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Canons and Customs in Colonial Zimbabwe: Jesuits and African Marriage Practices, c. 1890-1967

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This article, delivered as a paper for the 2003 Annual Meeting in Atlanta, treats of African Marriage in Zimbabwe according to “Customary Law” and Western Christian Marriage according to Canon Law. In the beginning of colonialism the missionaries required observance of canonical requirements for Catholic marriage. The colonial government sought to regularize the African marriage traditions. The result was a lessening of Church marriages. This article is a report on the efforts made to renew inculturation in Zimbabwe from c. 1890 to 1967.

Consider the following excerpt from the Jesuit archives:

Francesca Misodzi rejects the claim of Vale Mupunga though she is the mother of his child. She declares that in marrying again, she will observe the rites of the Faith; the Catholic church. She desired her children to remain at Chishawasha when requested to express her opinion on their being removed to Hartley. It is the known wish of her late husband, Henry Muronda, that she and her five children should remain [in] a position where they can be instructed in their faith. He gave the eldest daughter over to the care of the [Dominican] Sisters for her protection. The children are: Clara Chitima, born 28th November, 1903; One, a boy

died; Francis Chirenda, school boy; Rosa Nyorerergwa; Joseph Musiwa; one illegitimate child by Vale Mupunga.¹

For most of the colonial period, the hierarchy of the Catholic church in Southern Rhodesia—presuming the superiority of Western Christian marriage—made no significant efforts to adapt or integrate African and Western Christian marriage practices, and was more concerned with the regularization of canonically invalid unions of African Catholics by various means available within canon law. African Catholics for their part generally disregarded the Church’s canonical requirements, marrying according to “customary law.” By 1967, approximately 80 percent of African Catholics were not marrying in the Catholic church according to canonical form. This situation pushed the bishops to form two commissions to study the problem and recommend possible solutions. The commissions recommended, against the opinion of Jesuit canonists, that the bishops recognize African customary unions as the basis for a canonical marriage within the church, which they accepted. The recommendation was largely ineffective, thus, in 1975, the bishops went so far as to petition Rome for permission to allow elder lay Catholics to preside at Catholic weddings as a means to integrate African and church practices. Although they apparently did not receive authorization to do so, the request itself, as well as the marriage commissions’ recommendation to recognize African customary unions, is indicative of a significant change in perspective on the part of the

1. Jesuit Archives of Zimbabwe (JAZ hereafter), Fr. Richartz Letter Book, 1896-1924 (Typescript), April 10, 1919.

church's leadership with regard to understanding African marriage practices, and an unprecedented openness to experimentation to incorporate African marriage processes formally into Church structures.

At the advent of the colonial period, sexual and marital relations between African men and women derived meaning and function within a broader social context. Marriage was not merely the union of two individuals, it was the joining of two families. During this period there was no single wedding ritual as such which signaled the beginning of a marriage. Rather, marriage entailed a process of negotiation between the families, and a man and woman were considered married either when the first part of the bride price (*lobola*) was paid to the woman's family in cattle or crops, or when the woman was accompanied to her husband's homestead (*kuperekedzwa*), or when the woman bore her first child.² An intermediary engaged by the prospective husband's family, or *munyai*, usually arranged preliminary negotiations between the families, including the *vhuramuromo*, or payment to the woman's father, or *tezvara* [father-in-law], to encourage him to specify the

2. Elizabeth Schmidt, *Peasants, Traders, and Wives: Shona Women in the History of Zimbabwe, 1870-1939* (Harare: Baobab Books, 1992); Diana Jeater, *Marriage, Perversion, and Power: The Creation of Moral Discourse in Southern Rhodesia, 1894-1930*, (Oxford: Clarendon Press, 1993). Michael F.C. Bourdillon, *The Shona Peoples* (Gweru: Mambo Press, 1987), 36-49. See also Dominique Meekers, "The Noble Custom of Rooro: The Marriage Practices of the Shona of Zimbabwe," *Ethnology*, vol.32, 35-38; Jaison Andifasi, "An Analysis of Rooro," Clive and Peggy Kileff, ed., *Shona Customs: Essays by African Writers*, (Gwelo: Mambo Press, 1970), 28-32; Lydia Jahni, "Rooro and Marriage," in *ibid.*, 33-41.

lobola price.³ Elopement, however, was a common means to begin the negotiation process, usually having the tacit knowledge and approval of the woman's paternal aunt, or *tete*.⁴

Following the 1896-97 *chimurenga* – the struggle of Africans for basic human rights against the British colonists – and prior to the rapid monetization of the colonial African economy, matrilocal service marriages in which the prospective husband, or *mukuwasha* [son-in-law], agreed to work for the *tezvara* for a number of years rather than pay *lobola* became more common.⁵ By the 1920's, as more young African men entered the colonial economy as laborers in towns or mines *vadzitezvara* began to require *lobola* payments in cash, and increasingly “in a single transaction, or at least a significantly large first payment. This was a wholly different kind of transaction from the long-term transfer of goods which had characterized the marriage alliances of the 1890s, involving a lifetime of exchange and obligation linking families across generations.”⁶ It was also during this period that *vadzitezvara* began to exact *rutsambo*, or a large initial cash payment payable by the suitor himself rather than his family, first as protection against the bad faith of African migrant workers but

3. Andifasi, “An Analysis of Rooru,” 30; see also Jahni, “Rooru and Marriage,” 34.

4. See Jeater, *Marriage, Perversion, and Power*, 30-31.

5. *ibid.*, 98-104.

6. *ibid.*, 220-21.

subsequently as a means of income. Payment of cattle continued to be associated with the birth of children.⁷

In an effort to prevent another rebellion similar to the *chimurenga*, the British South Africa Company (BSAC) and settler administrations adopted a policy of limited non-interference with African culture during the colonial period. In effect, this entailed members of the natives affairs department consulting with wealthy and influential African men as to what constituted legitimate African “tradition” or “custom,” and enacting it into law. The net result of these consultations was the development of African “customary law,” or the promotion and protection of the interests of wealthy African men so long as those interests did not conflict with the interests of BSAC or, from 1923, the settler administration.⁸ The 1898 order in council provided that in civil cases between Africans the courts “shall be guided by native law so far as that law is not repugnant to natural justice or morality.”⁹ Thus, for example, marriage legislation allowed the continuation of *lobola* and polygyny, but banned child pledging and forced marriages.

The Southern Rhodesian colonial authorities passed several pieces of legislation designed to regulate African marriages. The 1901 Native Marriage Ordinance (NMO)

7. *ibid.*, 222.

8. See Schmidt, *Peasants, Traders, and Wives*, 106-8; Jeater, *Marriage, Perversion, and Power*, 209-10. See also, Martin Chanock, *Law, Custom, and Social Order: The Colonial Experience in Malawi and Zambia*, (London: Cambridge University Press, 1985).

9. Cited in Schmidt, *Peasants, Traders, and Wives*, 107.

allowed for polygynous marriages, required the payment of *lobola* within 12 months of the date of marriage (to prevent pledging of young girls), limited *lobola* to four head of cattle (or five for the daughter of a chief) or the cash equivalent, and required the registration of the marriage at a native commissioner's office to ensure that the woman had given her consent (to prevent forced marriages) and recording of the *lobola* payment to prevent excessive payments or non-payment. Significantly, Christian marriages were exempt from the provisions of the 1901 NMO.¹⁰ The 1901 ordinance was based on an "extremely limited understanding of African marriage processes," and aimed more at preventing than encouraging marriages, for example, by not recognizing elopement marriages.¹¹

The 1901 NMO presumed that marriage was a discrete event that required an official sanction. This western understanding of marriage did not account for African beliefs and practices that marriage alliances could be contracted between the families involved in the absence of any official sanction, or without the payment of *lobola* (e.g., in service marriages).¹² In attempting to address these issues, the 1905 Native Marriage Ordinance had the unintended effect of encouraging "technical concubinage," or unions that Africans saw as marriages but according to European norms were illegal

10. Jeater, *Marriage, Perversion, and Power*, 80; Schmidt, *Peasants, Traders, and Wives*, 111.

11. Jeater, *Marriage, Perversion, and Power*, 80; Schmidt, *Peasants, Traders, and Wives*, 112.

12. Jeater, *Marriage, Perversion, and Power*, 82.

because they weren't registered at an NC's office.¹³ Interestingly, Christian marriages also encouraged technical concubinage because African Christian men were forbidden to contract second marriages under the penalty of bigamy, and thus could not register any marriages contracted according to African practice, which resulted in rendering such wives concubines according to European law.¹⁴ Thus, in 1912, the colonial authorities passed another marriage ordinance which outlawed child pledging, mandated the registration of all African marriages regardless of whether or not *lobola* was paid, removed the limit on the amount of *lobola*, and allowed African men who married according to Christian rites to contract polygynous marriages according to African practices. Such marriages would be registered and recognized according to civil law only.¹⁵ According to Jeater, these laws did not "fundamentally alter [African] marriage practices," as Africans frequently chose to ignore the requirements to register their marriages.¹⁶

Five years later, the BSAC administration passed yet another marriage ordinance. The 1917 NMO was enacted in large part as a result of the disputes between the administration and Christian missionaries. The latter opposed the continuance of polygyny, and were particularly unhappy with the provisions of the 1912

13. *ibid.*, 82-85.

14. *ibid.*, 85-86.

15. JAZ, Box 451/2, Richard Sykes, S.J., *Native Marriages*, July 31, 1913. See also Schmidt, *Peasants, Traders, and Wives*, 115.

16. Jeater, *Marriage, Perversion, and Power*, 100.

NMO that allowed African Christians to contract polygynous marriages according to African practices. Native commissioners were unhappy with missionaries who frequently refused to obtain a *tezvara's* consent prior to performing Christian marriages, which technically was not required by law (though was required according to African practice). Christian marriages were subject only to English common law, thus if an African woman was 21 years old she didn't require her parents' consent to marry.¹⁷ The administration was also concerned that African men who contracted Christian marriages frequently didn't register non-Christian polygynous marriages, and as the courts did not recognize unregistered marriages the women technically became concubines before the law and the man in questions could not be held liable for bigamy.¹⁸ The 1917 NMO, thus considered any unregistered marriage as invalid (as per the 1901 NMO a woman had to give her consent to marriage at an NC's office in order to register a marriage); outlawed pledging and forced marriage (previously a forced marriage was only considered as the grounds for disallowing a marriage); and required that a woman's parent or guardian give his consent before the marriage occurred.¹⁹ According to Schmidt, the 1917 NMO allowed a woman to appeal her guardian's refusal of consent if she thought he had done so unreasonably,

17. See Nicholas M. Creary, "Domesticating a Foreign Import? African Cultures and the Catholic Church at Jesuit Missions in Zimbabwe, 1879-1980," doctoral dissertation, Department of History, Michigan State University, 2004, chapter 1.

18. Jeater, *Marriage, Perversion, and Power*, 201-04.

19. *ibid.*, 207; Schmidt, *Peasants, Traders, and Wives*, 111.

but she was only allowed to marry without his consent provided that the territorial administrator gave his consent: “In other words, her tutelage was transferred from an African guardian, deemed incompetent by the state, to a substitute European patriarch.”²⁰ Jeater argued that the 1917 NMO effectively established an African “customary” marriage: by requiring that registration occur after the payment of *lobola* and before consummation it enabled native commissioners to distinguish between lawful marriages and informal sexual unions; by expanding the registration requirements it ensured a woman’s consent.²¹ Significantly, the 1917 NMO’s definition of African custom effectively invalidated elopement as a means to contracting a lawful marriage.²² As with previous marriage legislation, however, the 1917 NMO was largely ineffective: Schmidt noted that into the 1930s child pledging was “prevalent” and forced marriages were still “widely practiced.”²³ According to Jeater, several NC’s complained that the legislation had effectively criminalized over half of the African population of Southern Rhodesia.²⁴

In 1929, the Rhodesian settler government further amended the marriage law. The 1929 NMO maintained the criminal offense for not registering marriages, but

20. Schmidt, *Peasants, Traders, and Wives*, 111-12.

21. Jeater, *Marriage, Perversion, and Power*, 209-12.

22. *ibid.*, 210; Schmidt, *Peasants, Traders, and Wives*, 112.

23. Schmidt, *Peasants, Traders, and Wives*, 112.

24. Jeater, *Marriage, Perversion, and Power*, 210.

would no longer invalidate them. Additionally, African men married by Christian rites were legally obliged to remain monogamous regardless of whether or not they registered additional marriages.²⁵

In an effort to curb increasing amounts of *lobola* required by *vadzitezvara*, the 1951 African Marriages Act limited the amount of *lobola* to £20.²⁶ More significantly, however, it required a couple to apply in person for a certificate from a district commissioner or district officer stating that the *tezvara* did not object to the marriage.²⁷ In 1962, the Southern Rhodesian parliament repealed the £20 limit on *lobola*.²⁸

The 1964 African Marriages Act appointed a registrar of marriages to oversee the registration of all African marriages within the colony; required the written consent the parent or guardian of any person under 21 years of age wishing to be married and forbade the marriage of African boys under 18 and African girls under 16; removed the ban on a person marrying the brother or sister of a spouse from whom s/he had been divorced while the spouse was alive; and required a couple to obtain an enabling certificate to marry according to Christian rites.²⁹ The legislature consulted

25. Schmidt, *Peasants, Traders, and Wives*, 111.

26. See Michael Bourdillon, *The Shona Peoples*, 45, note 48.

27. JAZ, Box 312/2, Lachlan M. Hughes, S.J., Memorandum, "African Marriages: Comments on Report of Commission, 20th January 1968," February 2, 1968, 10, 13.

28. Bourdillon, *The Shona Peoples*, 46, note 51.

29. JAZ, Box 312/1, 1964 Marriage Act and "Notes for the Guidance of Marriage Officers."

the Catholic bishops during the formulation of the 1964 African Marriage act, and apparently deferred to them “on a number of points.”³⁰ Archbishop Markall noted that although the bishops disagreed with several parts of the legislation, on the whole “they feel that the new Act is as well-conceived and effective a piece of legislation as could have been hoped for in this important matter.”³¹ One can find an example of the evident consultation with the Catholic bishops and the cause for their pleasure with the new marriage law in the section delineating the requirements for the publication of marriage banns. The law stipulated that a couple could publish or verbally announce the wedding banns at a worship service on three Sundays prior to the wedding date (not necessarily on successive Sundays), or publish a notice of intent to marry fifteen days prior to the wedding date, or obtain a marriage license from a district commissioner.³² According to the regulations that accompanied the promulgation of the marriage act, the couple had to pay fees of two shillings and six pence or five pounds for the notice of intention to marry or marriage license respectively.³³ There were no fees required for the publication of wedding banns, which was the method prescribed for Catholics according to canon law.

The Catholic church’s understanding of marriage is that it is a permanent, indissoluble, sacramental union

30. JAZ, Box 312/1, Francis Markall, Ad Clerum letter, “The New Marriage Act,” January, 1965.

31. *ibid.*

32. 1964 Marriage Act, Sections 12-18.

33. *ibid.*, 1965 Marriage Regulations, No. 17.

between a man and a woman instituted by God in the person of Jesus Christ.³⁴ According to Catholic doctrine, divorce is not a possibility, although an ecclesiastical court may issue a decree of nullity, or an annulment, if it determines that the grounds for a given marriage were defective, or invalid.

The regulations concerning the validity and licitness for marriage within the Catholic church are found within its canon law.³⁵ Although the first collection of the *corpus iuris canonici* dates to 1190, the Church did not promulgate a single, unified code of canon law for the entire church throughout the world until 1917. In 1963, Pope John XXIII established a commission to revise the code in light of the changes brought about by the Second Vatican Council.³⁶ The revised code was promulgated by Pope John Paul II in 1983.

With specific regard to the Church's marriage legislation, as early as 1563, the Council of Trent in its twenty fourth session issued the decree, "*Tametsi*" which required a man and women to publish wedding banns publicly and to marry in the presence of a priest and at least two witnesses for a valid marriage within the

34. See Mark 10: 2-12; Matthew 19: 3-12.

35. For concise histories of canon law see: A. Boudinhon, "Canon Law," *The Catholic Encyclopedia* (1910), Vol. 9, <<http://www.newadvent.org/cathen/09056a.htm>>; P. Leisching et al., "Canon Law, History of," *The New Catholic Encyclopedia*, (1965), Vol. 3.

36. See Boudinhon, "Canon Law," and Leisching et al., "Canon Law, History of,"

church.³⁷ For a variety of reasons, “*Tametsi*” was not universally promulgated throughout the Church, and so Pope Pius X promulgated the *decree* “*Ne Temere*” in 1907, which reiterated the canonically valid form of marriage found in “*Tametsi*,” and the provisions of “*Ne Temere*” were subsequently incorporated into the 1917 code.³⁸ Canon 1098 of the 1917 code, however, provided for two exceptions to the canonical form: marriage could be contracted licitly and validly in the presence of two witnesses only (i.e., without the presence of a priest) in danger of death, or if a couple could not go to a priest “without great inconvenience” (*sine gravi incommodo*).³⁹

As early as the third century, the Catholic church opposed the marriage of a Catholic to a “schismatic or heretic” (i.e., non-Catholic) and considered a union between a Catholic and a non-Christian as canonically invalid (i.e., the bond of matrimony does not exist) and as an impediment to valid canonical marriage within the

37. See, Andrew B. Meehan, “*Tametsi*,” *The Catholic Encyclopedia*, Vol.14 (1912), <<http://www.newadvent.org/cathen/14441b.htm>>; W. Van Ommeren, “*Tametsi*,” *The New Catholic Encyclopedia*, Vol.13 (1965), 929 . For the full text of the decree, “*Tametsi*” in English translation, see <<http://history.hanover.edu/early/trent/ct24mar1.htm>>.

38. See W. Van Ommeren, “*Ne Temere*,” *The New Catholic Encyclopedia*, Vol.10 (1965), 288.

39. *Codex Iuris Canonici*, (Rome: Vatican Press, 1918), 306; Stanislaus Woywod, O.F.M., *The New Canon Law: A Commentary and Summary of the New Code of Canon Law*, (New York: Joseph F. Wagner, Inc., 1929), 223. All subsequent references to specific canons are to the 1917 code unless noted otherwise.

Church (a diriment impediment). Marriage between a Catholic and baptized, non-Catholic Christian was considered canonically valid (i.e., the bond of marriage exists) but illicit (an impedient impediment), or invalid and illicit without a valid dispensation.⁴⁰

The documentary evidence from the Jesuit archives and the Harare archdiocesan archives generally supports Schmidt's and Jeater's arguments, though it also raises issues that have bearing on the Church's efforts—or lack thereof—to adapt its marriage practices to those of its African constituents. According to Schmidt, Jesuit and Wesleyan Methodist missionaries did not allow African women the use of “the custom of elopement, which would have entailed sexual relations before a church wedding.”⁴¹ While the Jesuits at Chishawasha may not have allowed resident Christians to elope, they apparently recognized elopement as an accepted VaShona marriage practice, and as a preliminary basis for contracting Christian marriage. In 1905, Jesuit Emil Schmitz expressed a view commonly held among his confreres that eloping is the only *native proof* that a girl wants a boy. As long as this is not done, there is no real proof of her love or will in the eyes of the natives. This custom exists all over the country. In the past, when complications were likely to follow—as the result of running away, we always sent the boy to the N.C., and Capt. Nesbitt after questioning the girl, always allowed

40. See, W. Fanning, “Mixed Marriage,” *The Catholic Encyclopedia*, Vol.9 (1910), <<http://www.newadvent.org/cathen/09698a.htm>>; Canons 1058-1080, especially Canon 1060.

41. Schmidt, *Peasants, Traders, and Wives*, 95; cf. Jeater, *Marriage, Perversion, and Power*, 59-62.

her to stay at Chishawasha for six months to see if she was fit for a Christian marriage. I may mention here, that “Christian marriage” is an important step for both parties concerned since it means “union for life with one wife.” Therefore, we think the girl should get a chance of at least six months instruction before marrying. . . . May I add that for Christian marriages, we cannot possibly follow the routine followed for Pagans. And this Capt. Nesbitt understood and accordingly helped as far as he could to be instructed and made fit for Christian marriage once a girl had shown proof of her wish by running away from home. This I should say is quite a natural view to take for a civilising Christian government.⁴²

This passage from Schmitz’s letter is significant as well for showing the rather cordial and informal arrangement that the Jesuits at Chishawasha had with the native commissioner for Goromonzi district and the implicit assumption of the superiority of Christian marriage to that of African marriage.

Schmidt noted that “[w]hile the state appreciated missionary values, it resented their interference in state affairs,” including the adjudication of non-Christian marriage cases.⁴³ In one such case, Jesuit Edward Biehler referred the case of Chief Usiku’s son, Chinyani, to fellow Jesuit Charles Bert rather than a native commissioner. Evidently the child of Chinyani and his second wife, Mushonga, died, and about a month later Mushonga’s mother, Vabiri (variously spelled Pabiri) took Mushonga back to her *kraal* (house) in Mazoe

42. JAZ, Box 452, Emil Schmitz to J.A. Halliday, December 29, 1905. Emphasis in original. See also Halliday to Schmitz, December 28 and 30, 1905.

43. Schmidt, *Peasants, Traders, and Wives*, 11.

district even though Chinyani had paid five head of cattle in *lobola*. According to Usiku, Vabiri had threatened to poison her son-in-law Chinyani if he came to her kraal to retrieve Mushongo.

Biehler thus advised Bert that: Osiku [sic] is afraid of Nesbitt [NC Goromonzi] sending Chinyani to fetch the woman. If so, Osiku says Chinyani will be poisoned and killed. It will be good to let Capt. Nesbitt know this, since the old Vabiri is [a] dangerous woman. . . . Therefore, it would be necessary in order to settle the case, to call for the [*tezvara*], Kudjgachete (in Shopo's kraal, Mazoe district), the wife of Chinyani, Mushonga, and the little girl Maria Mwera (in Mangewe's kraal also), and the baby Sheniwo on Mushonga's back. Of course Capt. Nesbitt would get these people through Mr. Kenny, NC of Mazoe. The old Vabiri deserves a good punishment.⁴⁴

Given the apparently cordial relations between the Jesuits at Chishawasha and their local NC at Goromonzi, it is probable that Captain Nesbitt would have appreciated Biehler and Bert's involvement, though officials at the Native department headquarters in Salisbury, such as W.S. Taberer and J.A. Halliday, would have perceived such involvement as meddling.

On two separate occasions Charles Bert had reason to inquire as to the status of African Christian widows.⁴⁵ Pre-colonial and early colonial VaShona marriage practices provided for the inheritance of a widow by

44. JAZ, Box 452, Edward Biehler to Charles Bert, October 23, 1906.

45. JAZ, Box 452, W.S. Taberer to Bert, November 13, 1907; NC Nesbitt to Bert, July 26, 1909.

another man in her deceased husband's family.⁴⁶ Church teaching dating to the Council of Trent (and subsequently according to the 1917 code of canon law) simply stated that although "chaste widowhood is more honorable," second marriages were permissible so long as the first marriage bond was proven dissolved and that there were no impediments to a valid marriage.⁴⁷ In one instance Chief Native Commissioner W.S. Taberer, referring to the common practice of a widow being inherited by the brother of her deceased husband, informed Bert that a Christian widow could not be forced to become "the property [sic] and wife of a pagan against her will," because even though an inherited wife didn't necessarily have the right to exercise her free will as a woman who married for the first time,

"the absolute forcing of any woman to cohabit with a man against her will, whether she be pagan or Christian, is repugnant to natural justice and morality, and any custom enforcing such a submission is insupportable in our law."

Further, such a woman was not liable to taxation unless she became the second wife of a man "with her consent."⁴⁸

46. See Jeater, *Marriage, Perversion, and Power*, 67; Schmidt, *Peasants, Traders, and Wives*, 16-18.

47. See Council of Trent, Decree on the Sacrament of Matrimony, Canon 10, <<http://history.hanover.edu/early/trent/ct24matt.htm>>; Canon 1142 in Woywod, *The New Canon Law*, 233; William H.W. Fanning, "Widow," *The Catholic Encyclopedia*, Vol.15 (1912), <<http://www.newadvent.org/cathen/15617c.htm>>.

48. JAZ, Box 452, Taberer to Bert, November 13, 1907.

In the second instance, NC Nesbitt advised Bert that “native law” required the payment of *lobola* to a Christian widow’s father or guardian just as “for a woman on the occasion of her first marriage,” and that the widow’s parent or guardian would be liable to the decedent’s next-of-kin if he demanded the return of the original *lobola*.⁴⁹

These cases clearly demonstrate examples of the manufacture of African “customary law”: African Christian women expressed concern about their status upon the death of their (presumably) Christian husbands and caused Fr. Bert to make the appropriate inquiries of native department officials. Bert’s desire to protect his African Christian women charges made Taberer invoke and interpret the 1898 order in council concerning “repugnance to natural justice and morality,” and likewise Nesbitt to impose Western logic on a previously fluid African social practice. Presumably Bert would have reiterated the Church’s teaching concerning the indissolubility of Catholic marriage as well as its monogamous and sacramental nature to the widows and their intended husbands prior to issuing wedding banns and presiding at the marriage ceremonies.

Given the foregoing discussion of the status of African Christian widows, it appears logical that Jesuit John Apel would have received an affirmative reply to the following case:

A Native Christian widow wants to be married to a Native Christian widower, who is the brother of her former husband. Kindly inform me if the law allows the marriage. In this case the

49. JAZ, Box 452, Nesbitt to Bert, July 26, 1909.

union is very desirable, as both have small children.⁵⁰

This case can clearly be considered an early African effort to inculturate, or adapt, church practices to local African practices: As Apel described the situation, the African couple took the initiative to seek to marry according to the rites of the Church, but significantly they applied ecclesiastical practice to a distinctly African way of proceeding, the inheritance of a widow by a man in her late husband's family. Although it is questionable to what degree the principles of a specific case could have been generalized into church policy or practice, the absence of discussion of the possibility in the documentary records of Chishawasha mission indicate another failed opportunity for the Jesuits to have mitigated what they considered a pernicious practice among their African residents, and to have brought a more lasting Christian influence to bear on them. The Jesuits at Chishawasha seem to have taken careful note of the frequent changes in marriage legislation and to have carefully explained the contents of the various native marriage ordinances.⁵¹ In 1913, following the passage of the 1912 Native Marriage Ordinance, Zambezi Mission superior, Richard Sykes sent a circular letter to the priests of the mission summarizing the main provisions of the legislation. Noting that even those African men who married according to Christian rites could legally contract subsequent polygamous marriages according to "native

50. JAZ, Fr. Richartz Letter Book, 1896-1924 (Typescript), John Apel to Major Nesbitt (NC, Goromonzi), November 21, 1920.

51. JAZ, Box 452 contains copies of all marriage legislation from 1901 to 1929.

custom” and have them registered and recognized by the BSAC administration, Sykes ordered that:

the following directions should be carefully observed. Although the natural marriage of Pagans becomes a Christian marriage on the reception of Baptism by the parties, it will be advisable and even necessary, in order to protect as far as possible neophytes against themselves and to do away with the temptations of polygamy, to impart full solemnity to their Christian marriage by observing the customary celebrations, including publication of banns and regular marriage rites, so as publicly to stamp the previous native marriage with the full celebration of a Christian sacrament [and thus] render the parties liable to criminal proceedings for bigamy should they proceed to another attempted marriage. Consequently the parties should not merely renew their consent and receive an informal blessing when they become Christians but the recognised marriage ceremony of the Ritual should be performed, and the now Christian marriage entered in the Government register and the legal certificate forwarded to the proper quarters. . . .The proper thing, that *long before the marriage*, in Christian instruction, this effects [sic] of the Christian marriage should be made clear to the catechumen, that it may even prevent him from joining the Christian religion if he does not feel able to fulfill the conditions.⁵²

52. JAZ, Box 451/2, Richard Sykes, S.J., *Native Marriages*, July 31, 1913. Emphasis in original.

In this passage, Sykes described what canon lawyers call “convalidation,” or the removal of an impediment to valid marriage by the conversion of the non-Catholic partner followed by the public renewal of their marriage consent before a priest and at least two witnesses in “the recognised marriage ceremony of the Ritual.” The Jesuit prefect apostolic also expressed views that were common for missionaries of his time: the need to protect recent Christian converts from themselves and the dangers of polygamy—even to the point of discouraging a potential convert from joining the Church, and the necessity of registering Christian marriages according to civil law.

That the Jesuits more than likely taught the Christians in their charge the contents of the various civil marriage laws as well as the laws of the Catholic church is evident by the following case. In May 1920, John Apel wrote to the NC Mrewa district informing him that the woman Mambidzeni had married Muvirimi in the district office.

They had two children, one is dead and the other has been taken by Muvirimi.

Muvirimi received baptism, after which he dismissed his wife, advancing the plea that she was a heathen. Still, the woman has ever since been anxious to stay with him because she loved him. In fact, she has gone to Fr. Burbridge at [St. Peter’s Church] Salisbury and has come to me here with the idea and in the hope that we could induce Joseph Muvirimi to take her back. Our efforts have been unsuccessful. Joseph even contemplates contracting another marriage with a girl called Katarina Kupara, living at Brown’s Farm, Salisbury.

According to church law, Muvirimi ought to take back Mambidzeni as his wife, seeing that she wants to live with him in peace.

May I suggest that you call Muvirimi and arrange matters between the two.⁵³

Clearly, Muvirimi was familiar with the dictates of the civil law that allowed him to marry and divorce, and even to contract multiple marriages so long as he didn't marry his junior wives according to Christian rites. But more significantly, he was also evidently aware of the church's teaching noted by Sykes above that when two non-Christians become Catholic the church recognized the canonical validity of their marriage, and that if a non-Catholic married to another non-Catholic converted, the neophyte Catholic's marriage to the non-Christian was null and void in the eyes of the church. Thus, according to the 1917 Code of Canon Law, presuming that there were no other impediments, Joseph Muvirimi could have licitly and validly married Katarina Kupara according to Catholic rites and raised his child by Mambidzeni (whose custody he could claim according to VaShona marriage practice by virtue of his having paid *lobola*, a requisite for the civil registration of an African marriage according to the 1912 marriage ordinance) within the church. Strictly speaking, Apel's claim that "[a]ccording to church law, Muvirimi ought to take back Mambidzeni as his wife" contradicted Canon 1070 of the 1917 code, his good will toward Mambidzeni notwithstanding.⁵⁴ This, then, is a rare instance

53. JAZ, Fr. Richartz Letter Book, 1896-1924 (Typescript), Apel to NC Mrewa, May 25, 1920.

54. "The marriage between a person baptized in the Catholic Church, or received into the Church from heresy or schism, and a non-baptized individual is null and void." See Woywod, *The New Canon Law*, 216-217.

in which a Jesuit supported the case of an unbaptized, “pagan,” African woman against the dictates of Catholic canon law.

The marriage cases found in the records of St. Peter’s parish in the archives of the archdiocese of Harare⁵⁵ clearly show the institutional church’s primary concern with canonically regularizing African Catholics’ marriages, rather than finding ways to adapt church practices to African practices. They also show the faith of African Catholics, and their desire to put their marriages right in the eyes of the church. Three cases are relevant here: Agnes and Felix, Joseph and Agatha, and Charles Mzingeli.

In the first case, Agnes, a Catholic, married Felix, a Methodist “from outstanding Methodist parents” in 1957. According to the African diocesan priest promoting their case, from the time of their marriage, Agnes:

... has been living with him peacefully. All her children, Campion, Felix, Regis, Godfrey, and Stephen are baptised and they received the sacraments. She goes to church herself [with] the children and [Felix] sometimes takes them there. I and some of his friends have been encouraging him to become a Catholic. [He replied] “I shall be the only one from my family becoming a Catholic and to me it means abandoning my family. But I am very sorry for my wife, who cannot receive the sacraments because of me. I wish something could be done.” He says this quite sincerely.⁵⁶

55. There is very little information concerning St. Peter’s parish in the Jesuit archives, despite the fact that the parish was founded by and remains under the administration of the Jesuits.

56. Archives of the Archdiocese of Harare (AAH hereafter), Box 670/C, Rev. S. Chifeya to Fr. McNamara, August 18, 1966.

Fr. Chifeya believed that the family was “quite stable,” and thought there was no “danger of divorce at all.” Accordingly, he requested permission for—and received—a mixed marriage dispensation from Archbishop Markall.⁵⁷

By contrast, the case of Joseph and Agatha (also promoted by Fr. Chifeya) was more complicated. Joseph had married a “pagan” woman in 1930 at the NC Selukwe’s office, but had no civil divorce documents. Agatha had also married a “pagan” according to “African custom” but did register it. Joseph and Agatha had a civil marriage in 1946, and by 1966 had five children. Joseph’s first wife and her parents had been living in Selukwe while they were married, but by the time Chifeya presented the case to Markall (1966) Joseph thought that she was either dead or remarried “because 1930 is such a long time for anyone to wait.” Joseph and Agatha “want[ed] to marry properly according to Christian rites in the Catholic church” because “they are both quite old now [and] they think it’s now time they put themselves in the hands of God.”⁵⁸ McNamara asked Chifeya for more information, specifically for Joseph’s and Agatha’s baptismal certificates, and whether there was any evidence that “Joseph’s first partner is dead. . . 1930 may be a long time ago but Joseph himself is not dead so we cannot presume that [she] is without some evidence.”⁵⁹ There was no documentation in the general files as to whether Joseph

57. *ibid.*; McNamara to Chifeya, August 23, 1966.

58. AAH, Box 670/C, Chifeya to McNamara, August 18, 1966.

59. AAH, Box 670/C, McNamara to Chifeya, August 23, 1966.

and Agatha received a dispensation and were allowed to marry in the church.⁶⁰

Lastly, one of the more interesting marriage cases in the St. Peter's parish records involved Charles Mzingeli, a member of the Industrial and Commercial Workers Union (ICU) in the 1920s and 1930s, and a leader of the revived ICU in the 1950s. When Mzingeli joined the ICU in the 1920s, it had been condemned by the South African Catholic bishops.

On these grounds the priest at St. Peter's [Fr. Alfred Burbridge] obliged him to leave it under pain of excommunication. He [Mzingeli] was so upset by this that he had several talks with Monsignor [Robert Brown, the prefect apostolic of the Zambezi Mission] who he said could only rely on the other Bishops' decision. Fr. Johanny was also asked if he could smooth the matter out. Fr. Johanny told me he could not manage to get the matter settled. Mr. Mzingeli believes that because the Government of South Africa did not like the Union assisting Africans to Trade Unionism the Church followed the Government in place of defending people's rights. He believes he was never excommunicated by the Church, but by his priest.

Deprived of the Sacraments and wishing to marry, he married at the NC's office with a Methodist. From the time of the "excommunication" until about 1950 he has not been a practicing Catholic. He has walked in processions and on

60. There more than likely are records documenting a conclusion to this case, but they would be found in the marriage files, which typically are sealed for at least 75 years.

several occasions has publicly testified to his adherence to the Catholic faith, during the period 1950 to the present [1954]. He has also been to Mass sometimes. I put the [mass times] such that Mass could be attended before the frequent meetings held on Sunday mornings. He is, however, often away addressing meetings.

Mrs. Mzingeli was a Methodist and with some help from her husband and two women she has been won over to the Catholic Faith. She is an invalid and could be received in the near future.

Today I spoke with Mr. Mzingeli about putting the marriage in order. He is willing to do this but says he has been so hurt by the treatment he received that he would first like an assurance that he was not wrong in seeking the aid of those who would help Africans towards trade unionism.⁶¹

Clearly, Mzingeli was aware of Burbridge's violation of church teaching in denying him access to receive communion as only a bishop had the power to excommunicate. And yet, despite the personal affront which hurt him deeply, as well as the hierarchy's failure in proclaiming and implementing the Church's teaching on social justice,⁶² Mzingeli was willing to submit his marriage for canonization within the Church on the condition that Chichester and his minions acknowledge that

61. AAH, Box 670/C, Henry Swift, S.J. to Bishop Aston Chichester, October 13, 1954.

62. See, Leo XIII, *Rerum Novarum*, 1891, which allowed for Catholics to join labor unions.

the labor leader had done no wrong. There is no record of a response from Bishop Chichester or of a resolution to the case.

Taken together, these three cases clearly show that the church's hierarchy, including African priests, was operating according to Western legal norms. Agnes and Felix received a dispensation from the impedient impediment of a mixed marriage so that Agnes could participate fully in the sacramental life of the church, specifically so that she could receive communion at mass. Joseph and Agatha's baptismal certificates were necessary to determine whether and what type of dispensation was required in order to allow them to marry within the church: if either of them had been baptized Catholic before their respective first marriages to non-Christians, technically s/he would have been required to seek his/her bishop's permission to marry a non-Christian which would have necessitated a dispensation from disparity of cult, which (as with a dispensation from mixed religion—i.e. , with a baptized non-Catholic Christian) would have required the non-Catholic partner to promise "to remove all danger of perversion of the Catholic party," and both partners to promise "that all their children shall be baptized and brought up as Catholics."⁶³ If neither had been baptized prior to marriage but converted to the church subsequently then "the valid marriage of unbaptized persons [could be] dissolved in favor of the faith by the Pauline privilege."⁶⁴ The Pauline privilege refers to the freedom of the non-Christian partner to leave the marriage and the non-obligation of the Christian neophyte to be bound to remain

63. Canons 1060-1061. See Woywod, *The New Canon Law*, 214.

64. Canon 1120. See Woywod, *The New Canon Law*, 228.

in such a marriage.⁶⁵ If Joseph's first wife had still been living at the time that Fr. Chifeya promoted the case, either he or Joseph would have been required to interpellate the first wife before Joseph could marry Agatha, that is:

... to ask (1) whether the [non-Christian] party wishes to be converted and baptized, (2) in case the [non-Christian] party does not wish to be baptized, whether he, or she, is willing to live in marriage without offense to God, which is to say that he, or she, will not interfere with the religious obligations of the convert [i.e., the practice of the Catholic faith and Catholic upbringing of their children].⁶⁶

Given that Mzingeli's wife was apparently willing to convert to the Catholic church, after her formal reception into the church their marriage could have been regularized by convalidation, or the public renewal of marital consent in the presence of a priest and at least two witnesses. If she had not been willing to become a Catholic, however, then—presuming the stability of the marriage (i.e., the likelihood that the partners would not separate)—the marriage could have been regularized by means of a *sanatio in radice* [cleansing at the root], which is the validation of marriage “which imports, besides dispensation from, or a cessation of, an impediment, a dispensation from the law of renewing consent, and a retro-action by fiction of law [*per fictionem*

65. See 1 Cor. 7:12-15.

66. Canon 1121. See Woywod, *The New Canon Law*, 228.

iuris], in reference to the canonical effects in the past state while the union was invalid.”⁶⁷

These cases also, however, show the deep faith of many African Catholics and the consequences of the Church’s failure to consider accommodating its marriage practice to African practices in some form prior to 1967. Evidently, many Catholics knowingly married non-Catholics according to “African custom” and/or civilly without the consent or approval of the clergy or hierarchy. Yet Mzingeli, and no doubt others like him, felt “deprived of the sacraments.” Joseph and Agatha wanted “to put themselves in the hands of God.” There was no evident material gain to be had in regularizing marriage according to the church’s norms, save for being able to receive communion at mass: Catholics in canonically invalid unions could still attend mass and otherwise participate in the life of the Church and their parochial communities. The spiritual benefits according to their beliefs, however, were tremendous in that they would be allowed full participation in the life of the church and the reception of the body and blood of Jesus Christ sacramentally present in the form of bread and wine. This shows a distinct commitment to faith on the part of those African Catholics who sought to enter more deeply into the church’s fold.

Despite the Catholic bishops’ relative pleasure with the 1964 marriage act, they were confronted with a situation in which approximately 80 percent of African Catholics were not marrying in the church, much less according to canonical norms. Accordingly, in January 1967, they established a commission with representatives from each of

67. Canon 1138. See Woywod, *The New Canon Law*, 232.

the five dioceses in the territory to study the causes of this problem and to suggest possible solutions.⁶⁸

The commission sent a circular letter to all the priests in Southern Rhodesia asking for their opinions on a number of questions dealing with the marriage situation, and asking them to consult with “interested lay people.”⁶⁹ The commission members wanted to know: whether the clergy (and laity) thought that civil legislation was responsible for the high rate of canonically invalid marriages and if so to what degree, particularly provisions for obtaining an enabling certificate; at what point in the African marriage process the couple was considered married; if the church were to recognize African “customary” marriages what effects it would have, and if it were possible for the church to do so how it should be done and “what safeguards would be necessary;” whether they thought *lobola* was “the main obstacle to the convalidation of African marriages;” whether public opinion was helpful in convalidating marriage; and whether “the Church [paid] sufficient attention to instructing the people with regard to the Sacrament of Matrimony.”⁷⁰

During the course of the year, the commission received 73 replies to Fr. Dunne’s circular letter, and prepared and submitted a report based on them to the bishops’ conference in January 1968, with two recommendations: first, that the church recognize African “customary unions” as the basis for canonical regularization, and “that the matter should be submitted to a canonical study.” The bishops, however,

68. JAZ, Box 312/2, S.J. Dunne, O.Carm., Circular Letter to All Priests, April 20, 1967. See also Lachlan M. Hughes, S.J. to Edward Ennis, S.J., May 31, 1968.

69. JAZ, Box 312/2, Dunne Circular Letter, April 20, 1967.

70. *ibid.*

considered the report insufficient and “requested the Commission to continue its study.”⁷¹ Archbishop Markall apparently then asked Jesuit canonist Lachlan Hughes, who was not a member of the commission, to write a canonical evaluation of the commission’s report—though this was not the official report recommended by the commission—and circulated Hughes’ private opinion to the bishops and commission.⁷² This touched off a debate of sorts between Hughes who supported the Jesuit “minority opinion” on the commission and Bethlehem Missionary Fr. Joseph Suter, who represented the majority.⁷³ The debate was largely over differing interpretations of canon law and its application to African culture. Whereas Suter and the majority of the commission were willing to admit elements of African practice as necessary preconditions to valid canonical marriage within the church, Hughes and a minority of the commission saw those elements as impediments to valid marriage which either had to be abolished or ignored in order to regularize African Christian marriages.

71. JAZ, Box 312/2, Noel K. Kinnane, O.F.M., Circular Letter to All Priests, February 9, 1968. See also in *ibid.*, Lachlan Hughes Memo, “African Marriages: Comments on Report of Commission, 20th January 1968,” February 2, 1968, 1; and Hughes to Ennis, May 31, 1968.

72. JAZ, Box 312/2, Hughes to Ennis, May 31, 1968.

73. JAZ, Box 312/2, Hughes, “African Marriages;” Joseph Suter, “Memorandum concerning Church-Marriage versus State-Law/Natural Marriage: Another Attempt,” March 31, 1968 (“Another Attempt” hereafter); Hughes, “Memorandum II: on *African Marriages*: Being a Restatement largely on the basis of Memo I and Fr. Suter’s ‘Another Attempt,’” May 23, 1968; Hughes, “Marriage Commission,” September 29, 1968.

The marriage commission recommended that African customary unions be recognized as the basis of marriages that required canonical regularization, and that three elements were necessary in order to verify the existence of an African customary union: the consent of the woman, her guardian (*tezvara*), and the man (*mukuwasha*); the mutual agreement to payment of *lobola* by the *mukuwasha* and its acceptance by the woman's family; and the formal handing over of the bride.⁷⁴ The commission further recommended that the church develop a rite centered on the VaShona *kuperekedzwa* ceremony (the time during the marriage process when the woman is handed over to her husband), and suggested that "undertaking" to pay *lobola* (versus payment in full) was sufficient grounds to allow marriage according to Christian rites.⁷⁵ A dissenting minority opinion (put forward by Jesuit John Diamond), however, held that African elders recognized no uniform customary marriage and that the church couldn't use customary unions as the basis for canonical regularization because they lacked stability (i.e., allowed polygyny and divorce), and the stability they possessed was guaranteed only by the payment of *lobola* and the birth of healthy children.⁷⁶

74. *ibid.*, 6. The commission's preliminary report was not available in the Jesuit archives, thus its major recommendations were gleaned from Hughes' memorandum.

75. Hughes, "African Marriages," 1-2. The text of the recommendation reads: "This commission recognises the advisability of recognising the African customary union and recommends that [a] special Commission [sic] be appointed to discuss the canonical implications of such recognition." Cited in *ibid.*, 3.

76. *ibid.*, 4; see also JAZ, Box 312/2, Hughes to Ennis, May 31, 1968.

Hughes' memorandum was concerned primarily with the issue of canonically valid marital consent. Hughes argued that the commission failed to distinguish between *matrimonium in fieri* (i.e., the moment of consent) and *matrimonium in facto esse naturale* (i.e., the marriage lived out following the exchange of consent),⁷⁷ and that the lack of distinction "induce[s] a confusion into the [commission's] recommendations."⁷⁸ In his view, African customary law was unsuitable and inadequate to serve as the basis for Christian marriage, but that customary unions were valuable as preparation for canonical marriage. He believed that it was not possible to canonize customary law because: it required the consent of a third party (*tezvara*) to marriage under pain of nullity; it was "conditional in [marriage] consent;" and its requirement of full payment of *lobola* to the *tezvara* was an "invalidating impediment" to canonical marriage which caused "significant delay of marriage" and "lengthy concubinage." Further, he opposed the church recognizing and canonically regularizing unregistered customary unions because doing so would "introduce two classes of [African] marriage": marriages registered at a district commissioner's office and thus afforded protection under civil law, and unregistered marriages that wouldn't have legal protection from the government.⁷⁹

Hughes addressed what he perceived to be the inadequacies of the three elements that the commission stipulated as constitutive of an African customary union at length. With regard to consent, Hughes claimed that the

77. Conversation with Rev. John P. Beal, J.C.D., Department of Canon Law, Catholic University of America, May 30, 2001.

78. Hughes, "African Marriages," 3-4.

79. *ibid.*, 1-2.

commission's recommendation to recognize customary unions was flawed because canon law does not recognize the consent of anyone but the two people intending to marry as necessary, and the consent of either of the two people concerned cannot be conditional upon the consent of a third party (e.g., a *tezvara*), thus "the customary union is not apt for the canonical consent."⁸⁰

Similarly, Hughes objected to the commission's provision for an agreement to pay *lobola* because it was not required canonically, and if it were a "subjective requirement of [the] *Tezvara* before he consents," then the marriage could not be validated due to the conditional nature of a third party's consent.⁸¹ He further questioned the commission's position that only an agreement to pay *lobola* was sufficient by referring to the "fact" that *vadzitezvara* frequently withheld permission to marry "until full *lobola* has been paid—and sometimes beyond the agreement."⁸² Accordingly, "even the agreement to *lobola* cannot be accepted as a constituent element of customary union. Therefore customary union as such is not apt for canonical consent or form."

Hughes did not object to the development of a Catholic rite to be performed at the time of the *kuperekedzwa* ceremony – in fact, he extolled it as "a sufficiently direct symbol of itself to be acceptable as the 'locus' for canonical form"—i.e., the public exchange of vows before a priest and two witnesses. He did, however, question whether the *tezvara*'s handing over of the woman was absolute or contingent upon fulfilling certain conditions, (e.g., the

80. *ibid.*, 6.

81. *ibid.*

82. *ibid.*, 7.

completion of *lobola*) “in such a fashion that if the conditions are not fulfilled the handing over is ‘rescindible [sic].’” If so, in his mind, validation was not possible.⁸³

Hughes then discussed at length the relation of *lobola* to canonical requirements for consent,⁸⁴ and concluded that the conditions associated with *lobola* payments effectively negated the possibility for valid consent to a canonical marriage and that therefore, the “consensual element of customary union is not very apt to be the basis” of Christian marriage.⁸⁵ He included a series of five objections to his argument concerning *lobola* and consent with responses to each objection.⁸⁶ It would appear that one of the Jesuit representatives to the marriage commission informed Hughes of the contents of their deliberations (for example, he described the responses to the commission’s circular letter to the clergy as “wild” and “simplistic”⁸⁷), and this was Hughes’ effort to respond to those members of the commission who favored recognizing African customary unions. Hughes taught at the regional major seminary at Chishawasha, and John Diamond, the seminary rector, was one of the Salisbury archdiocese’s two Jesuit representatives to the commission.

Hughes concluded that the three elements that the commission suggested as constituting a customary union would be useful to determine the stability and other requisite

83. *ibid.*

84. *ibid.*, 7-9.

85. *ibid.*, 8.

86. *ibid.*, 8-9.

87. JAZ, Box 312/2, Hughes to Ennis, May 31, 1968.

elements for a valid canonical marriage, but that they couldn't be required for the regularization of marriage because "this would allow that other agencies than the Church can establish diriment impediments for Christians [i.e., Catholics]."88 He further concluded that because African customary unions were neither "suitable" nor "adequate" as a basis for regularizing marriages they couldn't be used as such unless they were "so modified" that the people would no longer recognize them as customary unions. Customary unions, accordingly, could be used "as a means of preparing the marriage," which should include the "exchange of proper canonical consent," and that while consent could be exchanged at the *kuperekedzwa* ceremony the "difficulties. . . arising from distance from a Church, attendance of the priest, etc., in *kuperekedzwa*, should not be underestimated."89

Having responded to the issues raised by the marriage commission, Hughes next proposed "practical steps" to regularize registered and unregistered customary unions. He first thought it necessary to verify that customary marriages "are actually subsisting" and only lacked canonical form. If so, then there would be "comparatively little difficulty" to validate them by "complete full marriage," convalidation, or *sanatio*, that is, the ordinary means that the church used to canonize marriages. In Hughes' opinion, the *tezvara's* approval of a church marriage was evidence of a "subsisting" customary union and his refusal would be "evidence that the union was not a genuine customary law marriage."90

88. Hughes, "African Marriages," 10.

89. *ibid.*

90. *ibid.*, 10-11.

Hughes recommended the same process of verification and validation for unregistered customary unions, and suggested that it would be possible either to marry within the church couples with customary unions that were unregistered due to the *tezvara*'s opposition or to validate the marriage via *sanatio* after the inquiry into the couple's continued consent.⁹¹ He thought this "a very radical solution," however, because it would introduce "two classes of African marriage" one protected by civil law and the other not, and because there would be "a great number of broken valid marriages" unless "there was very marked stability in the marriages thus treated."⁹²

Finally, Hughes turned his attention to "the problem of how to go about securing good Catholic marriages from the beginning." Briefly acknowledging the need for the church to provide "education and formation" (particularly if African Catholics were choosing to marry in customary unions instead of canonical marriages), and the need to maintain "traditional observances" (noting that *kuperekedzwa* would be ideal for including canonical consent in the customary marriage process), he addressed the issue of what to do if the *tezvara* refused to approve of a church wedding. Hughes believed that the *vadzitezvara* generally agreed to help a couple obtain an enabling certificate only after *lobola* had been paid in full, thus the church had two options if the *tezvara* did not accept the "undertaking" to pay *lobola* "as sufficient to proceed to the Church marriage": "either admit that the problem was insoluble or join issue with the *vadzitezvara*." Ideally, "joining issue" with the *vadzitezvara* should involve

91. *ibid.*, 11-12.

92. *ibid.*, 13.

persuasion, but if it were ineffective then again the church must either admit the insolubility of the problem or “disregard the opposition of the *vadzitezvara*.” The danger of disregarding the *vadzitezvara*, however, would be to leave couples so married without the protection of the civil law (N.B.: *tezvara*’s consent was required for customary marriage and civil registration of marriage), “and indeed it might be possible that the *vadzitezvara* would invoke the help of the government to recover control of their women,” a situation that Hughes felt capable of producing “a greater evil.” Accordingly, Hughes recommended invoking a law for appeal against “ridiculous sums set as *lobola*,” but thought that it was the *vadzitezvara*’s “tendency to ever-increasing exactions which bodes so ill for the future of Christian marriage.”⁹³

93. *ibid.*, 13-14.