no scriptural foundation. Rather, it has been a moot point for centuries, and even the attempt to solve it in its favour at the Second Vatican Council failed to the extent that the final text on marriage abandoned this teaching entirely. The question has been left to the free investigation by theologians. Therefore it seems that the most that can be said about the present practice, in this regard, is disciplinary or provisional. As for the canonical form, we attempted to show that its practice did not exist in early Christianity. The present practice is

the result of the abuse of the clandestinity of marriage. Theodore Mackin gives examples of such abuses. The first that he mentions was when "A man who had in fact consented to marriage with a girl clandestinely could later abandon her all the more easily while ecclesiastical law presumed the nullity of clandestinely formed marriages." The second was when "A man could falsely claim clandestine consent with a woman about to be married, and block this marriage permanently by getting friends to perjure themselves as witnesses to the fictional clandestine exchange." The third possibility was when "a man could solemnize marriage, exchanging marital consent formally and publicly with a woman, but then claim, again with the help of perjured witnesses, that he had already formed a marriage clandestinely."¹ The canonical form was tailored for the suppression of abuses such as these. It seems, therefore, the response to the question which forms the title of this work, namely, whether the Yawo resistance to the practice of the absolute inseparability of contract and sacrament was directed towards the gospel, must be in the negative, in that the conflict appears to be a cultural confrontation more than anything else. If this is correct, the resistance is in fact a demand for cultural recognition, it is a

¹Mackin, What is Marriage, p. 195.

demand for inculturation, it is a demand for one of the fundamental rights. The denial of this right involves the infringement of yet other fundamental rights. It goes without saying that the present ruling requires the observance of the teaching of the absolute inseparability of contract and sacrament. On the other hand, the views expressed here, supported by the Second Vatican Council, appear to deserve very serious consideration.

B. PASTORAL PERSPECTIVES FOR THE FUTURE: THE LOCAL
MAGISTERIUM AND SUBSIDIARITY

Although this dissertation centres primarily on the Yawo society and on the many other tribes in Malawi with cultural similarities to the Yawo tribe, it is clear that this work could possess applicability beyond the confines of Malawi, and we believe that this applicability could extend not only to a small but to a great number of other African tribes outside Malawi. This is why the pastoral perspectives for the future of Christian marriage resulting from the reflections we have presented here involve not only the local magisterium of Malawi but also the rest of the African magisterium especially south of the Sahara. It would, therefore, be beyond our competence to articulate the specifics of what the pastoral perspectives might be for the whole area. Consequently, we shall confine ourselves to the following generalities.

Chapter Four has attempted to show that the members of the African local magisterium are aware of the problems which arise as a result of the teaching on the absolute inseparability of contract and sacrament. Apparently, it is for this reason that they have emphasized the progressivity of the African customary marriage in which the importance of fertility is also stressed. They do not seem to merely express concern, rather they seem to openly accord recognition to the validity of this marriage. This is why some believe that it could be converted into a sacrament while others accord their recognition of its sacramentality to it as long as it is entered into by practicing Christians, despite the absence of the canonical form. The fact that the African local magisterium do not merely express concern seems once again to be supported by their strong denunciation of the pejorative appellations, by which the progressive marriage is often designated, as mere misnomers, and by the demand that they be abandoned. It is precisely the progressivity of the African marriage that is felt to be hampered by the present practice of Church marriage.

On the other hand, ours was the arduous task of demonstrating, in the first place, the culturality and the disciplinary nature of the present practices to which the authorities of the Church have attached absoluteness, and

we pointed out that the culture in question was that of the West. Apparently the absolutization of a particular cultural reality of marriage would be emphatically untenable,² in that it fails to take cognizance of the plurality of cultures, and therefore the plurality of matrimonial systems, each of which appears to enjoy authenticity and validity by its own right. In this way, the normativity of any one matrimonial system becomes also unwarranted.³ As Jan Heijke points out, the various matrimonial systems are simply many attempts whereby "humanity" on its way to more humanness tries to realize itself." Heijke continues, "Nowhere has the ideal been achieved. All cultural creations are tentative, inadequate and, in principle, open to criticism."⁴ They cannot lay claim to superiority or immutability. This implies that the improvement of a morality of candidates for evangelization, as far as cultural realities are concerned, could also come from within the people's own culture. In this connection Hillman writes:

What is being suggested here is that the Church cannot improve the moral life of a people by issuing decrees from the outside, by imposing

²Kasper, Theology of the Christian Marriage, p. 7.

³Heijke, Pro Mundi Vita 1 (1986), p. 3.

⁴Ibid., p. 26.

ready-made ethical rules, by imposing extrinsic modifications that have been borrowed from some foreign culture, some profoundly different historico-cultural experience of life together. Moral changes, if they are to be coherently integrated and deeply influential in the normal functioning of existing cultures, must come from inside these cultures.⁵

Now there is no one better qualified in the enterprise geared for the improvement of the life of a people than, in our case, the African local magisterium themselves for the obvious reason that, as bishop Kpakula observes, "It is the local Church on the local level that can appreciate and articulate these problems and come up with enlightened solutions."⁶ Bishop Kpakula states:

The nature of the Church itself, and the cultural values that vary from place to place, mean that national and regional episcopal conferences should take appropriate decisions concerning family life in their nation or region, for it is only on the local level that a proper understanding of the concrete situation of people can be attained. It would certainly be contrary to the role of the local Church and the application of the principle of subsidiarity if this were not the case.

⁵Hillman, Missiology 1 (1973), p. 66.

⁶Kpakula, African Ecclesiastical Review 23 (1981), p. 97.

⁷Ibid.

The so called principle of subsidiarity discourages the unnecessary intervention by a superior authority in tasks that can be even more effectively accomplished by an inferior authority, on the grounds that inferior authorities are often at the local level and in direct contact with the real situations and therefore in a better position to settle their own problems.⁸ William Bassett remarks that the employment of the principle of subsidiarity is consonant with the ecclesiology of the Second Vatican Council. He states: "The regional and national conferences of bishops can well decide procedures that can fit the Christian and cultural standards of their people."⁹

In traditional ecclesiology a distinction used to be made between the bishops' powers of order and powers of jurisdiction. The powers of order were believed to be acquired through episcopal consecration or ordination, while the powers of jurisdiction were considered as coming directly from the pope. Pius XII declared that bishops were "subordinate to the lawful authority of the Roman

⁸Bassett, "The Role of the Local Bishop in the Sacrament of Marriage," Concilium 9 (1973), pp. 58-59.

⁹Bassett, "The Marriage of Christians - Valid Contract, Valid Sacrament?" The Bond of Marriage, p. 179.

Pontiff, although enjoying the power of jurisdiction which they received directly from the same Pontiff."¹⁰ But the Second Vatican Council has rendered the distinction between the bishops' powers of order and of jurisdiction obsolete as far as the powers' provenance is concerned. The Council mentions only one source of the bishops' powers. The Council states: "But episcopal consecration, together with the office of sanctifying also confers the office of teaching and governing."¹¹ "Sharing in solicitude for all the churches, bishops exercise this episcopal office of theirs, received through episcopal consecration."¹² Contemporary ecclesiology no longer considers bishops as vicars of the pope, rather they are "successors of the apostles" and as such they "automatically enjoy in the dioceses entrusted to them all the ordinary, proper, and

¹⁰ Pius XII, "Mystici Corporis Christi," The Papal Encyclicals, ed. Claudia Carlen (Goudy Oldstyle: McGrath Publishing Company, 1981), p. 45; Cf. Acta Apostolicae Sedis 35 (1943), pp. 211, 212.

¹¹ "Dogmatic Constitution on the Church," The Documents of Vatican II, ed. Walter M. Abbott, (London, Dublin: Geoffrey Chapman, 1966), p. 41, n.21. cf. Vatican Council II Vol. I: Conciliar and Post Conciliar Documents, ed. Austin Flannery, (New York: Costello Publishing Company, 1975), p. 373, n.21.

¹² "Decree on the Bishops' Pastoral Office in the Church," The Documents of Vatican II, ed. Walter M. Abbott, (London, Dublin: Geoffrey Chapman, 1966), p. 397, n.3; cf. Vatican Council II Vol. I: Conciliar and Post Conciliar Documents, ed. Austin Flannery (New York: Costello Publishing Company, 1975), p. 565, n.3.

immediate authority required for the exercise of their pastoral office."¹³ Rather than being the vicars of the pope, the Council teaches that "Bishops govern the particular churches entrusted to them as vicars and ambassadors of Christ."¹⁴ "As vicars and in the name of Christ," writes Bonaventure Kloppenburg, "he (the bishop) has the proper (not vicarial), ordinary (not delegated), and immediate (without any intermediary) power that is needed for the exercise of his pastoral office."¹⁵ The fact that the bishop is not "the commissioned functionary of the pope, directing in the name and ad nutum of the pope"¹⁶ does not advocate the bishops' disobedience to the Roman Pontiff. However, as Kloppenburg observes, "'obedience', in the Church, does not signify primarily a subjection, dependence, or inferiority, but 'communal

¹³Ibid., p. 401, n.8; cf. Vatican Council II Vol. I: Conciliar and Post Conciliar Documents, ed. Austin Flannery, p. 567, n.8.

¹⁴"Dogmatic Constitution on the Church," The Documents of Vatican II, ed. Walter M. Abbott, p. 51, n.27; cf. Vatican Council II Vol. I: Conciliar and Post Conciliar Documents, p. 382, n.27.

¹⁵Bonaventure Kloppenburg, Ecclesiology of Vatican II, trans. Matthew J. O'Connell, (Chicago, Ill.: Franciscan Herald Press, 1974), p. 251.

¹⁶Rahner, Inquiries, p. 333.

action' or a conscious, free participation in the living hierarchical communion."¹⁷

Besides demonstrating the culturality and disciplinary nature of the practices enjoined by the teaching on the absolute inseparability of contract and sacrament, we, in the second place, assumed the responsibility of the even more arduous enterprise of giving theological grounds for our view relative to the reality of marriage applicable to the African context. This we did in the hope of being of service to the African people and of assistance to the African local magisterium in their task of tending their various flocks through their ordinary, proper and immediate powers received through the episcopal ordination. This task was also undertaken in order that inculturation should not be considered as a sheer deconstruction of the Church practice but rather as a result of the respect for what are deemed to be a people's fundamental rights. On the other hand, an inflexible observance of the practice would lead to the people's loss of those rights.

It might be correct to argue that at the time when the practice, say, of the canonical form was being introduced,

¹⁷Kloppenburger, Ecclesiology of Vatican II, p. 228.

the African people had not yet been discovered so that it would be unfair to blame the law, on the grounds that it could not foresee the possibility of other cultures whose discovery would only occur centuries later. While it is true to say that a law-giver cannot foresee all possible circumstances affecting it, it is a different matter to exercise inflexibility even after the unforeseen circumstances have in actual fact arisen in which the application of a past law would result in unnecessary sufferings. Thomas Aquinas suggests that precisely in cases of this nature, legislators should accommodate the law to the new circumstances. Aquinas writes:

Since human action, with which laws are concerned, are composed of contingent singulars and are innumerable in their diversity, it was not possible to lay down rules of law that would apply to every single case. Legislators in framing laws attend to what commonly happens: although if the law be applied to certain cases it will frustrate the equality of justice and be injurious to the common good which the law has in view.¹⁸

Thus, in an effort to avoid the frustration of justice and the injury to the common good, the accommodation of the law to the new course of events becomes necessary.

¹⁸Thomas Aquinas, *Summa Theologica* IIa IIae, Q. 120, a.1c.

Therefore, the issue here lies in the inability to change the law when and where change is called for.

The problem is that there is sometimes in the Church the false assumption that perfection consists in rigidity and inflexibility in the observance of even human laws to the point of insensitivity to the needs of the human person, ignoring what really matters, in the process, namely, compassion and understanding, in a word, the genuine love of the neighbour. Because of this rigidity and inflexibility, the phrase is often heard: "The law is hard, but it is the law all the same,"¹⁹ the law being referred to being a man-made law. It is an attitude of this type that is well described by Hans Küng when he writes:

We cannot honestly regard as inevitable all the lack of feeling the Church and its representatives have shown towards the needs of mankind, their failures to adapt to the new problems and the view of different eras, to understand the changing forms and values of the world, their blindness to the signs of the times and their habit of always being behind the times. There is nothing inevitable about the Church's neglect of the Gospel and the Gospel's demands and perspectives in both theology and practical decisions; there is nothing inevitable about all the wornout apologetics and lazy excuses, designed to maintain the status quo, about the Church's identification with particular systems and

¹⁹Kloppenburger, Ecclesiology of Vatican II, p. 252.

parties, cultures or philosophical schools, about the exaggerations of its powers and claims on the world, the disguising or suppression of past failings and errors.²⁰

With such an insensitive attitude, people are unnecessarily made to "weep and groan under the burden of decisions, prescriptions, laws and rubrics..."²¹ which do not possess any inevitability. The point is that, having shown the culturality and disciplinary nature of the teaching on the absolute inseparability of contract and sacrament and the ecclesiology of the Second Vatican Council with regard to the exercise of the episcopal powers, the fate of the African people in respect of their matrimonial problems, among other things, seems to be placed in the hands of the African local magisterium. But their ability to show sensitivity implies the removal of any obstructions to the free exercise of their office. It means that the African local magisterium must be given greater independence and freedom of action for the good of the African Church, for they are the ones who have the

²⁰Hans Küng, The Church, (New York: Image Books, 1976), p. 414.

²¹Kloppenburger, Ecclesiology of Vatican II, p. 252.

competence to turn their people's marriages into "both fully Christian and fully African"²² marriages.

The views proposed in Chapter Five are tailored to offer assistance to the African local magisterium precisely in their task of turning the reality of the African marriage into something "fully Christian and fully African." To be sure, for those of us trained in the theology of marriage of the 1940s and 1950s, a drastic mental adjustment will be necessary, but such an adjustment is a must. Openness to the new insights ushered in by the advent of the Second Vatican Council is called for. The problem could be that those of us trained in the traditional theology will often tend to interpret the teaching contained in the documents of the Second Vatican Council in the light of that theology, missing the whole point they intend to present, in the process. Kloppenburg says that the bishop who finds nothing new in the documents prepared by the Second Vatican Council and who believes that he is merely a functionary of the Roman Pontiff is no longer worthy to be called a pastor. Kloppenburg writes:

I am afraid of the bishop who does not recognize the signs of the times; who sees nothing new in

²²John Paul II, "Carry the Authentic Gospel to the African Culture," The Pope Speaks 25 (1980), p. 299.

the documents of Vatican II; who considers himself to be simply a vicar of the Roman Pontiff; who in every new situation feels he must consult the Nuncio; who has eyes only for Rome; who insists only on the law and has no awareness of the realities of his diocese; who is incapable of being a shepherd and leading his sheep to green pastures; who refuses to descend to human contingencies; who is unable in a positive way to exercise his proper, ordinary, and immediate pastoral power; who is able to dispense from general laws only when these have ceased to be valid and useful. A bishop who is nothing but a vicar of the pope is no longer a Catholic bishop; he ceases to be a pastor.²³

Finally, it must be stated that more than sufficient verbalizations on various Christian principles including those of inculturation and subsidiarity have already occurred. What we need now is the effective translation of the verbalized principles into realities.

²³Kloppenburger, Ecclesiology of Vatican II, p. 252.

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SUMMARY

The basic question around which this thesis revolves is that of inculturation. The need for inculturation, in our case, stems from a show of resistance by Africans to the missionary local theology of Christian marriage which when traced back is identified as a confrontation between two cultures.

CHAPTER ONE is a brief historical note. It describes who the Yawo people are; how through their long association with the Arabs by reason of trade they became involved in slave trade and acquired the Arabs' religion, Islam or muhammedanism; and how they entered Malawi from their original home. A description is also made of the introduction of Christianity into Malawi. It states that while the Protestants were the first to introduce Christianity into Malawi, it was the White Fathers, as far as the Catholicism is concerned, who initiated the work of evangelization there, but they were soon followed by the Montfort Fathers.

CHAPTER TWO embarks upon the analysis of the reality of marriage according to the Yawo's world view. The discussion shows that the Yawo society is matrilineal, uxorilocal and matrilocal, founded on the most important kinship relationship between the sister and the brother who

eventually becomes the maternal uncle to the sister's children. The kinship relationship between the maternal uncle and the sister's children is another feature with its own importance in the Yawo society. The sisters and their eldest brother form the nucleus and basis of the Yawo village community. The sisters create a sorority-group under the brother's charge, and their marriages come under the brother's guardianship. This function is by no manner of means surrendered to a stranger such as the husband who is accepted into the village merely as a worker in the sense of a begetter of children for the increase of the sorority-group. The Yawo marriage comes into being through a long dynamic process. We suggest that there are three main stages in the Yawo progressive marriage. We have decided to call the first stage the phase of acceptability in which the marriage is formally sanctioned by the guardians and the rest of the community with the result that the partners commence cohabitation even prior to the ratification ceremony. The second stage is what we have called the phase of ratification when the formalization that occurred in the first stage now undergoes its ritualization. The ceremony of the phase of ratification signifies the unification of the two sorority-groups of the partners' origin. The last stage has been designated the phase of establishment which occurs once a sufficient

number of offspring have been born in the marriage. It must be added that the African progressive marriage is potentially polygamous for a host of reasons.

There is a number of important features of the Yawo progressive marriage which when confronted with the traditional theology or the missionary local theology become areas of resistance. After the exploration of the reality of marriage in the Yawo context, CHAPTER THREE assumes the responsibility of identifying one problem area. It is shown that the very progressivity of the Yawo marriage already constitutes a problem area, in that the traditional theology regards the first stage or the phase of acceptability as nothing less than concubinage, despite the fact that the people themselves recognize it as a valid procedure for the commencement of marriage in earnest. The Yawo progressive marriage is not, therefore, accepted as a sacrament, which the marriages of baptized persons are supposed to be, on the grounds that the canonical form has not been employed in the marriage's formation. In short, the progressive marriage is believed to go counter to the teaching on the absolute inseparability of contract and sacrament. On the other hand this chapter attempts to show that the problem may simply be a cultural rather than an evangelical one, in view of the fact that the separability

of contract and sacrament seems to have been taught by a considerable number of theologians in the Church and that it has not always been the case that the canonical form was employed in the formation of Christian marriage.

CHAPTER FOUR aims at discovering whether the local African magisterium of Malawi and the African local magisterium in general together with their theologians have been able to identify the problem of the progressivity of the African marriage and, if so, what action has been taken to wrestle with the situation. It goes without saying that the problem could scarcely escape the magisterium's notice. As for the question of their identification, it may be affirmed that the majority of the episcopal conferences seem to indicate that they have been able to identify it and have taken action to address it, albeit only by way of statements and recommendations. For instance, most bishops seem to recognize the validity of the progressive marriage. They resent such designations as concubinage as applied to the African progressive marriage, even when they are entered into by Christians. Many bishops seem to believe in the possibility of converting the Christians' marriages entered into with the progressive form into sacramental marriages. A good number of other bishops seem to consider

the sacramentality of these marriages as already present, regardless of the fact that the canonical form has not been employed.

After attempting to demonstrate the probability of the culturality of the conflict experienced between the African progressive marriage and the Christian marriage, and having sounded the mind of the African local magisterium, in CHAPTER FIVE, we try to search for the possibility of an African local theology of marriage, at least in one of its aspects. A local theology is essentially the result of inculturation. But inculturation cannot be undertaken just for the sake of inculturation, in view of the fact that not all cultural elements can become factors in the process of its occurrence. Cultural elements fit for inculturation must measure up to the gospel message at least in its essence. Therefore, in this chapter, our first task will be the attempt to identify the gospel core with which culture is supposed to conform. Then, we will investigate the possible values of which the progressive marriage may be in possession. The presence of values in culture, however, does not guarantee the occurrence of inculturation. Its occurrence is also dependent upon the attitude of the evangelizers who can bring it about. We will therefore try to examine what these attitudes may be.

In the case where there are favourable attitudes towards culture, the prospects for the occurrence of inculturation are bright with the attendant hopefully good results. On the other hand, where the attitudes are unfavourable, inculturation seems to stand no chance of occurring and that with the attendant consequences.