MARRIAGE LAWS ACROSS TRADITIONS: PROBLEMS AND PROSPECTS

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ALOYSIUS U ENEMALI

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Dedication

To the Couples and Families

who live the mystery of Marriage

every day in its joy and in its sorrow,

in its fullness and in its Fragmentation,

and in whose lives this book finds its

Reason for being

And to the memory of all who have

Sought to build bridges between traditions

where walls had stood too long.

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Foreword

Marriage in Nigeria is not merely a private relationship between two individuals; it is a deeply institutional reality situated at the intersection of law, religion, culture, and history. Within a single marital union, customary norms, civil law, and the sacramental theology of the Catholic Church frequently converge, yet they do so without full harmony. Each system carries distinct assumptions regarding consent, authority, kinship, inheritance, and communal obligation. The consequence is a fragmented pastoral and juridical environment in which many Catholics must navigate overlapping and sometimes conflicting expectations while attempting to build stable families and coherent social lives.

It is within this complex and often unresolved landscape that Fr Aloysius Enemali situates his work. The book is not simply a treatment of marriage as a theological or legal category. It is a sustained inquiry into the deeper crisis of normative integration within postcolonial African societies, where indigenous traditions, colonial legal inheritances, and Christian doctrinal frameworks continue to coexist without adequate synthesis. The colonial legal system introduced into Nigeria was shaped for a different social order, yet it remains the operative structure of state regulation. Customary systems, far from disappearing, remain embedded in communal life. Alongside both stands the canonical tradition of the Catholic Church, with its long-developed juridical and theological coherence.

Fr Enemali approaches this reality with rare balance and intellectual discipline. Writing as a canon lawyer, philosopher, theologian, and legal expert, he engages lived social complexity without reducing it

to abstraction. His analysis avoids romanticising African customary marriage, while also resisting any tendency to detach canon law from concrete human experience. Instead, he carefully examines the points of tension where systems overlap without genuine communication or mutual recognition.

At the core of the book is a compelling thesis: the contractual, covenantal, and sacramental dimensions of marriage are not competing alternatives but integrated aspects of a single anthropological and theological reality. The fragmentation evident in Nigerian marital practice is therefore not natural or inevitable, but historically produced through institutional disjunctions that have not been fully resolved through law, theology, or pastoral practice.

This insight carries significant implications for both Church and society. The canonical tradition is challenged to take more seriously the African understanding of marriage as a communal covenant involving families, lineages, and broader social relations. At the same time, customary systems are called to affirm more clearly the importance of free and informed consent as a requirement of justice and human dignity. The pastoral importance of this work for the Church in Nigeria and Church is therefore considerable. This book deserves wide readership among canonists, civil lawyers, theologians, pastoral ministers, anthropologists, and Church administrators. More importantly, it speaks directly to those responsible for the governance of family life within Catholic communities in Nigeria and across Africa. It is a major contribution to an urgent conversation that can no longer be postponed.

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Acknowledgements

A work that ranges as widely as this one, across the laws of marriage in customary tradition, statutory frameworks, Islamic jurisprudence, and Catholic canon law, is never the product of solitary reflection alone. It emerges from sustained conversation with scholars, practitioners, pastors, and communities who have each, in their own way, illuminated some dimension of the complex normative reality that this book attempts to map. It is right, and it is a pleasure, to acknowledge those whose contributions have been most decisive.

To the Most Reverend Valerian Okeke, Metropolitan Archbishop of Onitsha, I owe a debt of gratitude that the conventions of acknowledgement can only partially express. His Grace has been more than a local ordinary and canonical superior; he has been an encouraging father whose unflinching support has sustained my sacerdotal and academic life. In a work that deals substantially with the crisis of multiple marriage systems in the life of Nigerian Catholic families, it is fitting that the first acknowledgement should go to the Chief Shepherd who carries ultimate pastoral responsibility for those families in the Onitsha Ecclesiastical Province. His Grace's support for serious theological and canonical scholarship in service of the Church's mission has been, for me personally, a source of both inspiration and obligation.

I am grateful to the Reverend Father Professor Luke Ijezie, Acting Rector of the Catholic Institute of West Africa (CIWA), Port Harcourt, for the pleasant and productive working relationship that has characterised our collaboration and the institutional support without which the completion of a project of this scope would simply not have been possible.

My warm appreciation goes to my colleagues and the staff of the Catholic Institute of West Africa, and in particular to Rev. Fr. Professor, Kenneth Inaku Egere, Dean Faculty of Arts and Social Sciences, who journeyed with me throughout the course of putting this work together, and Rev. Fr. Dr. Samuel P. Gwimi, the Head of Pastoral Theology Department, who read the entire work and generously wrote the Foreword.

I thank the members of CIWA Publication Board Chaired by Rev. Fr. Associate Professor Emmanuel Chinedu Anagwo for promptly going through the work and recommendating it for CIWA Publication.

A particular word of thanks is owed to the Reverend Father Smart Nwosu, a close collaborator who proofread the entire manuscript and made inestimable technical contributions to its precision and coherence. In fact, the accuracy of this work owes a great deal to his diligence.

The subject matter of this book, the laws of marriage across different traditions, is one that no single discipline can adequately address. I have therefore incurred debts to scholars and practitioners across several fields: to civil lawyers who helped me understand the Nigerian statutory framework and its colonial genealogy; to specialists in religious and customary law whose expertise clarified the operation of different legal traditions across the diverse communities of Nigeria; to cultural anthropologists whose fieldwork on marriage traditions among the Igbo, Yoruba, Hausa, and Fulani peoples has informed the comparative analysis; and to theologians and canonists, colleagues in the broader African Catholic intellectual community, whose engagement with the theology of inculturation has shaped the constructive argument of the final chapter. To all of these, named in the footnotes but too numerous to enumerate fully here, my genuine and lasting thanks.

To my family members, siblings, benefactors and friends whose generous and unwavering support has accompanied every stage of this work, I express my sincere gratitude. Academic research into the institution of marriage is a peculiar endeavour, not least because those closest to the researcher are often the most patient observers of how fully that institution's demands and complexities are felt in the texture of real human lives. Their patience has been a gift, and their encouragement has been sustaining.

To my legal, professional, and research colleagues, men and women of goodwill who have engaged with this project in its various stages of development, I am grateful for every challenge, correction, and affirmation. Scholarship is, at its best, a communal enterprise, and this book is the better for having been tested in conversation before it was committed to print.

To God alone be the glory.

Rev. Dr. Aloysius Enemali (Esq.)
Dean: Faculty of Canon Law,
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Port Harcourt, Nigeria
2026

List of Abbreviations

Canonical and Ecclesiastical

CCEO	Codex Canonum Ecclesiarum Orientalium (Code of Canons of the Eastern Churches, 1990)
CDF	Congregation for the Doctrine of the Faith
CIC	Codex Iuris Canonici (Code of Canon Law, 1983)
CIC (1917)	Codex Iuris Canonici (Code of Canon Law, 1917)
DDF	Dicastery for the Doctrine of the Faith
GS	Gaudium et Spes (Second Vatican Council, 1965)
FC	Familiaris Consortio (Pope John Paul II, 1981)
AL	Amoris Laetitia (Pope Francis, 2016)
EA	Ecclesia in Africa (Pope John Paul II, 1995)

Nigerian Legislation and Institutions

CAC	Corporate Affairs Commission
CAN	Christian Association of Nigeria
CBCN	Catholic Bishops' Conference of Nigeria
MCA	Matrimonial Causes Act (Nigeria) Cap M7, Laws of the Federation of Nigeria 2004
Marriage Act	Marriage Act (Nigeria) Cap M6, Laws of the Federation of Nigeria 2004

CRA	Child Rights Act (Nigeria) 2003
FRN	Federal Republic of Nigeria
LFN	Laws of the Federation of Nigeria
NWLR	Nigerian Weekly Law Reports
SC	Supreme Court of Nigeria
CA	Court of Appeal, Nigeria

International Instruments

ACRWC	African Charter on the Rights and Welfare of the Child
ACHPR	African Charter on Human and Peoples' Rights
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CRC	Convention on the Rights of the Child
ECtHR	European Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
UDHR	Universal Declaration of Human Rights
Maputo Protocol	Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa

Islamic Jurisprudence

CDF	see above
FBD	Father's Brother's Daughter (anthropological notation for preferred cousin marriage)

General

c. / cc.	canon / canons
ch.	chapter
ed. / eds.	editor / editors
edn	edition
ibid	ibidem (in the same place)
n	footnote (cross-reference within chapter)
para.	paragraph
pt	part
repr.	reprinted
rev. ed.	revised edition
s. / ss.	section / sections
tr.	translator / translated by
vol.	volume
vs.	versus

A Note on Citation Style

The footnote citations in this book follow the OSCOLA (Oxford University Standard for the Citation of Legal Authorities) system, which is the standard citation method for legal academic writing in common law jurisdictions and is widely used across African legal scholarship. Readers unfamiliar with OSCOLA may find the following conventions useful.

Books are cited as: Author, 'Title' (Publisher, Year) page number. Articles are cited as: Author, 'Title' (Year) volume Journal page, specific page. Cases are cited by the parties' names in italics, followed by the law report reference. Statutes are cited by their short title and year, with section references abbreviated 's' (section) and 'ss' (sections).

Cross-references within a chapter use the convention '(n [number])' to refer to the same source cited in an earlier footnote of the same chapter — for example, 'Nwogugu (n 3) 25' means: the work by Nwogugu cited in footnote 3 of this chapter, at page 25. Cross-references do not carry over between chapters; each chapter's footnote numbering begins afresh.

Canonical sources are cited by the abbreviation CIC (Code of Canon Law, 1983) followed by the canon number — for example, 'CIC c 1055 §1' means canon 1055, paragraph 1. The 1917 Code is cited as 'CIC (1917)'. The Code of Canons of the Eastern Churches (1990) is cited as CCEO with canon number.

Papal and conciliar documents are cited by their Latin incipit in italics — for example, *Gaudium et Spes* or *Familiaris Consortio* —

followed by the paragraph number: '§' for a single paragraph and '§§' for a range. Full bibliographic details for all sources cited appear in the Works Cited at the end of the volume.

Quranic references are cited by surah (chapter) number and verse — for example, 'Quran 4:3' — followed where relevant by the transliteration of a key Arabic term in italics. Hadith references cite the canonical collection, the book title, and the hadith number.

Nigerian case reports use the standard abbreviations: NWLR (Nigerian Weekly Law Reports), NLR (Nigerian Law Reports), WACA (West African Court of Appeal), NMLR (Nigerian Monthly Law Reports), SC (Supreme Court), and CA (Court of Appeal).

All Igbo words and phrases, as well as Arabic, Latin, Greek, and other non-English terms, are italicised on first use in each chapter and defined in context. A full glossary of technical terms would have exceeded the scope of the present volume, but definitions are provided within the text wherever a term is first introduced.

Introduction

Marriage is one of those rare human institutions that every known society has practised, argued about, and refused to leave alone. Across the entire sweep of recorded history, from the law codes of ancient Mesopotamia to the pastoral guidelines of a Catholic diocese in Nigeria societies have invested enormous energy in determining who may marry, how marriage is constituted, what it demands of those who enter it, and what becomes of it when it breaks down. That investment alone tells us something important: marriage has never been regarded, by any civilization worth studying, as a merely private arrangement between two consenting individuals. It has always carried the weight of community, of law, of religion, and of the most fundamental questions about what human beings owe each other and to the generations that will come after them. And yet, for all this universality of practice, marriage remains one of the most stubbornly contested institutions in human experience. It is contested not merely at the level of social policy, where the debates are loud and politically charged, but at the far deeper level of meaning. What is marriage, essentially? Is it a legal contract, a moral covenant, a divine sacrament, or some irreducible combination of all three? Who has the authority to define it, regulate it, and dissolve it: the state, the church, the community, or the couple themselves? These questions have never been fully settled, and they press upon us today with an urgency that older generations may not have fully anticipated.

This book enters those debates from a specific and carefully chosen vantage point: the plural legal and cultural landscape of contemporary Nigeria, and within it the particular experience of the Igbo Catholic communities. Nigeria is not, at first glance, an obvious location

from which to engage questions of universal significance about the nature of marriage. But it is, on reflection, an extraordinarily illuminating one. Nigeria is a country in which customary law, statutory law, Islamic personal law, and Catholic canon law all claim simultaneously to govern the conjugal lives of different sections of the same national population, and in which those claims frequently collide in ways that cause real and sometimes severe harm to ordinary men, women, and children who are simply trying to marry and to sustain their families. To study marriage in Nigeria is to study, in concentrated and unusually visible form, the conflicts that arise wherever different normative traditions are forced to share the same social space without adequate mechanisms for mutual recognition and integration.

The central argument of this book is that marriage, properly understood across its full range of dimensions, is a unified human reality: simultaneously a legal contract, a communal covenant, and for the baptized, a sacrament. These three dimensions are not competing alternatives between which a choice must be made. They are complementary aspects of a single institution that no one of them, taken alone, can adequately describe. The contractual dimension captures the enforceability of the conjugal bond and the state's legitimate interest in regulating the family as the fundamental unit of social life. The covenantal dimension captures the moral depth, the communal character, and the sacred accountability of the marriage bond: the fact that it creates obligations not merely between two individuals but between their families, their communities, and, in the African traditional understanding, the ancestral generations that gave those families their identity and their name. The sacramental dimension captures what Christian theology understands to be the ultimate depth of conjugal union: that the marriage of two baptized persons is, in Catholic teaching, an effective sign of

Christ's own covenant of love with the Church, and therefore a channel of divine grace that no merely human authority can dissolve.

The book moves through seven chapters, each of which examines a distinct dimension of this complex whole. Chapter One traces the historical and philosophical foundations of marriage across ancient civilizations and through the emergence of civil marriage as a secular institution, establishing the tripartite contract-covenant-sacrament framework that structures the subsequent analysis. Chapter Two gives sustained and respectful attention to African traditional marriage systems, with particular focus on the Igbo tradition, arguing that the communal, ancestral, and covenantal character of traditional African marriage is not a primitive antecedent to more sophisticated legal forms but a rich normative tradition in its own right, one with genuine structural affinities to both Christian and Islamic understandings of the conjugal bond. Chapter Three examines statutory and civil marriage law in Nigeria, tracing the colonial inheritance of the Marriage Act and the Matrimonial Causes Act, and identifying the persistent tensions that arise when a monogamous, individually-oriented statutory framework is applied in a society whose customary and religious traditions are organized around fundamentally different social and moral premises.

Chapter Four turns to the Catholic canonical tradition, developing the biblical theology of marriage from Genesis through the Pauline letters and the prophetic tradition, and tracing the development of canon law from the medieval Church through the Council of Trent to the 1983 Code. Special attention is given to the encounter between canonical requirements and African customary expectations — particularly the persistent tensions around Bride-price, polygamy, communal involvement, and the possibility of an inculturated marriage celebration. Chapter Five examines Islamic marriage traditions and Muslim family

law, engaging the classical jurisprudence of the major schools alongside the specific expressions of Islamic marriage practice in northern and southern Nigeria, and analyzing the interaction between Islamic personal law, statutory law, and customary systems in the increasingly complex legal environment of postcolonial Nigeria. Chapter Six broadens the comparative lens to examine the full range of conjugal forms; monogamy, polygyny, polyandry, cohabitation, concubinage, and same-sex unions, engaging the feminist debates, religious arguments, legal questions, and social realities that attend each form with the rigour and fairness that the complexity of the subject demands.

Chapter Seven serves as the intellectual culmination of the entire work. Drawing on everything that the preceding chapters have developed, it confronts directly the crisis of multiple marriage celebrations that is the most visible and most practically damaging expression of the fragmentation that this book diagnoses: the situation in which a Nigerian Catholic couple must complete three separate ceremonies, under three separate legal frameworks, at enormous personal, financial, and emotional cost, simply in order to be fully recognized as married by their family, their community, their state, and their Church. The chapter argues that this fragmentation is neither inevitable nor theologically required. It proposes an integrated model of marriage celebration, grounded in the theology of inculturation and in the canonical instruments that already exist within the Code of Canon Law, that is capable of satisfying the demands of civil legality, customary legitimacy, and sacramental validity within a single, coherent, culturally authentic ceremony.

The book is addressed to canonists, civil lawyers, theologians, anthropologists, pastoral ministers, and anyone else who takes seriously the proposition that the way a society orders its most intimate human relationships reflects, and also shapes, its deepest convictions about

justice, dignity, community, and the sacred. Marriage is never just a legal status. It is always also a statement about what human beings are, what they owe each other, and what kind of community they are trying to build. This book is an attempt to think through that statement with the rigour, the honesty, and the pastoral seriousness that the people whose lives it concerns so abundantly deserve.

Chapter One

MARRIAGE AS A HUMAN INSTITUTION: ORIGIN, MEANING AND HISTORICAL DEVELOPMENT

1.1 Introduction

Marriage is among the oldest and most contested institutions in human civilization. Every known society, regardless of the complexity of its social organisation, has developed some recognizable form of it. That simple fact is significant. It tells us that marriage is not a cultural luxury, not a theological afterthought, not a legal convenience invented by states to manage property succession. It is something deeper, something that societies seem to arrive at independently and then proceed to argue about endlessly, refine obsessively, and dismantle only to reconstruct under a different name.

The word "marriage" itself carries so much historical freight that it is nearly impossible to use it without importing at least some assumption about what it means. A Roman lawyer would have understood it as *iustum matrimonium*, a legally recognized union that produced legitimate children and allocated property rights. A medieval canonist would have understood it as a sacrament, indissoluble, ordered toward the procreation and education of children and the mutual support of the spouses. An Igbo elder presiding over a betrothal cer emony would have understood it as a covenant between two families and, through those families, between two communities and the ancestors who underwrite social continuity. None of these understandings is simply wrong. But they are not the same thing.

And the failure to acknowledge those differences has produced, in Nigeria and elsewhere, some of the most intractable conflicts in family law.[1]

This book is an attempt to map that terrain honestly. It takes marriage seriously as a legal category, as a theological reality, and as a social fact. It does not try to adjudicate between these frameworks, though it does not pretend they are equivalent or easily reconciled. What it tries to do is give each tradition, including Igbo customary law, Yoruba and Hausa customary practice, Islamic family law, English-derived statutory law, and Catholic canon law, the rigorous internal account it deserves, while also showing where these systems collide in practice and what that collision costs the individuals caught between them. The focus is Nigeria, but Nigeria can only be understood against the broader comparative background. Marriage law in England evolved over centuries before it arrived on Nigerian shores in a colonial packet. Catholic canon law developed across councils, papal decretals, and scholastic debates long before it encountered Igbo marriage customs. Islamic family law carries within it the history of the Prophet's practice in seventh-century Arabia, the systematic reasoning of four classical schools of jurisprudence, and the political negotiations of postcolonial Muslim states. To understand what happens when all of these meet in Enugu or Kano or Lagos, you need to understand where each of them comes from.

This first chapter lays the foundation. It examines what marriage is, where the concept comes from, how it has been understood across cultures and epochs, and what the major theoretical frameworks have said about its origins. It moves from ancient Mesopotamia through biblical Israel, through classical Greece and Rome, through medieval Europe, to

[1]See generally Jack Goody, *The Development of the Family and Marriage in Europe* (Cambridge University Press, 1983) 1–22; Claude Lévi-Strauss, *The Elementary Structures of Kinship* (Eyre & Spottiswoode, 1969) 29–51.

the emergence of civil marriage as a secular institution, and finally to the international human rights framework that now constitutes the outermost legal boundary within which all domestic marriage law must operate. Subsequent chapters build on this foundation to examine African traditional marriage, statutory marriage, canon law, Islamic family law, plural marriage systems, informal unions, and the central problem of a country in which the same people may be simultaneously subject to three incompatible marriage regimes.

1.2 Conceptual Meaning of Marriage

Defining marriage is harder than it looks. The institution wears too many faces. A definition that captures what marriage means in Islamic law may miss what it means in Igbo customary law. A definition adequate to Roman canon law may be circular when applied to secular civil marriage. What follows is not an attempt to produce a single master definition but to clarify the dominant conceptual frameworks within which marriage has been understood, because the framework one starts from determines nearly every conclusion one reaches about validity, dissolution, capacity, and obligation. At its most basic, marriage is a socially recognized union between persons that creates mutual rights and duties and that is distinguished from other forms of intimate relationship by its public acknowledgment and its legal consequences. Westermarck, whose three-volume study of human marriage remains a foundational reference in the anthropological literature, defined marriage as "a relation of one or more men to one or more women which is recognized by custom or law and involves certain rights and duties both in the case of the parties entering the union and in the case of the children born of it."[2] That

[2]Edward Westermarck, *The History of Human Marriage*, 5th ed (Macmillan, 1925) vol 1, 1–26.

definition is deliberately broad. It does not require monogamy. It does not presuppose consent. It does not specify any particular form of ceremony. And that breadth is its virtue, because it allows comparison across traditions without smuggling in the normative assumptions of any one of them.

Malinowski approached the institution from a functionalist direction. For him, the essential feature of marriage was not the formal ceremony or the legal status but the legitimacy it conferred upon children. Marriage was the institution through which society assigned a father to every child, thereby creating the social structure within which children could be raised and resources allocated across generations.[3] This focus on legitimation rather than ceremony or consent explains why many African customary law systems treat the payment of Bride-price as the juridically crucial act: it is the payment that determines the legal paternity of children born to the union, regardless of whether any formal ceremony has taken place.

The contractual conception of marriage, which dominates secular civil law, views it as a voluntary agreement between two persons that the state recognizes and to which it attaches legal consequences. The state's interest is in ordering family relationships, securing the welfare of children, regulating succession, and preventing social harm from disordered sexual relations. Under this view, marriage is essentially a private agreement elevated to public status. Consent is the formal heart of the institution, and the state stands as the guarantor of the agreement rather than as its maker.

[3]Bronisław Malinowski, *The Family among the Australian Aborigines* (University of London Press, 1913) 1–12.

The covenantal conception, common to both Judeo-Christian theology and certain African traditional frameworks, understands marriage as a commitment that creates a new social unit with obligations extending beyond the two parties themselves. In the Catholic theological tradition, the covenant of marriage is ordered toward the good of the spouses and the procreation and education of children, and this dual purpose is considered inscribed in the nature of the institution itself rather than imposed by law from outside. [4] In many Igbo communities, the covenantal character of marriage is expressed through its ancestral dimensions: a marriage that fails to produce children is experienced as a disruption not only of the couple's personal union but of the family's covenant with its ancestors. These three conceptions, contractual, covenantal, and sacramental, are not mutually exclusive, but they generate very different answers to very practical questions. When can a marriage be dissolved? Who has standing to object to a proposed union? What obligations survive the death of one spouse? What happens to the children when the union breaks down? These are the questions that courts, tribunals, and families must answer every day. And the answer they give depends almost entirely on which conceptual framework they are working within.

1.3 Marriage as Contract, Covenant and Sacrament

The three categories of contract, covenant, and sacrament represent progressively deeper understandings of what marriage is and progressively stronger claims about its social and spiritual weight. They are not three alternative theories between which one must choose. In much of the Catholic theological and canonical tradition, and in the theological

[4]Code of Canon Law (1983) c 1055 §1; Pope John Paul II, *Familiaris Consortio* (22 November 1981) §11.

anthropology that underlies it, they are three dimensions of a single reality that is simultaneously a natural human institution, a moral commitment, and a sacred sign.

Marriage as contract is the foundation. Without the voluntary exchange of consent, there is no marriage in any system of law worth its name. The Roman jurist Modestinus captured this in a definition that would echo through fourteen centuries of Western legal thought: *"Nuptiae sunt coniunctio maris et feminae et consortium omnis vitae, divini et humani iuris communicatio."*[5] Marriage is a joining of man and woman and a sharing of all of life, a communion of divine and human law. The phrase *consortium omnis vitae*, the sharing of all of life, has fascinated canonists and civilians alike because it suggests something considerably richer than a contract for sexual access or property sharing. It points toward a total integration of life that sits uneasily in a purely contractual category.

Marriage as covenant adds the dimension of irrevocability. A contract can be terminated when both parties agree or when one party breaches its terms. A covenant, in the biblical tradition from which the term is drawn, is a binding commitment that creates a new relationship and cannot simply be unwound because the parties change their minds. The prophets of Israel used marriage as an analogy for the covenant between God and the people precisely because of this quality: just as Yahweh does not abandon Israel despite Israel's infidelities, so the marriage bond is meant to endure through difficulty. When the Second Vatican Council described marriage as an "intimate partnership of life and

[5]Gaius, Institutes II.195; Justinian, Digest 23.2.1 (Modestinus): *"Nuptiae sunt coniunctio maris et feminae et consortium omnis vitae, divini et humani iuris communicatio."* See Alan Watson (ed and tr), *The Digest of Justinian* (University of Pennsylvania Press, 1985).

love" established by "an irrevocable personal consent," it was reaching for the covenantal rather than the purely contractual framework.[6]

Marriage as sacrament is the most theologically charged of the three. In the Catholic tradition, following the Council of Trent's definitive teaching, marriage between baptized persons is one of the seven sacraments.[7] What this means, technically, is that the marriage covenant between two baptized Christians is elevated by Christ to the dignity of a sacramental sign, an effective symbol through which God's grace is communicated to the spouses. The immediate practical consequence is enormous: a valid, consummated sacramental marriage is absolutely indissoluble. No human authority, including the Pope, can dissolve it. This is not mere ecclesiastical policy. It is a doctrinal claim about what sacramental marriage is in its very nature.

St Augustine's treatment of the three goods of marriage, *proles*, *fides* and *sacramentum*, children, fidelity, and the sacramental bond, remains foundational to the Catholic understanding.[8] Burke has argued that these three goods should not be understood as three separate benefits that marriage happens to produce but as three intrinsic properties of the marriage bond itself, constitutive of what marriage is rather than merely what it produces.[9] This move from a consequentialist to a constitutive account of marriage's goods has significant implications for how one understands the requirements of valid consent: a person who enters marriage with a positive intention to exclude children, or to exclude

[6]Second Vatican Council, *Gaudium et Spes* (7 December 1965) §48.
[7]Council of Trent, Session XXIV (11 November 1563), Doctrine on the Sacrament of Matrimony and Canon Tametsi. See Norman Tanner (ed), *Decrees of the Ecumenical Councils* (Georgetown University Press, 1990) vol 2, 753–759.
[8]St Augustine of Hippo, *De Bono Conjugali*, ch 3–4, in Philip Schaff (ed), *Nicene and Post-Nicene Fathers*, Series I, vol 3 (Eerdmans, 1956).
[9]Cormac Burke, "Marriage as a Sacrament" (1992) 62 *The Jurist* 1, 4–10.

fidelity, or to treat the bond as revocable, is not merely choosing a bad version of marriage. Under canonical analysis, that person may not be entering into marriage at all.

Witte's comparative study of Western marriage traditions traces the long arc from medieval sacramental theology through Reformation contractualism to modern secular liberalism, arguing that each transformation in the dominant framework for understanding marriage generated a corresponding transformation in what law required and permitted. [10] That arc matters for Nigeria, because Nigerian law has inherited multiple points along it. Statutory marriage law reflects the secular contractualism of Victorian England. Canon law in Nigerian Catholic dioceses reflects the sacramental theology of Trent as developed through the 1983 Code of Canon Law. Customary law in Igboland reflects a covenantal framework that, while not Christian in its origins, shares with the Christian tradition a conviction that marriage creates obligations that are not reducible to the mutual preferences of the spouses.

1.4 Anthropological Theories on the Origin of Marriage

Where did marriage come from? The question is deceptively simple, and the answers anthropologists have offered are various, mutually contradictory, and often ideologically charged. They are worth examining not because any one of them is definitively correct but because each illuminates a different dimension of the institution's social function.

The evolutionary school, represented most influentially by Lewis Henry Morgan, proposed that human societies moved through successive

[10]See Martha Nussbaum, *Sex and Social Justice* (Oxford University Press, 1999) 184–219; John Witte Jr, *From Sacrament to Contract: Marriage, Religion and Law in the Western Tradition*, 2nd ed (Westminster John Knox Press, 2012) 1–30.

stages of sexual organization from promiscuity through group marriage to pair-bonded monogamy.[11] This schema, which Friedrich Engels adapted and radicalized in *The Origin of the Family, Private Property and the State*, presented monogamous marriage as a historically specific institution generated by the emergence of private property: men needed to control women's sexuality in order to ensure that the property they had accumulated would pass to their biological children. [12] Whatever one makes of the political conclusions Engels drew from this analysis, the basic insight that marriage's legal structure reflects and reinforces property interests has proven durable. Bride-price systems, inheritance rules, and the differential treatment of male and female adultery in many legal systems all become more legible once the property connection is acknowledged.

Westermarck's alternative theory rejected the promiscuity hypothesis entirely. He argued, on the basis of cross-cultural evidence, that marriage, understood as a stable union between a man and a woman recognized by the community, was a universal feature of human societies, not a product of any particular stage of economic development. He also argued that the incest taboo, which is the negative boundary that defines who cannot be a marriage partner, was grounded in a natural aversion to sexual relations between persons who had lived in close domestic proximity from early childhood. This "Westermarck effect" has received considerable support from subsequent psychological and evolutionary research, though the debates about its scope and mechanism continue.

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[11]Lewis Henry Morgan, *Systems of Consanguinity and Affinity of the Human Family* (Smithsonian Institution, 1871) 10–38.

[12] Frederick Engels, *The Origin of the Family, Private Property and the State* (International Publishers, 1972) 71–146.

Lévi-Strauss approached marriage as a system of exchange rather than a natural fact. For him, the exchange of women between groups through marriage was the fundamental form of communication and alliance-building in human society, the elementary structure upon which more complex social formations were built. The rules prohibiting marriage within one's own group, the rules specifying whom one may and must marry, and the ceremonies through which marriages were effected were all aspects of a single system of symbolic exchange. This structural analysis has been influential in the anthropological study of African marriage systems, including the Bride-price institutions of Igbo and other Nigerian peoples, where the exchange of goods between families is simultaneously a material transaction and a symbolic negotiation of social relationships.

Jack Goody's comparative work on family and marriage in Europe and Africa introduced the distinction between Bride-price systems and dowry systems as reflecting fundamentally different strategies for the transmission of property across generations. [13] In Bride-price systems, property flows from the groom's family to the bride's family at marriage; this reflects a system in which women are incorporated into the husband's lineage and their labour and reproductive capacity are, in a technical sense, alienated from their natal family. In dowry systems, property flows from the bride's family to the couple or the groom's family; this reflects a different set of inheritance and succession rules. Goody's analysis is valuable because it situates African marriage customs, including Igbo Bride-price, within a global comparative framework rather than treating them as exotic curiosities requiring explanation by reference to some supposed African cultural essence.

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[13]Jack Goody, *Production and Reproduction: A Comparative Study of the Domestic Domain* (Cambridge University Press, 1976) 1–18.

These anthropological theories share a common weakness: they tend to reduce marriage to one of its functions, whether reproductive, economic, or symbolic, and then treat that function as the institution's essence. Marriage is all of these things, but it is also a moral relationship, a spiritual reality, and a legal status, and no single functionalist account can exhaust what it is. The Catholic philosophical tradition, drawing on Aristotle's account of the family as the natural unit of human social life,[14] has insisted that marriage is ordered toward goods, both of the spouses and of children and society, that cannot be reduced to any external function. That insistence is not merely theological sentiment; it reflects a serious philosophical claim about the structure of human flourishing that deserves engagement rather than dismissal.

1.5 Marriage in Ancient Civilizations

1.5.1 Marriage in Mesopotamia

Mesopotamia produced the oldest surviving written law, and marriage occupies a substantial portion of it. The Code of Hammurabi, promulgated by the Babylonian king around 1754 BCE, contains approximately forty provisions dealing with marriage, divorce, adultery, and the disposition of children.[15] These provisions reveal a society in which marriage was understood primarily as a legal and economic arrangement between families rather than as a romantic or sacramental union, though the emotional and domestic dimensions of marriage were certainly not absent from Mesopotamian life. The Code required that a

[14] See Aristotle, *Politics*, Book I, ch 2 (1252b–1253a); also Geoffrey MacCormack, "Scandinavian Realism and the Anthropology of Law" (1970) 16 *Journal of Legal Pluralism* 1, 5.

[15]Martha Roth (ed and tr), *Law Collections from Mesopotamia and Asia Minor*, 2nd ed (Scholars Press, 1997) 23–70 (Laws of Hammurabi §§127–195).

marriage be evidenced by a written contract to be legally binding.[16] Without this document, a woman living with a man had the status of a concubine rather than a wife, with significantly reduced legal rights both during the relationship and upon its dissolution. This requirement reflects the early recognition that marriage's legal consequences are sufficiently important to require formal documentation and public recognition, a principle that has survived, in transformed form, in every modern marriage law system.

The grounds and consequences of divorce under Hammurabi's Code were heavily gendered. A husband could divorce his wife by declaration, paying her whatever the marriage contract specified. If she had been a "bad wife" (the Code uses this phrase without precise definition) he could send her away without payment. [17] A wife who neglected her household duties could be demoted to the status of a servant in her own home while her husband took a second wife. These provisions illuminate both the patriarchal character of Mesopotamian marriage and the ways in which law attempted to balance the husband's dominance with certain protections for the wife, particularly through the marriage contract's financial provisions.

The Code also addressed the situation of captive women taken in war, the rights of priestesses who married, and the legal status of children born to a man's slave concubine.[18] The sophistication of these provisions, dealing with what we would now call conflicts between multiple domestic relationships, attests to the social complexity of Babylonian family life and the law's attempt to manage it. The figure of the concubine in

[16]Ibid §§130–136.
[17]Ibid §§137–140. See also Raymond Westbrook, "Old Babylonian Marriage Law" (PhD thesis, Yale University, 1982) 15–55.
[18]Ibid §§171–174.

Babylonian law is not merely a figure of moral condemnation; she occupies a defined legal position with specific rights and vulnerabilities that the Code attempts to specify.

1.5.2 Marriage in Ancient Egypt

Egyptian marriage differed markedly from the Mesopotamian model in ways that continue to surprise modern students of ancient law. There was no formal marriage ceremony in ancient Egypt, no required religious ritual, and no state registration. [19] A couple was considered married when they set up a household together and were recognized as husband and wife by their community. Egyptian marriage documents, when they existed, were not marriage contracts in the Mesopotamian sense but rather property agreements dealing with the division of assets in case of separation. What is particularly striking is the relatively strong legal position of Egyptian women compared to their counterparts in most other ancient societies. Egyptian women could own property independently, enter contracts in their own names, pursue litigation, and inherit on equal terms with men.[20] The Greek historian Diodorus Siculus, observing Egypt in the first century BCE, found the relationship between Egyptian husbands and wives so different from the Greek norm that he felt compelled to comment on it, noting that Egyptian wives had considerably more authority within the household than Greek convention would have permitted.[21]

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[19]John Baines and Jaromír Málek, *Atlas of Ancient Egypt* (Facts on File, 1980) 196; Aylward Blackman, "On the Position of Women in the Ancient Egyptian Hierarchy" (1921) 7 *Journal of Egyptian Archaeology* 8, 12–18.

[20]Fekri Hassan, "Town and Village in Ancient Egypt" in John Ucko et al (eds), *Man, Settlement and Urbanism* (Duckworth, 1972) 551.

[21]Diodorus Siculus, *Library of History*, Book I, §27 (C H Oldfather tr, Loeb Classical Library, 1933).

The practical flexibility of Egyptian marriage, its informal constitution and its property-based dissolution, reflects a society in which marriage was understood as a domestic and economic partnership rather than as a status created and regulated by religious or state authority. This informality did not mean Egyptian marriages were unstable or taken lightly; the evidence from papyri and other sources suggests that Egyptian families placed high value on marital fidelity and the welfare of children. But it does mean that the formal legal apparatus surrounding marriage was considerably lighter than what we find in Mesopotamia, in biblical Israel, or in the later Roman tradition.

1.5.3 Marriage in Greece

Classical Athenian marriage was, from a modern perspective, deeply unequal. The system was built around the concept of *enguē*, the betrothal agreement between the bride's father (or guardian) and the prospective husband. [22] The bride herself was not a party to this agreement. She was, in the legal terminology of Athenian family law, given (*ekdidosthai*) by her guardian to her husband. The marriage was completed by the transfer of the bride to her husband's household (*ekdosis*), and the primary legal purpose of the institution was to produce legitimate children who would inherit the family's property and continue its religious obligations. The wife's legal capacity in classical Athens was severely restricted. She could not enter contracts independently, could not own significant property, and was perpetually under the guardianship of a male relative even after her husband's death. [23] Aristotle's theoretical account of these arrangements, which treated women as naturally deficient in deliberative capacity and therefore naturally subordinate to

[22]W K Lacey, *The Family in Classical Greece* (Thames & Hudson, 1968) 100–118.
[23]David Schaps, *Economic Rights of Women in Ancient Greece* (Edinburgh University Press, 1979) 74–88.

male authority in both household and state, provided philosophical justification for what was in practice a system of significant inequality.[24]

The dowry system that accompanied Athenian marriage is significant both economically and legally. The bride brought a dowry (*proix*) from her natal family into the marriage. This dowry was formally the property of the wife, not the husband, though the husband managed it during the marriage. Upon divorce or the husband's death, the dowry was required to be returned to the wife's family of origin. This provision gave the wife's family a continuing financial stake in the marriage and provided the wife with a form of economic security that purely contractual analysis might miss.[25]

Sparta presented a markedly different picture. Spartan women had considerably more freedom than their Athenian counterparts, could own land in their own right, and the Spartan marriage system allowed practices, including certain forms of polyandry in cases where a husband was absent for long periods on military service, that would have been unthinkable in Athens. The contrast between Athens and Sparta illustrates a point that will recur throughout this book: even within a single culture at a single historical period, "marriage" can mean significantly different things depending on the specific community one examines.

1.5.4 Marriage in Rome

Roman law's treatment of marriage is the most directly ancestral to the secular civil law tradition that reaches Nigeria through English common law, and it deserves correspondingly detailed attention. Roman

[24]Aristotle, *Politics*, Book I, ch 12–13 (1259a–1260b).
[25]Plutarch, *Life of Solon* §20, in Bernadotte Perrin (tr), *Plutarch Lives* (Loeb Classical Library, 1914) vol 1.

marriage law underwent substantial development over the roughly twelve centuries from the early Republic to Justinian's codification in the sixth century CE, but certain key concepts remained relatively stable throughout.

The classical Roman definition, preserved in Justinian's Digest in the words of the jurist Modestinus, presents marriage as "the joining of a man and a woman and a sharing of all of life, a communion of divine and human law." The phrase *divini et humani iuris communicatio* is remarkable: it implies that marriage is simultaneously a religious and a legal institution, not reducible to either alone. Classical Roman marriage was not a religious ceremony in the modern sense; the elaborate wedding rituals of Roman practice were social celebrations rather than legally constitutive acts. What created a marriage was the intention of the parties to live together as husband and wife (*affectio maritalis*), combined with the transfer of the woman to her husband's household. The Roman distinction between marriage *cum manu* and marriage *sine manu* is fundamental to understanding the evolution of Roman family law.[26] In the earlier system of marriage *cum manu*, the wife passed entirely into her husband's legal power (*manus*), becoming a legal dependent in his household and losing all connection with her family of origin. By the classical period, marriage *sine manu* had become the dominant form: the wife remained under her father's legal authority (*patria potestas*) or, after her father's death, became legally independent (*sui iuris*). This shift had profound practical consequences: a wife in a *sine manu* marriage retained

[26]Susan Treggiari, *Roman Marriage: Iusti Coniuges from the Time of Cicero to the Time of Ulpian* (Clarendon Press, 1991) 14–20.

control of her own property, could inherit from her natal family, and could dissolve the marriage with relative ease.[27]

Roman law's treatment of divorce was, by the standards of most ancient and many modern societies, strikingly permissive. Classical Roman marriage could be dissolved by either party unilaterally, without judicial intervention, simply by the declaration of the intention to end the union. This ease of divorce did not mean that Roman marriages were unstable in practice, as the evidence from literary and epigraphic sources suggests that long marriages were celebrated and respected. But it did mean that the state's role in marriage dissolution was minimal, a feature that stands in sharp contrast to both the canonical tradition's insistence on indissolubility and the procedural requirements of modern divorce law.[28]

The Roman concept of *iustum matrimonium*, lawful marriage, was also restricted by requirements of status. Roman citizens could only contract lawful marriage with other Roman citizens or with persons to whom the *ius connubii*, the right of intermarriage, had been granted. Marriage between free persons and slaves was impossible; a slave could not contract a legal marriage at all, though the law recognized the stable domestic unions of slaves (*contubernium*) as a social reality even while withholding legal status from them. This is the first appearance in Western legal history of the figure that will recur throughout this book: the union that looks like a marriage, functions like a marriage, and is treated by its participants as a marriage, but that the law refuses to recognize as one.

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[27]John Crook, *Law and Life of Rome* (Thames & Hudson, 1967) 100–110; Treggiari (n 26) 7.

[28]Thomas Wiedemann, *Adults and Children in the Roman Empire* (Routledge, 1989) 20–25.

1.6 Marriage in Biblical Israel

Marriage in biblical Israel cannot be understood apart from the covenantal theology that structures the Hebrew Bible's account of the relationship between God and the people. The narrative in Genesis presents the original human couple as created by God in a relationship of complementarity and intimacy: "It is not good that the man should be alone; I will make him a helper fit for him" (Genesis 2:18).[29] The union of man and woman in marriage is presented not as a social convention or a legal arrangement but as something that corresponds to the deepest structure of human nature as God created it: "Therefore a man leaves his father and his mother and clings to his wife, and they become one flesh" (Genesis 2:24).

The historical practice of marriage in ancient Israel, however, presents a considerably more complex picture. The Hebrew Bible records, without evident condemnation, the polygamous arrangements of the patriarchs and kings. Abraham had Sarah and Hagar; Jacob had Leah, Rachel, and their respective slave women; David had multiple wives; Solomon had seven hundred wives and three hundred concubines, with the text's comment on this reflecting not moral horror but rather the idolatrous consequences of marrying foreign women who brought their gods with them. [30] The legal provisions of the Mosaic law governing marriage reflect an overwhelmingly patriarchal social order. A father could sell his daughter as a slave or arrange her marriage without her consent. A man who seduced or raped an unbetrothed woman was required to pay her father's bride price and marry her without possibility

[29]Genesis 2:18–24; Malachi 2:14–16.
[30]Genesis 29:15–30 (Jacob, Leah and Rachel); 1 Samuel 1:1–2 (Elkanah, Hannah and Peninnah); 1 Kings 11:1–3 (Solomon's seven hundred wives).

of divorce.[31] Deuteronomy 24:1–4 permits a husband to divorce his wife by giving her a written bill of divorcement (*get*) if he finds "some indecency in her," a phrase whose precise meaning was disputed between rabbinic schools and that became the basis for an elaborate system of rabbinic divorce law.[32]

Alongside these patriarchal provisions, the Hebrew Bible also contains sustained reflection on the moral and spiritual dimensions of marriage. The prophetic books use marital imagery to describe the covenant relationship between God and Israel. Hosea's marriage to an unfaithful woman becomes an enacted parable of Israel's infidelity to God. Malachi condemns those who "deal treacherously" with the wives of their youth, explicitly linking marital fidelity with the integrity of the covenant (Malachi 2:14–16). The Song of Songs, whatever its precise allegorical dimensions, presents erotic love and marital devotion as goods in themselves rather than merely as means to procreation.

The institution of levirate marriage, prescribed in Deuteronomy 25:5–10, is particularly important for understanding the social function of Israelite marriage. If a man died without children, his brother was required to marry the widow in order to produce a child who would carry on the dead man's name and inherit his property. This institution, which has close parallels in Igbo customary law's practice of widow inheritance, reveals the extent to which biblical marriage was understood as a covenant not merely between the spouses themselves but between families and, through the families, with the continuing community of the living and the dead.[33]

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[31]Louis Epstein, *Marriage Laws in the Bible and Talmud* (Harvard University Press, 1942) 15–25. See also Deuteronomy 22:28–29; Exodus 22:16–17.
[32]Deuteronomy 24:1–4.
[33]Louis Epstein (n 31) 50–80; Mordecai Friedman, *Jewish Marriage in Palestine: A Cairo Geniza Study* (Jewish Theological Seminary, 1980) vol 1, 1–40.

The post-exilic period saw significant development in Jewish marriage law, as contact with Babylonian and later Hellenistic practice introduced new legal concepts and as the rabbinic tradition developed the detailed system of matrimonial law recorded in the Talmud. Epstein's comprehensive study of biblical and talmudic marriage law documents this development in detail, tracing the tension between the early practice of polygamy and the gradually emerging rabbinic preference for monogamy that culminated, in the Ashkenazic tradition, in the formal prohibition of polygamy attributed to Rabbi Gershom around 1000 CE.[34]

1.7 Marriage in Medieval Europe

The medieval European treatment of marriage represents one of the most complex and consequential developments in the history of the institution. It was in this period that the Catholic Church, working through a growing body of canonical legislation and systematic theology, established the framework for understanding marriage that would define Western Christian civilization's approach to the institution for centuries.

The process was neither smooth nor swift. In the early medieval period, marriage remained largely a private and family matter, with the Church's role limited primarily to blessing the union and prohibiting marriages within specified degrees of kinship. The proliferation of canonical prohibitions on consanguinity in this period extended the forbidden degrees far beyond what Roman law or biblical precedent required, and Goody has argued, controversially, that this extension served the Church's institutional interest in preventing the consolidation

[34] Louis Epstein, *Marriage Laws in the Bible and the Talmud* (Harvard University Press, 1942), 25–33.

of family property by ensuring that the absence of close heirs increased the likelihood of property being donated to ecclesiastical institutions.

The decisive development in medieval marriage law was the Church's gradual assertion that marriage was a sacrament, and that jurisdiction over matrimonial disputes therefore belonged to ecclesiastical courts rather than secular tribunals.[35] By the twelfth century, the canon lawyers, working from the foundational texts of Gratian's *Decretum* and the subsequent decretal collections, had produced a sophisticated and internally consistent theory of marriage that would remain the framework for Western Christian marriage law until the Reformation. The key elements of this theory were: consent alone, not cohabitation or sexual consummation, as the act that created the marriage bond; the indissolubility of consummated sacramental marriage; the prohibition of marriage within certain degrees of kinship; and the requirement of canonical form for validity.

The Fourth Lateran Council of 1215 introduced the requirement that marriages be publicly announced through the calling of banns on three successive Sundays before the ceremony, a requirement designed to enable persons with knowledge of impediments to come forward and prevent invalid marriages from being contracted. [36] This public notice requirement is one of the most durable contributions of medieval canon law to modern marriage practice: it survives, in secularized form, in the notice requirements of most civil marriage laws, including the Nigerian Marriage Act. The Council of Trent in 1563 addressed the problem of

[35]James Brundage, *Law, Sex and Christian Society in Medieval Europe* (University of Chicago Press, 1987) 1–80; R H Helmholz, *Marriage Litigation in Medieval England* (Cambridge University Press, 1974) 1–28.

[36]Fourth Lateran Council (1215) Canon 51; Second Council of Lyon (1274). See Norman Tanner (ed), *Decrees of the Ecumenical Councils* (Georgetown University Press, 1990) vol 1.

clandestine marriages, secret unions that satisfied the canonical requirement of consent but were contracted without witnesses, public announcement, or priestly presence, and that had therefore created enormous practical difficulties for courts trying to establish whether a valid marriage existed. The Tridentine decree *Tametsi* required that a valid marriage must be contracted before the parties' own parish priest and two witnesses. This canonical form requirement is the ancestor of the modern statutory requirement that marriages be solemnized before an authorized official with specified witnesses.

Brundage's monumental study of law, sex, and Christian society in medieval Europe demonstrates the extraordinary reach of canonical marriage jurisdiction in this period. Questions of impediment, validity, nullity, and separation were all within the Church's exclusive competence. The secular courts dealt with the property consequences of marriage, particularly questions of dower and inheritance, but the validity of the marriage itself was a matter for the ecclesiastical tribunals. This dual jurisdiction, with the Church controlling the personal status and the secular courts controlling the property consequences, created tensions and conflicts that medieval lawyers negotiated with considerable ingenuity and that were never fully resolved before the Reformation shattered the unified canonical system.

The Reformation's treatment of marriage was theologically complex and legally revolutionary. Luther's denial of marriage's sacramental character and his insistence that it was a worldly matter to be governed by secular authority transferred jurisdictional control from ecclesiastical to civil courts in Protestant territories.[37] Calvin's consistory

[37]John Witte Jr, *From Sacrament to Contract* (n 10) 42–120; Martin Luther, *The Estate of Marriage* (1522), in Walther Brandt (ed), *Luther's Works* (Fortress Press, 1962) vol 45, 13–49.

in Geneva developed an elaborate system of matrimonial discipline that combined ecclesiastical supervision with civil enforcement. The English Reformation, which kept much of the structural framework of Catholic canon law while removing papal authority, produced yet a third model. The result, by the seventeenth century, was that Europe contained at least three incompatible systems of marriage law, a situation that has close analogies with the contemporary Nigerian situation in which statutory, customary, and canonical systems operate in parallel and often in conflict.

1.8 The Emergence of Civil Marriage

Civil marriage, as a legal institution entirely separate from religious ceremony and subject exclusively to secular state authority, is a relatively recent invention. Its emergence is inseparable from the Enlightenment's reconception of the state as the source of all legally binding obligations and from the political revolutions that displaced established churches from their control of vital records and personal status. Lord Hardwicke's Marriage Act of 1753 in England was one of the earliest statutory attempts to bring marriage under systematic state supervision. [38] Before its enactment, English marriage law was a confusing mixture of canonical requirements and social custom, with "irregular" marriages, those contracted without banns or license and outside the Church of England, occupying an uncertain legal position. The Act's primary purpose was to prevent clandestine marriages, particularly those of minors, by requiring parental consent for the marriage of persons under twenty-one and mandating that all marriages (with specified

[38]Marriage Act 1753 (Lord Hardwicke's Act) 26 Geo II c 33 (England); see Rebecca Probert, *Marriage Law and Practice in the Long Eighteenth Century: A Reassessment* (Cambridge University Press, 2009) 1–50.

exceptions for Quakers and Jews) be solemnized in the Church of England with prior publication of banns or a licence.

The decisive step toward fully secular civil marriage was taken in France. The Civil Constitution of the Clergy in 1790 and the subsequent legislation of the Revolutionary period stripped the Church of its role in registering marriages and made civil registration the legally constitutive act.[39] The Napoleonic Code of 1804 consolidated this: marriage was a civil contract, solemnized before the civil registrar, and religious ceremonies had no legal effect whatsoever. The couple might choose to have a religious blessing after the civil ceremony, but the civil ceremony was the marriage. This model, sometimes called the *mariage civil obligatoire*, spread through Napoleon's conquests and subsequent influence across much of continental Europe and through French colonial administration to parts of Africa.

England took a more gradualist approach. The Marriage Act of 1836 created a system of civil marriage solemnization before a superintendent registrar, making it possible for couples to marry without any religious ceremony. This was not a requirement of civil marriage for all but an option alongside the existing system of Anglican church marriage and the already recognized forms of Quaker and Jewish marriage. The 1836 system, substantially continued in the Marriage Act 1949, is the direct ancestor of the statutory framework that British colonial administration introduced to Nigeria. The emergence of civil marriage as a genuinely alternative institution rather than merely a registration system for religious marriages was accompanied by important changes in the substantive law of marriage, particularly regarding divorce. For as long as marriage was understood primarily as a sacramental institution, divorce

[39]Marriage Act 1836 (UK) 6 & 7 Will IV c 85; Civil Constitution of the Clergy (France, 1790); Code Napoléon (1804) arts 63–76.

in the sense of dissolution of the marriage bond was theologically impossible and legally unavailable. The Matrimonial Causes Act 1857 in England established a divorce court for the first time, making it possible for English couples to divorce by judicial decree rather than only by the enormously expensive and socially exclusive procedure of a private Act of Parliament.[40] This development, and the steady extension of divorce grounds throughout the twentieth century, represents the full working-out of the contractualist logic of civil marriage: if marriage is a contract, contracted by consent, it can in principle be dissolved by the parties' agreement or by one party's breach.

1.9 Marriage and International Human Rights Law

The development of an international human rights framework for marriage since 1948 has added a new layer of legal normativity that operates above domestic legal systems and in principle constrains what states may do by way of marriage legislation. For Nigerian law, this framework is particularly important because it provides an external benchmark against which the compatibility of customary, statutory, and canonical marriage practices can be assessed.

The Universal Declaration of Human Rights of 1948 affirms in article 16 that men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. It further provides that marriage shall be entered into only with the free and full consent of the intending spouses, and that the family is the natural and fundamental group unit of society and is entitled to protection by

[40]Marriage Act 1949 (UK) s 2 (consent and capacity); Matrimonial Causes Act 1973 (UK) s 1 (grounds for divorce). See also Rebecca Probert, *Family Law in England and Wales* (Hart Publishing, 2012) 1–30.

society and the State.[41] The International Covenant on Civil and Political Rights of 1966 elaborated on these provisions in article 23, recognizing the right of men and women of marriageable age to marry and found a family, requiring that no marriage be entered into without the free and full consent of the intending spouses, and requiring states to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. [42] This equality requirement has significant implications for marriage systems that historically imposed substantially different rights and obligations on husbands and wives, including both traditional customary law systems and those aspects of Islamic family law that treat the sexes differently in relation to divorce.

The Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages of 1962 specifically addressed the problems of forced marriage and child marriage, requiring states to establish a minimum age for marriage and to require registration of marriages. [43] The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of 1979 goes further, requiring states to eliminate discrimination in relation to marriage and family relations and specifically to ensure on a basis of equality of men and women: the same right to enter into marriage; the same right freely to choose a spouse; the same rights and responsibilities during marriage and

[41]Universal Declaration of Human Rights (adopted 10 December 1948, UNGA Res 217A(III)) art 16(1)–(3).
[42]International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 23(2)–(4); International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3, art 10.
[43]Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (adopted 7 November 1962, entered into force 9 December 1964) 521 UNTS 231, arts 1–3.

at its dissolution; and the same rights for both spouses in respect of the ownership, management, enjoyment and disposition of property.[44]

For African states, including Nigeria, the Maputo Protocol of 2003 is particularly significant. It requires state parties to ensure that women and men enjoy equal rights and are regarded as equal partners in marriage, and specifically prohibits child marriage and requires minimum ages of eighteen years for marriage.[45] Nigeria has ratified both CEDAW and the Maputo Protocol, creating binding international legal obligations that sit in considerable tension with aspects of both customary marriage practice and Islamic family law as currently applied in many Nigerian states. The Nigerian constitutional framework adds a domestic dimension to these international obligations. Section 42 of the 1999 Constitution prohibits discrimination on grounds of sex, among other categories.[46] The practical application of this provision to marriage has been contested and underdeveloped in Nigerian jurisprudence, but it provides a constitutional foundation for challenges to marriage rules that discriminate between men and women without adequate justification. The tension between this constitutional norm, the customary law systems that the Constitution simultaneously protects, and the Islamic law that is applied in the Sharia courts of the northern states represents one of the central unresolved

[44] Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13, arts 16(1)(a)–(f); African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 1520 UNTS 217, art 18(3).

[45]Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) (adopted 11 July 2003, entered into force 25 November 2005) art 6.

[46]Constitution of the Federal Republic of Nigeria 1999 (as amended) s 42 (freedom from discrimination); Marriage Act (Nigeria) Cap M6, Laws of the Federation of Nigeria 2004, s 3; Matrimonial Causes Act (Nigeria) Cap M7, Laws of the Federation of Nigeria 2004.

problems of Nigerian family law, a problem that this book returns to at several points.

Witte has argued that the trajectory of Western marriage law, from sacrament through contract to human rights, has produced a system that is simultaneously more protective of individual autonomy and less capable of sustaining the social conditions within which marriage can flourish. [47] The autonomy framework of human rights law makes it difficult to impose any particular model of marriage on individuals who prefer something different, but it also makes it difficult to sustain the social expectations and institutional supports that give marriage its social weight and stability. This tension, between individual freedom and social coherence in marriage law, is not uniquely Western. It runs through every marriage system examined in this book and is felt with particular acuity in societies like Nigeria where multiple competing marriage traditions intersect and the state must decide which of them to recognize, regulate, or restrict.

1.10 Conclusion

Marriage is simultaneously universal and particular. Every human society has it in some form; no two societies have it in exactly the same form. What they share is the recognition that the union of persons in an intimate, exclusive or at least primary domestic partnership creates social facts, including children, property claims, obligations of support, and kinship relationships, that cannot be left to the merely private arrangements of the individuals concerned. Society, through its law, its religion, or its custom, must take a position on which such unions it will

[47] Witte (n 10) 295–332; John Eekelaar, *Family Law and Social Policy*, 2nd ed (Weidenfeld & Nicolson, 1984) 1–25.

recognize, which it will permit, which it will protect, and which it will dissolve.

The historical survey in this chapter has shown that the positions societies have taken vary enormously in their substance while sharing certain structural features. The requirement of public recognition or registration, the regulation of prohibited degrees of relationship, the allocation of rights and duties between spouses, the provision for children of the union, the management of dissolution, all of these appear across virtually every marriage law system even as the specific rules diverge sharply. That structural commonality explains why comparative legal analysis of marriage is possible and productive. The substantive diversity explains why it is also difficult and why importations from one system to another so often create unexpected problems. Nigeria's situation, in which statutory marriage law derived from English colonial legislation, customary marriage law reflecting the practices of hundreds of distinct ethnic communities, Islamic family law applied in the Sharia courts of twelve northern states, and Catholic canon law operative in the lives of tens of millions of Nigerian Christians all exist simultaneously and in frequent conflict, is unusual in degree but not in kind. All pluralistic legal systems face versions of this problem. What makes the Nigerian situation particularly pressing is the combination of scale (over two hundred million people subject to these overlapping systems), social significance (marriage and family disputes are the most common source of litigation in Nigerian courts), and the depth of the underlying cultural and religious commitments that make simple harmonization politically unacceptable even where legally possible.

The chapters that follow work through each of these systems in detail before confronting the questions of conflict, harmonization, and reform that arise when they meet in the lives of actual Nigerian families.

The argument that emerges is not that any one of these systems is simply correct and the others mistaken, though the text will not pretend to be neutral on every question. The argument is rather that an honest understanding of what each system actually teaches, historically and theologically and legally, is the necessary condition for any serious conversation about what Nigerian marriage law should look like in the twenty-first century. That conversation has been too long delayed, and its delay has cost real people, mostly women and children, real harm.

Chapter Two

TRADITIONAL MARRIAGE IN AFRICA

2.1 Introduction

To write about traditional marriage in Africa is to write about something that has never been one thing. Africa is not a country. It is a continent of over fifty sovereign states, several thousand distinct ethnic communities, and a range of social, ecological, and historical experiences so diverse that generalisation is almost always partially false. The temptation to speak of "African marriage" as though it were a single institution with uniform characteristics has produced some of the worst scholarship on the continent, as well as some of the most damaging colonial legislation. This chapter resists that temptation while still maintaining that certain broad features characterise traditional marriage institutions across a wide range of African societies and that these features are sufficiently coherent to constitute a recognisable tradition worth studying on its own terms.[48]

That tradition is embedded in a particular understanding of the human person and of the human community. In most African traditional thought, the individual is not the atomistic, self-defining subject of liberal political philosophy but a relational being whose identity is constituted by membership in a web of relationships extending across family, lineage, community, and the community of ancestors. Marriage, in this

[48]Kalu Ogba, *Igbo Religion and Societal Regulations* (Fourth Dimension Publishers, 1999) 34–41; John Mbiti, *African Religions and Philosophy*, 2nd ed (Heinemann, 1990) 130–145.

framework, is not simply a private arrangement between two consenting adults. It is a social event of the first order, one that creates new relationships between kinship groups, reconstitutes the social fabric, and renews the community's bond with its ancestors. Mbiti's famous formulation, that in African thought "I am because we are, and since we are, therefore I am," points toward the ontological foundation from which African marriage institutions grow.[49]

This does not mean that individuals in African traditional societies had no voice in the selection of their spouses or no emotional investment in their marriages. The ethnographic literature is full of evidence to the contrary. What it means is that the social framework within which individual choices were made, and within which marriages were constituted and sustained, was fundamentally communal rather than individualist. The community had a stake in every marriage, exercised through the structured involvement of elders, lineage heads, and ancestral sanctions, and that stake was not merely sentimental but constitutive. A marriage that the community did not recognise was not a marriage at all; it was, at best, a private arrangement whose legal and spiritual consequences were deeply uncertain.[50]

This chapter examines African traditional marriage through several lenses. It begins with a general account of the conceptions of marriage common to a wide range of African societies, then develops a detailed analysis of Igbo traditional marriage, the tradition most directly relevant to the Nigerian Catholic context with which much of this book is

[49]Mbiti (n 1) 141; the formulation *"I am because we are"* is discussed at 108–109.

[50] Emefie Ikenga-Metuh, *African Religions in Western Conceptual Schemes* (Imico Publishers, 1985) 27–33; also Bolaji Idowu, *African Traditional Religion: A Definition* (SCM Press, 1973) 175–181.

concerned. It then examines Yoruba, Hausa, and Fulani marriage traditions in order to establish a comparative base within Nigeria itself before considering the broader questions of colonialism, Christianity, and contemporary challenges that have transformed traditional marriage institutions throughout the continent. Throughout, the chapter reads traditional African marriage as a coherent normative tradition rather than as a collection of ethnographic curiosities, while remaining attentive to its internal diversity and to the legitimate criticisms that human rights scholarship, feminist theory, and Christian theology have directed against specific practices within that tradition.

2.2 African Traditional Conceptions of Marriage

The most fundamental characteristic of African traditional marriage is its communal constitution. Where Western civil law typically requires only the consent of two competent adults witnessed by a state official, African traditional marriage characteristically requires the active participation and consent of two family groups. The spouses are, in a meaningful sense, less the primary parties to the transaction than the most visible representatives of communities that have decided, after careful investigation and negotiation, to enter into a new relationship with each other. This does not mean that the spouses' consent was irrelevant; in most traditions it was both morally important and practically necessary. But it situates that consent within a broader framework of communal agreement and communal interest that transforms the meaning of the act.[51]

A second characteristic is the centrality of children to the purposes of marriage. African traditional societies, operating without the social

[51]Victor Uchendu, *The Igbo of Southeast Nigeria* (Holt, Rinehart & Winston, 1965) 50–58; Isaac Olawale Albert, "Perspectives on the Igbo Custom of Bride Wealth" (1999) 21 *Journal of African Studies* 11, 12–18.

welfare systems and insurance mechanisms of modern states, depended on children for the continuation of family lines, the care of elderly parents, the maintenance of ancestral rituals, and the reproduction of social life across generations. Marriage was the primary mechanism through which children were produced and allocated to social groups. The allocation of legal paternity over children, not merely the regulation of sexual access, was the juridically crucial function of marriage in most African customary law systems. Bride-price payment, which is the most widely misunderstood feature of African marriage to outside observers, makes sense primarily in this context: it is not a purchase price for the bride as a person but a juridical act that transfers the right of paternity over her future children from her natal lineage to her husband's lineage, with all the rights and obligations that legal paternity entails.[52]

A third characteristic is the spiritual dimension of African traditional marriage. In most African traditional cosmologies, the community of the living is not the only community that matters. The ancestors, the recently dead who have not yet completed their transition to the spirit world and who retain an active interest in the welfare of their descendants, are participants in the social life of the community. Marriage affects the ancestors because it concerns the continuation of the lineage, the performance of ancestral rituals, and the quality of the relationships between families that the ancestors founded. A marriage that violates ancestral norms, whether by crossing forbidden boundaries of kinship or

[52]Jack Goody and Stanley Tambiah, *Bridewealth and Dowry* (Cambridge University Press, 1973) 1–30; Nna-Emeka Obiora, "Igbo Bridewealth and its Juridical Significance" (2003) 14 *African Journal of International and Comparative Law* 200, 205–212.

by failing to observe the proper ceremonial forms, risks ancestral displeasure and its consequences for the wellbeing of the community.[53]

These three characteristics, communal constitution, centrality of children, and spiritual embeddedness, distinguish African traditional marriage from the purely contractual model of modern civil law and bring it closer to what Chapter One described as a covenantal model of marriage. They also generate specific legal institutions and practices, including Bride-price, levirate succession, widow inheritance, female husbandry in certain societies, and the complex of ceremonial acts through which marriages are constituted, that cannot be adequately understood by reference to the categories of either Western civil law or Catholic canon law alone. They require a framework of analysis that takes African customary law seriously as a legal system in its own right, capable of internal development and principled reform, rather than as a defective approximation of something else. This is the analytical posture adopted in this chapter and maintained throughout the rest of the book.

2.3 Marriage as Communal Covenant in African Cosmology

The concept of covenant, encountered in Chapter One primarily through the lens of Hebrew biblical theology and the Catholic canonical tradition, finds a powerful and independent expression in African traditional marriage. The African covenantal model of marriage differs from the biblical one in its theological foundations but shares with it the core conviction that marriage creates obligations that are not reducible to the preferences of the parties, that extend beyond the two spouses to encompass their families and their communities, and that are underwritten

[53]Mbiti (n 1) 130–145; Oyèrónkẹ́ Oyěwùmí, *The Invention of Women: Making an African Sense of Western Gender Discourses* (University of Minnesota Press, 1997) 31–52.

by sacred powers whose displeasure with violations of marital obligations has real consequences. This parallel, which is not accidental but reflects the fact that both traditions have been shaped by the same fundamental human insight about the nature of committed conjugal union, is one of the most productive points of contact for theological dialogue between African tradition and Christian marriage theology.[54]

In Igbo cosmology, the world of the living is bound to the world of the ancestors (*ndi ichie*) and to the world of the unborn through the institution of the lineage. The lineage is not merely a genealogical fact but a moral and spiritual community that persists across generations and that has both rights and obligations in relation to every marriage contracted by any of its members. When a family negotiates a marriage for one of its sons, it is acting not only on its own behalf but on behalf of the entire lineage, including those ancestors whose memory the lineage maintains and those future descendants whose existence the lineage hopes to secure. Marriage is, in this framework, a covenant between two lineages that is witnessed and underwritten by the ancestors of both, giving it a dimension of sacred obligation that no purely civil or contractual analysis can capture.[55]

The covenantal character of African traditional marriage has practical implications that reach into questions of validity, dissolution, and the consequences of breach. A marriage that has been properly constituted through the full performance of the required ceremonies and the payment of the agreed Bride-price is not simply a personal status

[54]Francis Arinze, *Sacrifice in Ibo Religion* (Ibadan University Press, 1970) 45–62; Ogbu Kalu, *The Embattled Gods: Christianization of Igboland, 1841–1991* (Minaj Publishers, 1996) 78–91.

[55]Kalu (n 7) 80–84; also Emeka Okafor, *Igbo Customary Law and Marriage* (University of Nigeria Press, 2002) 15–30.

attaching to two individuals; it is a social fact embedded in a web of inter-family relationships and ancestral obligations that the parties cannot simply unwind by agreement. When such a marriage breaks down, the consequences ripple outward through both families in ways that must be managed by processes of communal renegotiation rather than by the simple judicial decree that suffices to dissolve a statutory marriage. The Nigerian courts have repeatedly encountered the inadequacy of the statutory dissolution model when applied to customary marriages, and some of the most interesting jurisprudential developments in Nigerian family law have involved the courts' attempts to give legal effect to the communal dimensions of customary marriage within a statutory framework designed for a very different conception of what marriage is.[56]

This covenantal understanding also illuminates the African marriage institutions that most puzzle Western observers. Levirate succession, the practice by which a brother of the deceased husband assumes marital responsibilities toward the widow, is understood within the African covenantal framework not as the widow's forced remarriage but as the continuation of the covenant between two lineages in the face of the death of one party. The widow is not simply a piece of property transmitted along with the husband's other assets; she is a person whose relationship with her husband's lineage continues because the covenant between the two families does not expire with the husband's death, since it was never merely a personal obligation between two individuals but a sacred bond between two communities. The children she bears to the levir are legally children of the deceased husband and carry on his lineage,

[56] Nwando Achebe, *The Female King of Colonial Nigeria: Ahebi Ugbabe* (Indiana University Press, 2011) 12–25; Ifi Amadiume, *Male Daughters, Female Husbands: Gender and Sex in an African Society* (Zed Books, 1987) 40–72.

fulfilling the primary purpose for which the original covenant was established.

2.4 Structure of Igbo Traditional Marriage

Igbo traditional marriage is one of the most elaborately structured and carefully regulated of Nigerian customary marriage systems. Its complexity reflects the seriousness with which Igbo society regards marriage as a social institution and the multiple social functions that marriage is expected to serve simultaneously: the alliance of two-family groups, the legitimate production of children for the continuation of both lineages, the creation of a new domestic unit capable of sustaining itself economically, and the renewal of the community's covenant with its ancestors. A successful Igbo traditional marriage is not contracted at a single moment but through a process that unfolds over weeks or months and that involves multiple distinct stages, each with its own ceremonial requirements and legal significance.[57]

The general structure of Igbo traditional marriage may be summarised as follows: preliminary investigation and family approval (*iju ese*); formal introduction of the families; payment of Bride-price (*ime ego*); the wine-carrying ceremony (*igba nkwu nwanyị*); and the transfer of the bride to her husband's household. Each of these stages has its own requirements, its own participants, and its own legal consequences. The failure to complete any of the required stages in proper form can affect the legal validity of the marriage under customary law, particularly in

[57]Okafor (n 8) 15–30; Uchendu (n 4) 51–55; Christopher Ogbalu, *Omenala Igbo: The Book of Igbo Custom* (University Publishing Company, 1974) 88–102.

relation to the allocation of paternity over children and the entitlement to return of Bride-price in the event of dissolution.[58]

2.4.1 Inquiry and Family Investigation

The process of Igbo traditional marriage begins long before any formal contact between the two families. When a young man has identified a woman, he wishes to marry, the first step is not for him to approach the woman directly but for his family to make discreet inquiries about her family. The Igbo term for this preliminary investigation, *iju ese*, meaning literally to ask questions or to make inquiries, captures the essentially investigative character of this stage. The inquiry is directed primarily at three sets of questions: the family's general reputation in the community, the absence of hereditary diseases or stigmatised conditions that might affect children of the union, and the absence of any disqualifying circumstances such as membership of the *osu* caste, persons dedicated to a deity and their descendants, or a history of family conflict with the prospective husband's lineage.[59]

This investigative process is understood not as mere social convention but as a matter of serious practical and spiritual importance. The Igbo conviction that character and social position run in families, and that the quality of the wife's family will be reflected in the quality of the children she bears, gives the preliminary investigation a significance that goes beyond the merely practical. A family that discovers, after undertaking the *iju ese*, that the prospective bride's family has a history of mental illness, epilepsy, leprosy, or other stigmatised conditions, or that they are *osu*, will typically withdraw from the proposed marriage despite

[58]Obiora (n 5) 203; Okafor (n 8) 17–18.

[59]Ogbalu (n 10) 88–91; Uchendu (n 4) 52.

the personal wishes of the young couple. This communal veto, which strikes observers shaped by liberal individualism as an unacceptable intrusion on individual autonomy, is experienced within the Igbo framework as a responsible exercise of the family's obligations to its members, to its ancestors, and to the future children whose lineage membership will be determined by the outcome of the marriage.[60]

2.4.2 Bride-price and Juridical Significance

Bride-price (*ime ego* or *ịkwụ ọla* in Igbo) is the most juridically significant element of Igbo traditional marriage. Its payment is the act that constitutes the marriage in law; without it, the union of a man and a woman, however celebrated socially and however long sustained in practice, has no legal standing under Igbo customary law. This means that children born to a woman before Bride-price has been paid for her are legally affiliated to her father's lineage, not to the man with whom she lives, a fact with profound practical consequences for inheritance, lineage membership, the performance of ancestral rituals, and the distribution of property upon the death of either parent.[61]

The Bride-price is paid by the groom's family to the bride's family and consists of money, goods, or a combination of both, the precise composition and amount varying by community, the respective standing of the two families, and the woman's level of education and social achievement. It is important to be precise about what Bride-price is and what it is not. It is not a purchase price for the bride as a person; to characterise it in those terms is to commit the error of applying the categories of commodity exchange to a transaction that operates within

[60]Okafor (n 8) 17–18; also T O Elias, *The Nature of African Customary Law* (Manchester University Press, 1956) 68–91.

[61]Obiora (n 5) 206–209; Goody and Tambiah (n 5) 3–8.

an entirely different symbolic and juridical framework. It is a juridical act that establishes a set of rights and obligations between two lineages: the right of the husband's lineage to the bride's domestic partnership and the legal paternity of her children, in exchange for the obligation to care for and support the bride with the dignity appropriate to her status as wife, and to maintain the reciprocal relationship of mutual assistance and respect between the two families.[62]

The juridical consequences of Bride-price payment extend through time and beyond the immediate parties. They determine the lineage membership of children, the entitlement of the wife to support and maintenance, the obligation of the husband's family to perform proper funeral rites for the wife upon her death, and the right of the wife's family to reclaim the Bride-price in the event of the dissolution of the marriage, particularly where the dissolution is attributable to the fault of the husband's family. The partial or total return of Bride-price (*ikpọ mmadụ aka*) is, in most Igbo communities, the act that legally dissolves the marriage under customary law; without it, the woman remains legally the wife of her husband's lineage and any children she bears to another man are legally affiliated to her husband rather than to their biological father. This feature of Igbo customary marriage law has generated considerable difficulty in the Nigerian courts, which have sometimes been called upon to determine the legal paternity of children born to women who have left their husbands but whose Bride-price has never been returned.[63]

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[62]Marriage Act (Nigeria) Cap M6, Laws of the Federation of Nigeria 2004, s 46; Okafor (n 8) 22–26.

[63]Obiora (n 5) 208–210; Goody and Tambiah (n 5) 5–10.

2.4.3 Wine Carrying Ceremony

The wine-carrying ceremony (*igo mmanya* or *igba nkwu nwanyị*) is the most publicly visible and symbolically resonant element of Igbo traditional marriage. It is in this ceremony that the bride publicly identifies her husband from among the assembled guests by carrying a cup of palm wine to him and presenting it for him to drink. The act is understood simultaneously as the public expression of the bride's consent to the marriage and as the moment of her formal transfer from her father's household to her husband's household, the visible enactment of the transition from one lineage to another that is the social core of the Igbo marriage process.[64]

The ceremony typically involves large numbers of invited guests from both families, elaborate feasting, music and dancing, and the formal introduction of the bride to her husband's family members. The sequence of events varies by community but generally includes the formal reception of the bride's family by the groom's family, the presentation of gifts, the public announcement of the Bride-price payment, and the wine-carrying act itself. In some communities, the bride is first led to her father, who drinks from the cup, before she proceeds to identify her husband; this sequence symbolises the formal transfer of guardianship from father to husband and is understood as an act of the father's blessing as well as of the bride's consent. The ancestral dimension of the ceremony is expressed through the libation of palm wine to the ancestors before the drinking begins, a practice that formally includes the ancestors as witnesses to the covenant being established.[65]

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[64]Ogbalu (n 10) 95–97; Uchendu (n 4) 54.

[65]Ifi Amadiume (n 9) 45–50; Okafor (n 8) 28–30.

The wine-carrying ceremony is the public and communal counterpart of the juridical act of Bride-price payment. Where Bride-price establishes the legal structure of the marriage relationship, the wine-carrying ceremony gives it social recognition, emotional substance, and communal ratification. It is the moment at which the community witnesses and endorses the union, and it is correspondingly the moment at which the marriage becomes a social fact rather than merely a private or legal one. The community's presence as witness and participant is not ceremonially optional; it is constitutive of the marriage's social validity in a way that has no precise equivalent in either civil or canonical marriage law, and this communal dimension is one of the features of traditional Igbo marriage that any proposal for the inculturation of Christian marriage rites must reckon with seriously.

2.4.4 Consent and Family Participation

The question of consent in Igbo traditional marriage requires careful analysis because it operates at multiple levels and cannot be adequately captured by the simple bilateral model of civil law or the canonical requirement of internal freedom from grave fear and force. Consent in the Igbo system is simultaneously personal and communal, individual and familial. The bride's personal consent, expressed through the wine-carrying ceremony, is morally and practically important; a woman who publicly refused to carry the wine cup to the designated man would, in practice, prevent the marriage from proceeding regardless of the wishes of both families. But her personal consent alone, without the prior agreement of both families expressed through the Bride-price negotiation

and the *iju ese*, would be insufficient to constitute a valid marriage under Igbo customary law.[66]

International human rights law, particularly the Convention on Consent to Marriage and CEDAW, requires that marriage be entered into only with the free and full consent of both parties and prohibits the practice of giving women in marriage by their families without their consent. The Igbo system's requirement of family approval is not straightforwardly incompatible with this requirement, provided that family approval functions as an additional protection for the prospective spouses rather than as a mechanism for overriding their personal wishes. The critical question is whether, in practice, the family's involvement amplifies or suppresses the individual's genuine consent. Where family involvement takes the form of ensuring that the prospective spouse is genuinely suitable and that the marriage is truly in the young person's best long-term interests, it may be understood as a form of responsible care that supplements rather than displaces individual consent. Where it takes the form of coercing a young woman to accept a husband she has chosen not to marry, or refusing to permit a marriage to which she has given genuine consent, it violates both the human rights requirement of free consent and the Igbo tradition's own internal standards of respect for the bride's expressed preference.[67]

2.5 Marriage and Ancestors in Igbo Cosmology

The ancestral dimension of Igbo traditional marriage is not a metaphorical or decorative addition to an otherwise purely social

[66] Code of Canon Law (1983) c 1057 §1; Universal Declaration of Human Rights (adopted 10 December 1948, UNGA Res 217A(III)) art 16(2).

[67] Okafor (n 8) 30–32; Amadiume (n 9) 46.

institution. It is constitutive of the institution's deepest logic and generates specific practices and prohibitions that cannot be understood without reference to the Igbo cosmological framework within which marriage is embedded. To engage this dimension seriously is not to endorse the cosmological framework uncritically but to take seriously the internal coherence of a tradition that has sustained human communities for centuries and that continues to shape the marriage practices of millions of people, including millions who also profess the Catholic faith.[68]

In Igbo cosmology, the *chi* (personal spirit or destiny) of each person, the *mmuo* (spirits, including ancestors), and the community of the living are all understood as participants in a single moral universe in which actions in the human realm have consequences in the spiritual realm and vice versa. The ancestors, particularly the recently deceased who are still close to the world of the living, take an active interest in the affairs of their descendants and can express that interest through blessings or curses, through fertility or its absence, through communal wellbeing or calamity. The proper conduct of marriage ceremonies, including the invocation of ancestral blessings and the libation of palm wine to the ancestors before the wedding feast, is therefore not merely a matter of custom but a form of communication with beings who are understood to have a real and ongoing stake in the outcome of the marriages they are invited to witness.[69]

The ancestral dimension of Igbo marriage also explains several institutions that have attracted controversy in their encounter with Western legal and Christian moral norms. The institution of *nwunye di*

[68]Arinze (n 7) 47–55; Kalu (n 7) 80–84.

[69]Mbiti (n 1) 82–89; Robin Horton, "African Traditional Thought and Western Science" (1967) 37 *Africa: Journal of the International African Institute* 50, 58–64.

(female husband), documented in Igbo society and several other African contexts, in which a woman of social or economic distinction contracts a formal marriage with another woman, is best understood not as a sexual union but as a social and juridical mechanism through which a woman without male heirs can secure the continuation of her lineage by acquiring, through the female husband relationship, legal paternity over the children that the younger woman bears to a man of her choice. The female husband pays Bride-price, assumes the social role of husband and father, and in all legally relevant respects occupies the position of a male husband within the Igbo marriage system. This institution, which appears bizarre or morally problematic when viewed through the lens of either Western civil law or Christian sexual ethics, has an internal logic within the Igbo covenantal and ancestral framework that demands to be understood before it is evaluated.[70]

The theological challenge posed by the ancestral dimension of Igbo traditional marriage to the Catholic Church in Nigeria is considerable. The Second Vatican Council's call for inculturation invites the Church to engage African traditional religious forms with discernment, distinguishing what can be baptised and incorporated into Christian practice from what is genuinely incompatible with Christian faith. The invocation of ancestral witnesses at a marriage ceremony, understood not as the worship of the ancestors as divine beings but as the acknowledgment of the community's continuity across time and the family's covenant with those who have gone before, may be capable of being incorporated into a Christian marriage celebration in a form that is theologically coherent rather than syncretically confused. Working out the precise boundaries of this possibility is one of the tasks of a genuine theology of inculturation in the domain of marriage, a task that Nigerian

[70]Amadiume (n 9) 67–72; Nwando Achebe (n 9) 20–24.

Catholic theologians and canonists are still in the early stages of undertaking.

2.6 Yoruba Traditional Marriage

The Yoruba of southwestern Nigeria constitute one of the largest and most urbanised of Nigerian ethnic groups, with a sophisticated political culture, a rich literary and artistic tradition, and a complex religious system that, in its traditional form, centres on the worship of the *Orisa* (divinities) through an elaborately structured cosmological framework mediated by the Ifa divination system. Yoruba traditional marriage shares many of the broad features identified above as characteristic of African traditional marriage generally, including its communal constitution, its emphasis on the centrality of children, and its embedding in a larger cosmological order, while exhibiting specific institutional features that distinguish it from the Igbo model and that reflect the particular social and political organisation of Yoruba communities.[71]

The Yoruba marriage process begins, like the Igbo process, with family investigation and approval. The *ìdánwò*, the investigation or testing of the prospective spouse's family background, reputation, and freedom from disqualifying conditions, is undertaken discreetly before any formal approach is made. Yoruba society employs the concept of *ẹbí*, family solidarity and collective moral responsibility, as the primary framework for assessing the suitability of a marriage partner's family. A family known for persistent poverty attributed to spiritual causes, for dishonesty, or for conflict with powerful spiritual forces is one that a

[71]Samuel Johnson, *The History of the Yorubas* (CMS Bookshops, 1921; repr Lowe & Brydone, 1966) 108–116; Wande Abimbola, *Ifa: An Exposition of Ifa Literary Corpus* (Oxford University Press Nigeria, 1976) 30–47.

prudent Yoruba family will avoid allying itself with through marriage. The Ifa oracle is frequently consulted at this stage to determine the spiritual compatibility of the two families and the auspiciousness of the proposed union, and a negative oracle reading can be sufficient to terminate a proposed marriage regardless of the personal compatibility of the prospective spouses.[72]

Bride-price (*ìdána*) in the Yoruba system performs juridical functions similar to those described for the Igbo system but is organised somewhat differently, proceeding in stages across the course of the extended marriage process rather than as a single lump-sum payment. The *ìdána* is supplemented by a set of ceremonial gifts presented to the bride's parents (*ẹbọ ọkọ*) and by the provision of palm wine, kola nuts, and food for the celebrations at each stage. The Yoruba system also recognises a set of continuing obligations flowing from the husband's family to the bride's family that extend throughout the marriage and are expressed in the regular presentation of gifts and practical assistance on important family occasions, reinforcing the inter-family relationship that the marriage covenant has established and maintaining its vitality through time.[73]

The Yoruba traditional wedding ceremony (*ìgbéyàwó*, literally the lifting up and taking away of the bride) is a multi-day celebration involving elaborate entertainment, the formal presentation of the bride to the groom's family, the exchange of gifts between families, the public blessing of the couple by family elders, and, in households where traditional religious practice is maintained, the involvement of Ifa priests

[72]N A Fadipe, *The Sociology of the Yoruba* (Ibadan University Press, 1970) 66–89; Noel King, *African Cosmos: An Introduction to Religion in Africa* (Wadsworth, 1986) 55–61.

[73]Fadipe (n 25) 69–75; Biodun Adediran, "Yoruba Dynastic Traditions and Marriage Alliances" (1992) 8 *Cahiers d'Études Africaines* 31, 34–40.

whose oracle reading at the time of the betrothal will have determined the auspiciousness of the union and identified any spiritual obstacles requiring ritual attention before the marriage can proceed with proper ancestral sanction.[74]

The intersection of Yoruba traditional marriage with Islam, which entered Yorubaland from the north from at least the eighteenth century, has produced hybrid practices in which the ceremonial forms of traditional marriage are combined with Islamic requirements of *nikah* and the payment of *mahr*. Similarly, the encounter with Christianity, particularly the missionary activity of the Church Missionary Society in Yorubaland from the mid-nineteenth century, produced communities in which the traditional forms were progressively modified by or combined with Christian wedding ceremonies. The complex negotiations between traditional, Islamic, and Christian elements in contemporary Yoruba marriage practice are a microcosm of the broader challenge of legal and religious pluralism in marriage that this book addresses, and they illustrate in miniature why simple solutions to the problem of multiple marriage systems are unlikely to succeed in the Nigerian context.

2.7 Hausa Traditional Marriage

The Hausa of northern Nigeria present a distinctive case in the study of traditional African marriage because their marriage practices have been so thoroughly shaped by Islam that it is difficult in many instances to distinguish what is authentically traditional Hausa from what is of Islamic origin. The Islamisation of Hausaland, substantially achieved through the jihad of Usman dan Fodio in the early nineteenth century and

[74]Abimbola (n 24) 38–44; J D Y Peel, *Religious Encounter and the Making of the Yoruba* (Indiana University Press, 2000) 95–110.

the establishment of the Sokoto Caliphate, transformed not only the formal religious affiliation of the Hausa-Fulani population but also their marriage institutions, family law, and social norms in ways that make a clean separation of the traditional from the Islamic analytically artificial and historically misleading.[75]

Hausa traditional marriage is distinguished by a high rate of polygyny among men who can afford it, by the practice of *kulle*, the seclusion of wives within the domestic compound analogous to purdah in South Asian Islamic communities, and by a pattern of marriage instability in which divorce and remarriage are relatively common and carry less social stigma than in many other Nigerian cultures. Ronald Cohen's classic sociological study of Kanuri marriage in the Lake Chad basin documented a divorce rate that was, at the time of his fieldwork in the 1950s and 1960s, among the highest recorded in any society, and attributed this to a combination of Islamic divorce law's relative accessibility, the economic semi-independence of women who maintained their own income-generating activities within the domestic economy, and the social acceptability of serial monogamy in a context where polygyny is the formal religious ideal but successive monogamous unions are a widely practiced alternative.[76]

The payment of *sadaki*, the Islamic *mahr* or dower, is a central feature of Hausa marriage, serving the legal function that Bride-price serves in Igbo and Yoruba systems while operating within an explicitly Islamic theological and legal framework. The *sadaki* is understood as the

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[75]M G Smith, *Government in Zazzau, 1800–1950* (Oxford University Press, 1960) 20–38; Murray Last, *The Sokoto Caliphate* (Longmans, 1967) 51–70.

[76]Ronald Cohen, "Marriage Instability among the Kanuri of Northern Nigeria" (1961) 63 *American Anthropologist* 1231, 1235–1242.

wife's personal right, a gift from the husband to the bride that is her exclusive property and cannot be appropriated by her family. This contrasts significantly with the Igbo Bride-price, which is paid to the bride's family and becomes the family's rather than the bride's property. The difference is legally and theologically significant: it reflects the Islamic conception of the wife as a legally independent individual with her own distinct property rights, a conception that sits in interesting tension with the social practice of female seclusion that characterises the same Hausa-Islamic cultural complex.[77]

2.8 Fulani Marriage Traditions

The Fulani (Fulbe) of Nigeria and West Africa more broadly represent a particularly interesting case for the comparative study of African traditional marriage because of the combination of their nomadic or semi-nomadic pastoralist lifestyle, their traditionally strong adherence to Islam, and the persistence of distinctively Fulani cultural practices that sometimes sit in productive tension with strictly orthodox Islamic legal requirements. The WoDaaBe (Bororo) Fulani, studied in Nigeria's northwestern regions by Stenning and elsewhere in West Africa by Dupire, are the most thoroughly documented in the anthropological literature and will serve as the primary reference point here, with the recognition that Fulani communities vary significantly across the vast territory they occupy and that the settled Fulani of the Sokoto and Kano

[77]Smith (n 28) 25–31; Polly Hill, *Rural Hausa: A Village and a Setting* (Cambridge University Press, 1972) 155–172.

regions have been more thoroughly Islamised than the pastoralist WoDaaBe.[78]

Fulani marriage is characteristically endogamous at the clan level: the preferred marriage partner is a cousin, particularly a father's brother's daughter, a preference shared with Arab and many other Islamic societies and one that reflects the pastoral economy's imperative to keep cattle herds and other productive resources consolidated within the extended family group rather than dispersing them through exogamous marriage alliances. The payment of Bride-price in the form of cattle (*togu*) is the juridically constitutive act in Fulani traditional marriage, analogous to the Igbo *ime ego* and serving similar functions in establishing legal paternity and creating the inter-family obligations that give the marriage its social reality and durability.[79]

The WoDaaBe practice of *shadi*, the preferred marriage to a cousin contracted in infancy or early childhood by the parents of the prospective spouses, coexists uneasily with the individual-consent requirements of both Islamic family law and international human rights instruments. Alongside this arranged form, however, the WoDaaBe recognise a more romantically constituted form of marriage known as *koobgal*, the love marriage, in which young people who have formed attachments at the great annual cattle assemblies petition their families for permission to formalise their relationship. The annual *gerewol* festival, at which young WoDaaBe men compete in elaborate beauty and charm displays to attract the attention of women who may then signal romantic interest, is one of

[78]Derrick Stenning, *Savannah Nomads: A Study of the WoDaaBe Pastoral Fulani of Western Bornu Province, Northern Region, Nigeria* (Oxford University Press, 1959) 78–108.

[79]Marguerite Dupire, *Organisation sociale des Peul* (Plon, 1970) 210–245; Stenning (n 31) 90–98.

the most widely cited examples in the anthropological literature of an African marriage institution that inverts the gender assumptions of most Western societies: here it is men who ornament themselves and compete for female selection rather than the reverse, a feature that complicates easy generalisations about the subordination of women in African traditional marriage systems.[80]

2.9 Comparative Analysis of African Marriage Traditions

The survey of Igbo, Yoruba, Hausa, and Fulani marriage traditions in the preceding sections, supplemented by the general characterisation of African traditional marriage in section 2.2, permits comparative observations that are useful for the subsequent legal and theological analysis of this book.[81]

First, all four traditions share the communal constitution of marriage: no tradition treats marriage as a purely bilateral transaction between two individuals. In all four, the active participation and approval of both families is necessary, not merely desirable, for a valid marriage. This shared feature distinguishes all African traditional marriage systems from the statutory monogamous marriage model introduced by English colonial law, in which the consent of two competent individuals witnessed by an authorised official is both necessary and sufficient for a valid marriage, with no role accorded to families beyond the specific requirement of parental consent for the marriage of minors.[82]

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[80]Stenning (n 31) 100–105.

[81] Goody and Tambiah (n 5) 1–58; Jack Goody, *The Logic of Writing and the Organization of Society* (Cambridge University Press, 1986) 40–65.

[82]Mbiti (n 1) 142–145; Oyěwùmí (n 6) 40–52; also A N Allott, *Essays in African Law* (Butterworths, 1960) 155–180.

Second, all four traditions employ some form of property transfer between families, whether Igbo *ime ego*, Yoruba *ìdána*, or Islamic *sadaki*, as the juridically constitutive act of marriage. Despite differences in what is paid, to whom, and in what ceremonial context, the common feature is that the movement of property between families is the legal act that transforms cohabitation and sexual union into marriage with its full complement of legal consequences. This shared feature has important implications for legal recognition: it explains why Nigerian customary law courts generally regard the completion of Bride-price payment as the decisive test of whether a valid customary marriage exists, and why statutory law's indifference to Bride-price has created persistent jurisdictional confusion.

Third, despite these broad similarities, the traditions differ significantly in the degree to which Islamic legal frameworks have displaced or incorporated traditional practice, in the specific ceremonial forms through which marriage is constituted and publicly recognised, in the permitted forms of marital dissolution, and in the social norms governing the relations between spouses and between in-laws after the marriage has been established. These differences are not merely ethnographic curiosities; they have direct practical implications for the administration of customary marriage law in Nigerian courts, for the pastoral practice of the Catholic Church in different regions of Nigeria, and for any legislative proposal that seeks to provide a single framework for the recognition and regulation of customary marriage throughout the federation.

2.10 Colonialism and the Transformation of African Marriage

The colonial encounter transformed African marriage institutions in ways that were profound, pervasive, and largely unintended by the

colonial administrators themselves. British colonial policy in Nigeria, operating through the framework of indirect rule as theorised by Lord Lugard, formally committed itself to the preservation of native customary law insofar as it was not repugnant to natural justice, equity, and good conscience. But the practical effect of colonial rule, through the introduction of a new statutory marriage system, the restructuring of the Nigerian economy around cash and wage labour, and the spread of missionary Christianity and its associated educational institutions, was to place African traditional marriage institutions under sustained competitive pressure from which they have never fully recovered and from which the legal system has never fully reckoned with the consequences.[83]

The Marriage Ordinance of 1884, which established the statutory monogamous marriage system for the Colony of Lagos and was subsequently extended to the Protectorates, created a legal bifurcation that persists with modifications to the present day. Persons who married under the Ordinance entered into a monogamous union recognised and regulated by statute, dissoluble only by judicial decree, and protected by laws against bigamy that made a subsequent customary marriage by a statutory spouse a criminal offence. Persons who married under customary law entered into unions that might be monogamous or polygynous, that were constituted and dissolved according to community custom, and that were recognised by the colonial courts only to the uncertain and contested extent that the courts chose to take cognisance of the applicable customary rules.[84]

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[83] Kristin Mann, *Marrying Well: Marriage, Status and Social Change among the Educated Elite in Colonial Lagos* (Cambridge University Press, 1985) 1–30.

[84]Marriage Act (Nigeria) Cap M6 (n 15); Mann (n 36) 15–25.

The practical consequence of this bifurcation was the creation of a two-tier system in which statutory marriage conferred higher social status and greater legal protection, particularly for women and children who could invoke the statutory provisions governing maintenance, inheritance, and custody, while customary marriage remained the norm for the vast majority of the population who lacked the educational, religious, or social connections to access the statutory system. Chanock's analysis of colonialism and customary law in central Africa applies with equal force to Nigeria: the colonial encounter did not simply preserve customary law but transformed it, frequently by codifying fluid and locally variable practices into fixed and judicially enforced rules, and by allocating to male customary law elders the interpretive authority to define and declare custom in ways that often systematically disadvantaged women and younger people.[85]

The economics of colonial transformation reinforced the structural distortions introduced by the legal bifurcation. As men began to earn cash wages in the colonial economy, the meaning, composition, and amount of Bride-price changed in ways that have complicated both its juridical function and its social significance. In some communities, Bride-price demands inflated dramatically as cash became the dominant medium of exchange and as some families began to treat daughters as income-generating assets in a monetised economy. In others, the traditional Bride-price system was undermined by the new geographic and social mobility of the colonial labour market, as young men who had moved to urban centres could now obtain the resources to marry independently of their families' involvement, disrupting the family-based negotiation process

[85]Martin Chanock, *Law, Custom and Social Order: The Colonial Experience in Malawi and Zambia* (Cambridge University Press, 1985) 1–20; Elias (n 13) 68–91.

that had previously been constitutive of the marriage rather than merely accompanying it.[86]

2.11 Christianity and Indigenous Marriage Systems

The encounter between Christian missionary activity and African indigenous marriage institutions produced conflicts and accommodations that remain theologically and pastorally unresolved in the practice of Nigerian Christianity to the present day. The missionaries, operating largely from the vantage point of Victorian European Christian culture, regarded most features of traditional African marriage as either morally problematic or theologically incompatible with Christian faith. Polygyny was understood as straightforwardly sinful. Bride-price was interpreted, through the commodity-exchange categories of the industrial age, as the purchase of a wife and therefore as incompatible with the dignity of the woman and the freedom of her consent. The ancestral dimensions of marriage ceremony were condemned as idolatrous participation in the worship of false gods.[87]

These missionary judgments were not without theological foundation, and some of them, particularly the critique of polygyny from the perspective of the New Testament's vision of marriage as a faithful and exclusive union between one man and one woman, deserve serious theological engagement rather than mere dismissal as cultural imperialism. But the missionaries' systematic failure to distinguish between what was genuinely incompatible with Christian faith and what was merely culturally different from European practice had lasting and

[86]Elias (n 13) 70–80; Allott (n 35) 155–180.

[87]Ogbu Kalu (n 7) 78–130; J F A Ajayi, *Christian Missions in Nigeria 1841–1891: The Making of a New Elite* (Longman, 1965) 34–60.

damaging consequences for the reception of the Gospel in African communities. The rejection of Bride-price as wife purchase failed to understand the juridical, relational, and social-solidarity functions the institution served in communities where it was the primary mechanism for creating and sustaining inter-family alliances. The condemnation of ancestral ceremonies as idolatrous failed to distinguish between the acknowledgment of ancestral continuity as a dimension of human identity and the worship of ancestors as divine beings with power over human destiny.[88]

The Second Vatican Council's call for the inculturation of the faith, developed in the post-conciliar period through documents such as *Gaudium et Spes* and John Paul II's *Familiaris Consortio*, opened the door to a more nuanced and theologically sophisticated engagement with African traditional marriage. The principle of inculturation holds that the Gospel must be planted in every culture and that local cultural forms, including marriage customs, may serve as vehicles for the expression of Christian values rather than being simply obstacles to be cleared away in the name of a falsely universalised European Christian culture.[89] This principle has profound implications for the question of how the Catholic Church in Nigeria should relate to Igbo and other traditional marriage ceremonies, implications that are developed in detail in Chapter Seven. The theological work of inculturation in this domain has barely begun, and its absence has left Nigerian Catholics navigating between their

[88]Ajayi (n 40) 45–55; E A Ayandele, *The Missionary Impact on Modern Nigeria, 1842–1914* (Longman, 1966) 200–230.

[89]Second Vatican Council, *Gaudium et Spes* (7 December 1965) §§47–52; Pope John Paul II, *Familiaris Consortio* (22 November 1981) §§6–11.

traditional marriage obligations and their canonical obligations without consistent or authoritative pastoral guidance.

2.12 Contemporary Challenges to Traditional Marriage

African traditional marriage institutions face a set of contemporary challenges that are qualitatively different from the colonial-era pressures described above, though the two sets of challenges are historically connected and mutually reinforcing. These contemporary challenges arise from the interaction of globalisation, rapid urbanisation, the international human rights framework, feminist critique, dramatic economic change, and the persistence of both Christian and Islamic normative frameworks that are themselves evolving in response to the same social pressures. The result is a situation of considerable institutional instability in which the inherited frameworks for marriage, both customary and statutory, are under simultaneous pressure from multiple directions.[90]

The international human rights framework, particularly CEDAW and the Maputo Protocol, establishes standards for marriage practice that are in significant tension with aspects of African traditional marriage as practiced in many communities. The requirement of free and full personal consent, the prohibition of child marriage, the requirement of a minimum marriageable age, and the principle of equality between spouses in relation to the rights and obligations arising from marriage all have implications for practices that are normative in many traditional

[90] Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13, art 16; Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) (adopted 11 July 2003, entered into force 25 November 2005) art 6.

communities: the arranged marriage of girls in early adolescence, the use of Bride-price as a mechanism of family control over the daughter's choice of partner, the gendered asymmetry in divorce rights, and the institution of widow inheritance. Nigeria's ratification of CEDAW and the Maputo Protocol creates binding international legal obligations that sit in considerable and largely unacknowledged tension with the provisions of customary law that the Constitution simultaneously recognises and protects.[91]

Feminist scholarship on African marriage has both sharpened and complicated the human rights critique of traditional practice. Scholars such as Amadiume and Oyěwùmí have challenged the direct application of Western feminist categories to African marriage institutions, arguing that these categories presuppose an individualist conception of the person and a binary understanding of gender that do not map cleanly onto African social reality. The institution of female husbandry, which Western feminist analysis has typically read as evidence of women's oppression (forcing women to adopt the role of husband in order to exercise social authority within a patriarchal system), Amadiume reads as evidence of a degree of gender flexibility in Igbo society that the Western binary framework cannot accommodate and that complicates the simple narrative of African women's subordination. This debate has practical implications for how legal reform of customary marriage should proceed and for what the equality between spouses that human rights instruments require actually means in an African cultural context that may understand the human

[91]Child Rights Act (Nigeria) 2003, s 21; Ladan Mohammed Tawfiq, "Child Marriage in Nigeria: Challenges and Prospects" (2013) 7 *Journal of Law, Policy and Globalization* 44, 47–52.

person and human social roles differently from the liberal individualist baseline that human rights discourse tends to assume.[92]

The economic dimensions of contemporary challenge are equally pressing. In urban Nigeria, where the majority of the population now lives under conditions of acute and often desperate economic pressure, the Bride-price system has been subject simultaneously to inflation and to commodification that have distorted its traditional juridical function. In some communities, Bride-price demands have increased to levels that effectively exclude young men of limited means from marrying through the customary route, or that force them into informal cohabitation arrangements that lack the legal protection and social recognition of properly constituted customary marriages. At the same time, the expectation that a young couple will celebrate not only a traditional ceremony but also a church or mosque wedding and a Western-style reception has created a system of multiple required celebrations whose cumulative financial burden is a significant and growing barrier to marriage for young educated Nigerians in both urban and rural settings.[93]

2.13 Conclusion

African traditional marriage, as this chapter has argued at length, is not a relic of a pre-modern past that can be simply set aside in favour of the contractualist and individualist model of modern civil law. It is a living tradition, or more accurately a set of living traditions, that embodies a coherent and philosophically defensible understanding of the human

[92]Amadiume (n 9) 40–72; Oyěwùmí (n 6) 50–52; also Amina Mama, *Women's Studies and Studies of Women in Africa During the 1990s* (CODESRIA Working Papers, 1996) 12–18.

[93]Mann (n 36) 25–30; Elias (n 13) 85–91; Nwando Achebe (n 9) 22–25.

person as a relational being, of marriage as a covenant between communities rather than merely a contract between individuals, and of the family as a sacred institution whose integrity is underwritten by powers extending beyond the merely human. These are not insights exclusive to African traditional culture. As Chapter One showed, they appear in different forms in the biblical, canonical, and Islamic traditions. But they receive in the African traditional context a particularly strong, socially embedded, and institutionally specific expression that deserves to be taken seriously in any proposal for the reform or harmonisation of Nigerian marriage law.

The colonial encounter and its aftermath have transformed African traditional marriage in ways that are not always well understood even by those who invoke tradition as an argument against reform. What passes today as customary law in Nigerian courts is often a selective and partially colonial construction of practices that were, in their original context, more fluid, more locally variable, and more responsive to individual circumstances than their codified form suggests. Genuine fidelity to the best values of the African traditional marriage tradition requires not the uncritical preservation of whatever practices happen to have survived colonial transformation but a critical and theologically informed engagement with the question of what those values were and how they can be expressed with integrity and justice in contemporary conditions.

The encounter between African traditional marriage and the Christian faith, while deeply conflicted in its historical expression, contains the seeds of a genuinely productive theological dialogue. The Catholic Church's covenantal understanding of marriage, its insistence on the community's stake in the marriage of its members, its recognition that marriage is embedded in a moral and spiritual order that transcends the preferences of the individual spouses, and its growing commitment to the

inculturation of the faith in African cultural forms, has considerably more to say to African traditional marriage than the missionary rejection of that tradition would suggest. The chapters that follow, particularly Chapter Four on canon law and Chapter Seven on the prospects for unified marriage systems, develop the argument that a theologically responsible inculturation of Christian marriage in Igbo and other African cultural contexts is both possible and pastorally urgent. Chapter Three, which comes next, turns to the statutory and civil marriage framework that operates alongside and in competition with the traditional systems described in this chapter, the English-derived legislation that continues to govern the formal legal landscape of Nigerian family life.

Chapter Three

STATUTORY MARRIAGE AND CIVIL MARRIAGE SYSTEMS

3.1 Introduction

Statutory marriage, as it operates in Nigeria today, is simultaneously a legal inheritance and a legal problem. It is an inheritance because it derives directly from the English marriage law that British colonial administration imposed on the Lagos Colony from 1884 and subsequently extended to the Protectorates of Northern and Southern Nigeria. It is a problem because it was designed for a social world, broadly Christian, broadly monogamous, broadly English in its assumptions about the relationship between individual consent and family obligation, that does not describe the social world of the vast majority of Nigerians for whom it ostensibly provides a legal framework. The gap between statutory marriage law as enacted and statutory marriage law as lived is one of the central problems of Nigerian family jurisprudence, and it is one that has generated a rich and revealing body of case law as courts have attempted to navigate between the demands of imported legislation and the realities of indigenous social practice.[94]

This chapter examines the statutory and civil marriage system with the thoroughness that its legal importance demands. It begins with the historical development of civil marriage in England, the source

[94]T O Elias, *The Nature of African Customary Law* (Manchester University Press, 1956) 85–91; A N Allott, *Essays in African Law* (Butterworths, 1960) 155–180.

tradition from which Nigerian statutory marriage law descends, and proceeds to an account of the Marriage Ordinance of 1884 and its successors. It then analyses the essential requirements of a valid statutory marriage under Nigerian law: capacity, consent, and formalities. Subsequent sections examine the legal consequences of statutory marriage, particularly the monogamy requirement and the criminal law of bigamy, the grounds and procedure for matrimonial causes including divorce, the framework for judicial separation and nullity, and the provisions governing the legitimacy and custody of children. The chapter then examines the persistent conflicts between statutory and customary marriage systems, the human rights framework governing marriage, and comparative perspectives from England and the United States. Throughout, statutory marriage law is analysed not merely as a technical legal framework but as a normative system that embeds particular assumptions about the nature of marriage, the status of women, and the role of the state in the regulation of intimate life, assumptions whose adequacy for the Nigerian context requires continuous critical scrutiny.[95]

The analysis proceeds from the recognition that Nigerian statutory marriage law is not a free-standing creation of the postcolonial Nigerian state but a colonial inheritance that has been preserved largely intact since independence in 1960. Understanding the origins of the framework is therefore not merely an exercise in historical curiosity but a precondition for understanding its current limitations and the directions in which reform must go if the statutory system is to serve the needs of all Nigerians

[95]Marriage Act (Nigeria) Cap M6, Laws of the Federation of Nigeria 2004 (Marriage Act); Matrimonial Causes Act (Nigeria) Cap M7, Laws of the Federation of Nigeria 2004 (MCA).

rather than the preferences of the English-educated minority for whom it was originally designed.[96]

3.2 Historical Development of Civil Marriage

The emergence of civil marriage as an institution distinct from and independent of religious marriage is a product of the long struggle between secular and ecclesiastical authority over the regulation of intimate life that has characterised European history from the Reformation through the Enlightenment to the liberal secular state of the twentieth century. To understand what Nigerian statutory marriage law is, it is necessary to understand this historical process in some detail, because every significant provision of the current Nigerian Marriage Act can be traced to a specific moment in the English legislative history that the colonial administration imported wholesale into Nigerian law.[97]

Lord Hardwicke's Marriage Act of 1753 was the first comprehensive statutory regulation of marriage in England. Before its enactment, English marriage law was an unstable combination of canonical requirements, social custom, and the pragmatic recognition of unions contracted in irregular forms. The Act imposed a uniform requirement of Anglican church solemnization for all marriages in England and Wales, with narrow exceptions for Jews and Quakers. It required parental consent for the marriage of persons under twenty-one and mandated the prior publication of banns or the obtaining of a licence

[96] Kristin Mann, *Marrying Well: Marriage, Status and Social Change among the Educated Elite in Colonial Lagos* (Cambridge University Press, 1985) 1–20; E I Nwogugu, *Family Law in Nigeria,* 3rd ed (Heinemann Educational Books, 1990) 1–25.
[97] Marriage Act 1753 (Lord Hardwicke's Act) 26 Geo II c 33 (England); Rebecca Probert, *Marriage Law and Practice in the Long Eighteenth Century: A Reassessment* (Cambridge University Press, 2009) 1–50; Stephen Cretney, Family Law in the Twentieth Century: A History (Oxford University Press, 2003) 1–40.

from a bishop. Its primary purpose was the prevention of clandestine marriages, particularly the Fleet marriages contracted without parental consent that had become a social embarrassment among the propertied classes. Whatever its merits in terms of preventing abuse, the Act had the consequence of excluding from its scheme the growing population of Protestant Nonconformists who objected in principle to being married in the Church of England, a problem that drove subsequent reform.

The Marriage Act of 1836 introduced the decisive change that shapes English and Nigerian marriage law to the present day: it created a system of civil marriage before a civil registrar as a fully valid alternative to Anglican church marriage. Nonconformists, Catholics, and persons of no religious profession could henceforth marry in a civil ceremony that was in all legal respects equivalent to an Anglican church marriage. The Act also established the comprehensive system of civil registration of births, marriages, and deaths that replaced the previously exclusive ecclesiastical register. This 1836 structure, with its distinction between the civil preliminaries of notice and certificate and the solemnization ceremony before a registrar or in a licensed building, is the direct ancestor of the framework replicated almost identically in the Nigerian Marriage Act.[98]

The Marriage Ordinance of 1884, enacted by the colonial government for the Colony of Lagos, drew directly on the English 1836 model. It established a Registrar of Marriages, a system of giving notice, a procedure for the issue of a marriage certificate, and the requirement that marriages be solemnized either before the Registrar or in a licensed church or chapel before a licensed minister. The Ordinance applied

[98]Marriage Act 1836 (UK) 6 & 7 Will IV c 85, ss 17–30; Births, Deaths and Marriages Registration Act 1836 (UK) 6 & 7 Will IV c 86; Cretney (n 4) 5–15.

exclusively to monogamous unions and explicitly provided that persons already married under native law or custom could not contract a valid marriage under the Ordinance without first dissolving the customary union. A person already married under the Ordinance who purported to contract a subsequent customary marriage was guilty of bigamy. These provisions created the legal bifurcation between statutory and customary marriage that remains the fundamental structural feature of Nigerian marriage law, and that has generated the conflicts examined in section 3.11 below.[99]

The Marriage Ordinance was revised and consolidated over the colonial period, and its successor, the Marriage Act (Cap M6), is the primary source of statutory marriage law in Nigeria today. The Act preserves the essential structure of the 1884 Ordinance while incorporating modifications reflecting subsequent legislative developments. It applies throughout the Federation, though the practical accessibility of the statutory system varies considerably between the urban south, where registrars' offices and licensed churches are readily available, and parts of the north, where geographical and social distance from these institutions has historically limited the practical reach of the statutory framework and where the parallel application of Islamic personal law through the Sharia courts adds a further complicating dimension.[100]

[99]Marriage Ordinance (Nigeria) No 3 of 1884, ss 1–42; Mann 15–25; Nwogugu 3–10.
[100]Marriage Act Cap M6 (n 2), Preamble and ss 1–50; Nwogugu 8–20.

3.3 Marriage under English Law

A survey of the contemporary English law of marriage is valuable for Nigerian family law analysis because the English cases illuminate the interpretive tradition from which key provisions of the Nigerian Acts derive and because developments in English law over the past half-century point toward directions in which the Nigerian statutory framework may need to evolve. The English experience also illustrates the difficulties that arise when a marriage law system designed for a relatively culturally homogeneous society must accommodate the realities of a diverse and rapidly changing social world. The comparison serves not as an argument for the wholesale importation of English legal reforms into the Nigerian context but as a diagnostic instrument for identifying the assumptions embedded in the inherited legislation.[101]

The foundational English case definition of marriage, given by Lord Penzance in *Hyde v Hyde and Woodmansee* in 1866, presented marriage as "the voluntary union for life of one man and one woman to the exclusion of all others." [102] This definition, offered in the specific context of the court's refusal to recognise a Mormon polygamous union contracted in Utah, has exercised a determinative influence on Commonwealth marriage law. It encodes three commitments that have all been contested and substantially modified in the subsequent century and a half: the requirement of voluntariness, tested by the doctrine of duress and undue influence; the requirement of a life-long union, effectively abandoned by the Divorce Reform Act 1969 and consolidated in the Matrimonial Causes Act 1973; and the requirement that the parties be one

[101]Jonathan Herring, *Family Law*, 9th ed (Pearson, 2019) 50–80; Masson, Bailey-Harris and Probert, *Cretney's Principles of Family Law*, 8th ed (Sweet & Maxwell, 2008) 1–20.
[102]*Hyde v Hyde and Woodmansee* (1866) LR 1 P&D 130, 133 (Lord Penzance).

man and one woman, modified in England and Wales by the Marriage (Same Sex Couples) Act 2013. Each of these modifications tells a story about the evolution of English social values and their legislative expression.[103]

The progressive expansion of divorce grounds, from the original matrimonial offences of adultery, cruelty, and desertion through the irretrievable breakdown standard introduced in 1969, reflects the gradual triumph of the view that a marriage that has ceased to function as a genuine partnership should be dissolvable regardless of the fault of the parties. The further development introduced by the Divorce, Dissolution and Separation Act 2020, which abolished the requirement to establish any of the historical facts and allowed divorce on the unilateral application of either spouse after a reflection period, represents the logical endpoint of the contractualist understanding of marriage: if marriage is primarily a chosen relationship rather than a status, the state's role on breakdown is to give legal effect to the parties' decision rather than to adjudicate their conduct. The introduction of same-sex marriage in 2013 reflects a reconceptualisation of the legal meaning of marriage from an institution defined by its procreative purpose to one defined by the mutual commitment of two persons regardless of their biological capacity for reproduction.[104]

These English developments are directly relevant to the Nigerian debate because they demonstrate, with historical clarity, that the statutory

[103]*Corbett v Corbett* [1971] P 83 (Ormrod J); Bellinger v Bellinger [2003] UKHL 21, [2003] 2 AC 467; Gender Recognition Act 2004 (UK) s 2; Divorce Reform Act 1969 (UK) s 1.
[104]Marriage (Same Sex Couples) Act 2013 (UK) s 1; Civil Partnership Act 2004 (UK); Divorce, Dissolution and Separation Act 2020 (UK) s 1.

marriage framework far from being a neutral or value-free legal technology is a system that embeds substantive moral and social commitments that have changed significantly over time and continue to change. The Nigerian statutory framework, which has changed much less dramatically since independence, increasingly reflects the social assumptions of mid-twentieth-century English marriage law in ways that are difficult to defend either in terms of internal legal consistency or in terms of the international human rights obligations that Nigeria has accepted. This is not an argument for the uncritical adoption of English legal developments in the Nigerian context; it is an argument for a principled and culturally informed process of Nigerian legal development that takes the human rights framework seriously while remaining attentive to the social and cultural conditions that shape the practical meaning of marriage law in Nigerian communities.

3.4 Development of Statutory Marriage in Nigeria

The development of statutory marriage law in Nigeria from the Marriage Ordinance of 1884 to the present Marriage Act traces a trajectory that is simultaneously a legal history and a social history of selective adoption. It is the legal history of a colonial imposition that has been only partially domesticated and only variably effective. It is a social history of the educated urban elite who embraced statutory marriage as a marker of social status and Christian respectability, of the missionaries who promoted it as a requirement of ecclesiastical membership, and of the vast majority of ordinary Nigerians who continued to marry under customary law and experienced the statutory system as something remote,

expensive, and largely irrelevant to the practical realities of their conjugal and family lives.[105]

The geographical and social reach of the 1884 Ordinance was initially very limited, confined in practice to the small community of mission-educated Africans and Afro-Brazilians in Lagos who formed the clientele of the colonial courts and the congregation of the mission churches. As colonial authority extended to the Protectorates and as missionary education spread, the statutory marriage system reached larger numbers of people, but it remained, throughout the colonial period and beyond independence, a system associated with formal education, Christian affiliation, and urban social aspiration rather than with the marriage practices of ordinary rural Nigerians. This association has persisted into the present and continues to shape the social meaning and practical accessibility of statutory marriage in contemporary Nigeria.[106]

The Supreme Court's decision in *Okonkwo v Okagbue* in 1994 illustrated the complexity of the relationship between statutory and customary marriage law with particular clarity.[107] The Court was required to determine the applicable marriage law in circumstances where a man had gone through what purported to be a statutory marriage ceremony without complying with all the formalities of the Marriage Act, and where he had also been living with the woman in a manner consistent with a customary marriage. The Court's analysis navigated carefully between the demands of the statutory formality requirements and the practical

[105]Marriage Ordinance 1884; Mann 20–35; Nwogugu 5–15.
[106]Nwogugu 12–20; also J F A Ajayi, *Christian Missions in Nigeria* 1841–1891: *The Making of a New Elite* (Longman, 1965) 34–60.
[107]*Okonkwo v Okagbue* [1994] 9 NWLR (Pt 368) 301 (SC); *Nzekwu v Nzekwu* [1989] 2 NWLR (Pt 104) 373 (SC).

consequences of allowing those requirements to deprive a woman of the legal protections that a valid marriage would have provided. The decision reflects a judicial awareness, encountered repeatedly in Nigerian family law cases, that a legal framework leaves large numbers of people in legally precarious positions and requires the courts to exercise interpretive creativity to mitigate the consequences of its structural inadequacies.

3.5 The Nigerian Marriage Act

The Marriage Act (Cap M6, Laws of the Federation of Nigeria 2004) is the primary legislative instrument governing the contraction of statutory marriage in Nigeria. It establishes the framework within which a legal monogamous marriage can be contracted by any person who meets the capacity requirements, regardless of ethnic or religious affiliation. The Act's provisions fall into three broad categories: preliminary requirements governing notice and certificate procedure; solemnization requirements specifying the form of the marriage ceremony; and substantive requirements concerning capacity, consent, and the prohibited degrees of relationship.[108]

The preliminary procedure begins with the giving of notice of intended marriage to the Registrar of Marriages for the district in which one or both of the parties has resided for at least fifteen days. The notice must be entered in the Marriage Notice Book and posted at the Registrar's office, where it remains available for public inspection. If no lawful objection is lodged within twenty-one days, the Registrar may issue a Certificate of Marriage authorising the solemnization of the union. This notice and certificate procedure, modelled on the English registration

[108]Marriage Act Cap M6, ss 3 (notice of marriage), 11 (certificate of marriage), 21–27 (solemnization before Registrar), 28–32 (solemnization in licensed places of worship).

system of 1836, serves the public policy function of enabling any person with knowledge of a legal impediment to come forward and prevent an invalid marriage before rather than after it is contracted, thereby protecting all parties from the consequences of a void or voidable union.

The solemnization of the marriage may take place either before the Registrar in the Registry Office or in a church, chapel, or other building licensed for the celebration of marriages before a licensed minister of a recognised religious denomination. Both forms of solemnization require the presence of at least two witnesses and the exchange by the parties of prescribed forms of words constituting their consent to take each other as husband and wife. The words of consent are formulated in terms that make the voluntary character of the union explicit and that bring the statutory requirement into formal alignment with the canonical and human rights requirements of free personal consent.[109]

The Marriage Act contains provisions specifying the prohibited degrees of consanguinity and affinity within which marriage is not permitted. These prohibitions, drawn from the tables of kindred and affinity that shaped English canon law and its civil law successor, prevent marriage between close relatives and reflect in their specific English common law form the universal institution of the incest taboo. The prohibited degrees specified in the Act are somewhat narrower than those recognised in traditional Igbo customary law, which operates with an extensive definition of prohibited kinship that can encompass persons several generations removed from any traceable common ancestor, and considerably narrower than the traditional Islamic prohibitions, which extend to relationships created by milk kinship as well as biological

[109]Marriage Act Cap M6 (n 2), s 33; MCA Cap M7 (n 2), s 3(1)€ (consent obtained by fraud or duress as ground of nullity); Nwogugu (n 3) 30–45.

relationship. These differences between the statutory and customary or Islamic definitions of prohibited degrees create occasional practical conflicts when persons who are permissible marriage partners under one system are prohibited under another.[110]

3.6 Essential Requirements of Statutory Marriage

A valid statutory marriage under Nigerian law requires the satisfaction of three categories of requirement: capacity, the legal competence of both parties to marry each other; consent, the genuine and voluntary agreement of both parties to enter the union; and formalities, the completion of the prescribed preliminary and solemnization procedures. The failure of any one of these requirements may render the marriage void or voidable. A void marriage is one that never had any legal existence and which may be treated as such by any party, at any time, without the need for a court order. A voidable marriage is valid and subsisting until a court pronounces it null, can only be challenged by one of the parties, and cannot be impugned after the death of either party. The distinction is legally significant because the consequences of a void marriage for property, succession, and the status of children differ from those of a voidable marriage.[111]

3.6.1 Capacity

The capacity to contract a statutory marriage requires that both parties have attained the minimum age, that neither is already party to a subsisting marriage, and that they are not within the prohibited degrees of

[110]Marriage Act Cap M6, ss 35–36 (prohibited degrees of consanguinity and affinity); also Nwogugu 42–50.
[111]Nwogugu 40–75; MCA Cap M7, ss 3–5 (void and voidable marriages); also In re Estate of Agbali [1970] NMLR1.

relationship. The minimum age for statutory marriage in Nigeria is not clearly specified in the Marriage Act itself, which contains no express minimum age provision, but must be read alongside the Child Rights Act 2003, which in section 21 prohibits the betrothal or marriage of a child below eighteen years of age. The interaction between the Marriage Act's silence on minimum age and the Child Rights Act's prohibition has not been definitively resolved by the appellate courts, and the further complexity created by section 29(4)(b) of the 1999 Constitution, which has been interpreted by some commentators as effectively equating marriage with adulthood for female persons, has made the legal position on minimum age for marriage one of the most contested and practically important questions in contemporary Nigerian family law.[112]

The minimum age question has particular practical importance in the context of northern Nigeria, where the influence of Islamic law has historically resulted in the marriage of girls in early adolescence and where the Child Rights Act has not been adopted by all states of the Federation. The legislative deadlock between federal constitutional provisions, the federal Child Rights Act, state-level adoption or non-adoption of that Act, and the constitutional protection of Islamic personal law in states that have adopted the Sharia framework represents one of the most serious failures of the Nigerian federal structure in the domain of family law, with real and ongoing consequences for the health, education,

[112]Child Rights Act (Nigeria) 2003, s 21 (minimum age eighteen years); Constitution of the Federal Republic of Nigeria 1999 (as amended) (Constitution), s 29(4)(b); Marriage Act Cap M6 (n 2), s 3 (no express minimum age).

and life prospects of girls who are married before their physical and emotional maturity would permit genuinely free and informed consent.[113]

The prohibition on marriage by a person already subject to a subsisting valid marriage is one of the Marriage Act's most practically consequential provisions. Section 33 of the Act provides that a marriage under the Act is void if either party is at the time of the marriage already married to another person, whether under the Act or under customary law. This prohibition creates the monogamy requirement that is the most significant structural point of difference between the statutory marriage system and the customary and Islamic systems that permit polygynous unions. Its practical consequence is that a man who contracts a statutory marriage and subsequently enters a customary marriage commits the offence of bigamy and renders the second union void, while a woman who is a customary wife of a man who subsequently contracts a statutory marriage with another woman finds herself displaced from the status of legal wife without any fault on her part and without any legislative remedy.[114]

3.6.2 Consent

Consent is the jurisprudential heart of the statutory marriage system. The Act requires that both parties freely and voluntarily agree to take each other as husband and wife, and the Matrimonial Causes Act provides that a marriage is voidable where the consent of either party was not a real consent because it was obtained by duress or fraud or because that party was at the time of the ceremony mentally incapable of understanding the nature of the act being performed. The English case of

[113]Ladan Mohammed Tawfiq, "Child Marriage in Nigeria: Challenges and Prospects" (2013) 7 *Journal of Law, Policy and Globalization* 44, 47–52; also *Okonkwo v Okagbue*.
[114]Ladan Mohammed Tawfiq,

Szechter v Szechter, in which the court articulated the test for duress as whether the threat or pressure was such as to destroy the reality of consent by overborne the will of the party, has been cited with approval in Nigerian matrimonial proceedings.[115]

The consent requirement creates particular difficulties in the Nigerian social context because it sits in tension with the family-based negotiation processes of both customary and Islamic marriage, in which the formal initiation of the union is typically by the families rather than the individuals, and in which social, economic, and emotional pressure on the prospective spouses to accept their families' choices can be very intense. The Marriage Act's requirement that the parties themselves sign the notice of marriage and personally exchange the words of consent before the registrar or minister is a procedural safeguard designed to ensure that each party has a personal and individual opportunity to express or withhold consent. But a safeguard that requires a person to stand before an official and publicly contradict the arrangements made by their family is of limited practical efficacy in social environments where the cost of such a refusal includes social ostracism, the withdrawal of family support, and the loss of the Bride-price already paid on the woman's behalf.[116]

The international human rights framework requires that marriage be entered into only with the free and full consent of the intending spouses, and that states take measures to ensure that this consent is in fact free, informed, and given in the absence of duress or undue influence. The practical challenge of giving this requirement genuine rather than merely

[115] *Szechter v Szechter* [1971] P 286 (Simon P); *Nachimson v Nachimson* [1930] P 217 (CA); Nwogugu 55–65.

[116]Marriage Act Cap M6, s 3(1) (declaration that no impediment exists); MCA Cap M7, s 3(1)€; Nwogugu 358–65.

formal effect in the Nigerian social context is considerable, and it cannot be met by statutory formalities alone. It requires investment in education, economic opportunity, and social support structures that make it practically possible for young persons, and particularly young women, to decline marriages they do not genuinely choose without sacrificing their social and economic security in the process.[117]

3.6.3 Formalities

The formality requirements of Nigerian statutory marriage serve multiple policy purposes simultaneously: they create a public record of marriages for civil registration and administrative purposes; they provide an opportunity for the identification and prevention of impediments before the marriage is contracted; they ensure the presence of witnesses who can attest to the voluntariness and regularity of the ceremony; and they give the marriage the public solemnity that its significant legal and social consequences warrant. The Act specifies both the preliminary formalities of notice, certificate, and the twenty-one day waiting period, and the solemnization formalities of the prescribed words of consent exchanged before a registrar or licensed minister in the presence of the required number of witnesses.[118]

The consequences of non-compliance with the formality requirements depend on which requirement has been breached and the degree of the breach. Certain defects in formality do not affect the validity

[117]Universal Declaration of Human Rights (adopted 10 December 1948, UNGA Res 217A(III)) art 16(2); Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (adopted 7 November 1962, entered into force 9 December 1964) 521 UNTS 231, art 1.

[118] Marriage Act Cap M6, ss 3–11 (notice and certificate), ss 21–32 (solemnization); Nwogugu 65–75.

of the marriage if both parties acted in good faith and with a proper belief in the validity of the ceremony. Others, particularly the complete absence of any form of recognised solemnization or the failure to obtain any marriage certificate, can render the purported marriage void and deprive the parties of all the legal protections that a valid statutory marriage would have provided. The courts have navigated these issues with varying degrees of consistency across the decades, and some of the practically most significant decisions in Nigerian family law have concerned whether the absence of particular formalities should deprive a woman and her children of the legal protections they relied upon.[119]

3.7 Monogamy and Legal Consequences

The monogamy requirement is not merely a formal condition of the Marriage Act but a substantive commitment with far-reaching legal consequences that pervade every aspect of the legal relationship created by a statutory marriage. A statutory marriage creates a status, not merely a contract, and that status carries with it a comprehensive set of rights and obligations that distinguish it sharply from a customary union and that cannot be altered or supplemented by the private agreement of the parties. The most important of these legal consequences are the prohibition on additional marriages, the mutual rights of intestate succession, the obligations of financial support and maintenance, and the framework of rights in relation to children of the marriage. [120] The prohibition on polygamy, backed by the criminal law of bigamy, means that a man married under the Marriage Act cannot lawfully take a customary wife during the subsistence of the statutory marriage. This provision has

[119]*Oduola v Coker* [1981] 5 SC 197; *Esset v Esset* [2005] 7 NWLR (Pt 924) 356 (CA); Nwogugu 70–78.
[120]Marriage Act Cap M6, s 33; Okonkwo v Okagbue (n 14); *Ohochukwu v Ohochukwu* [2013] LPELR-21083 (CA).

generated some of the most bitterly contested litigation in Nigerian family law, particularly in cases where a man has contracted both a statutory marriage and subsequent customary marriages and dies intestate, leaving a contest between the statutory wife and the customary wives for recognition as the widow entitled to administer and share in the estate. The courts have generally held that the statutory wife alone has legal standing as wife for the purposes of intestate succession under the statutory law, a position that produces results experienced as deeply unjust by customary wives who have been treated throughout long marriages as equal or senior partners in the household economy and who may have borne more of the deceased's children.[121]

The criminal law of bigamy, set out in sections 370 to 372 of the Criminal Code Act, makes it an offence for any person who has contracted a marriage under any law to go through a form of marriage with any other person during the continuance of that marriage. The offence carries a maximum penalty of seven years imprisonment with or without hard labour. In practice, prosecutions for bigamy in Nigeria are relatively infrequent, partly because the social acceptability of polygamy in many communities means that the bigamous character of a second union contracted by a statutory husband is not perceived as morally wrong by many of the parties involved, partly because the difficulties of establishing the prior subsistence of the statutory marriage in court are considerable, and partly because the disinclination of family members to initiate criminal proceedings against a relative makes prosecution an unattractive option in most domestic situations.[122]

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[121]Edet v Essien (1932) 11 NLR 47; Alake v Pratt (1955) 15 WACA 20; Nwogugu 80–92.

[122]Criminal Code Act Cap C38, ss 370–372; *R v Princewill* [1963] NMLR 70.

3.8 Matrimonial Causes Act and Divorce

The Matrimonial Causes Act (Cap M7, Laws of the Federation of Nigeria 2004) is the primary instrument governing the dissolution of statutory marriages, the nullity of void and voidable marriages, and the legal consequences of matrimonial breakdown, including financial relief, custody of children, and property adjustment orders. It was enacted in 1970, substantially modelled on the English legislation of the period, and it has not been substantially amended since its enactment despite fifty years of significant changes in Nigerian social conditions, in the understanding of the purposes of divorce law, and in the international human rights standards to which Nigeria has committed.[123]

The Act establishes irretrievable breakdown of marriage as the sole ground for divorce but requires that the petitioner establish one of five specified facts as evidence of the breakdown: the commission of adultery by the respondent and the intolerance of that adultery by the petitioner; the respondent's behaviour of such a nature that the petitioner cannot reasonably be expected to live with the respondent; the respondent's desertion of the petitioner for a continuous period of not less than one year immediately preceding the presentation of the petition; the separation of the parties for a continuous period of at least two years where the respondent consents to the divorce; or the separation of the parties for a continuous period of at least three years whether or not the respondent consents to the divorce.[124]

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[123]MCA Cap M7, ss 15–87; Nwogugu 100–180; also *Nwosu v Nwosu* [1987] 4 NWLR (Pt 65) 377 (CA).

[124]MCA Cap M7, s 15(1) (sole ground: irretrievable breakdown); s 15(2)(a)–(e) (five facts).

This five-fact model has been the subject of sustained criticism in Nigeria as it has been in England. The requirement of establishing fault in the adultery and unreasonable behaviour facts introduces the adversarial qualities of blame and recrimination into proceedings that need, for the sake of the parties and particularly of their children, to be conducted with as little hostility as possible. The requirement of extended separation periods in the consent and non-consent facts imposes substantial waiting periods on parties whose marriages have irretrievably broken down, prolonging uncertainty and preventing both parties from reorganising their personal and financial lives. The introduction in England of no-fault divorce by the Divorce, Dissolution and Separation Act 2020 addresses these criticisms in the English context, but Nigeria has not enacted a comparable reform. The Nigerian MCA thus remains frozen at a point in the development of English divorce law that England itself abandoned as inadequate over fifty years ago.[125]

3.9 Judicial Separation and Nullity

In addition to divorce, the Matrimonial Causes Act provides for two other formal legal responses to the failure of a statutory marriage: judicial separation and a decree of nullity. Each addresses a different situation and produces different legal consequences, and their availability alongside the divorce procedure reflects the complexity of the relationship between the legal dissolution of a marriage and the various moral, theological, and social considerations that may make full dissolution

[125]Divorce, Dissolution and Separation Act 2020 (UK) s 1; Nwogugu 140–165; also Cretney 160–220.

inappropriate or unavailable for particular parties in particular circumstances.[126]

A decree of judicial separation relieves the petitioner of the duty to cohabit with the respondent but does not dissolve the marriage. The parties remain legally married and cannot remarry during the continuance of the decree. This remedy is of particular practical importance for Catholics and other Christians for whom the theological understanding of marriage as indissoluble means that divorce, however legally available, is morally unavailable. A Catholic spouse who finds continued cohabitation impossible or unsafe but who cannot in conscience apply for a divorce that would permit remarriage may apply for judicial separation as a means of achieving a legal separation of life and household while remaining faithful to the theological commitment that the marriage bond cannot be dissolved by human authority. The availability of judicial separation within the statutory framework thus reflects, at least implicitly, an acknowledgment that legal and moral standards for the termination of marital cohabitation are not necessarily identical and that a properly functioning family law system should accommodate persons who observe higher moral standards than the law requires.[127]

A decree of nullity, by contrast, does not dissolve a marriage but declares that no valid marriage ever came into existence. The distinction between void and voidable marriages is fundamental to the law of nullity. A void marriage, such as one contracted between persons within the prohibited degrees or where one party was already married, is a nullity from its inception. It has never been a marriage in law and requires no court order to be treated as such, though a declaratory decree may be

[126]MCA Cap M7, ss 38–41 (judicial separation); ss 3–5 (nullity); Nwogugu 100–130.
[127]MCA Cap M7, s 38(1) (effect of decree of judicial separation); Code of Canon Law (1983) cc 1151–1155 (separation of spouses); Nwogugu 110–118.

obtained for the purposes of clarity and the record. A voidable marriage, such as one in which consent was obtained by duress or fraud, is treated as valid until a court pronounces it null at the instance of one of the parties. The classic English distinction articulated by Lord Greene MR in *De Reneville v De Reneville*, that a void marriage is one that is bad from the beginning while a voidable marriage is good until avoided, has been adopted in Nigerian jurisprudence and provides the analytical framework within which the courts determine the status and consequences of allegedly invalid statutory marriages.[128]

3.10 Legitimacy and Custody of Children

The Matrimonial Causes Act contains detailed provisions governing the welfare and legal status of children born of or affected by a statutory marriage that has broken down, reflecting the legislative commitment that the dissolution of the parents' relationship should not prejudice the rights and welfare of children who are in no way responsible for the failure of the marriage. These provisions have been substantially reinforced and supplemented by the Child Rights Act 2003, which places the best interests of the child at the centre of all judicial and administrative decisions affecting children and which brings Nigerian domestic law into closer, though still imperfect, conformity with the Convention on the Rights of the Child.[129]

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[128]*De Reneville v De Reneville* [1948] P 100, 111 (Lord Greene MR); MCA Cap M7, ss 3–5; Nwogugu 105–115.

[129]MCA Cap M7, ss 69–73 (custody, maintenance, education of children); Child Rights Act (Nigeria) 2003, s 1 (best interests of the child); Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, art 3.

The courts have power under the Act to make orders relating to the custody, care, control, and maintenance of children in the context of matrimonial proceedings, and the guiding principle in the exercise of this discretion is the welfare of the child as the paramount consideration. In applying this welfare principle, Nigerian courts draw on a mixture of English case law, the Act's specific provisions, and judicial assessments of the child's particular circumstances, including the age and sex of the child, the demonstrated parental capacity and resources of each parent, and the child's own expressed preferences where these can be ascertained and where the child is of sufficient maturity for those preferences to carry meaningful weight. The tension between this welfare-oriented judicial discretion and the customary law rules that govern the allocation of children on the breakdown of customary marriages, where the father's lineage typically has a paramount claim to children above nursing age, creates one of the most practically significant areas of conflict between the statutory and customary systems.[130]

The legitimacy of children born of statutory marriages that are subsequently found to be void or voidable is addressed by the Act in terms that protect those children from the legal consequences of the invalidity of their parents' union. Children of a void or voidable marriage whose parents went through a form of marriage in good faith are treated as legitimate for all purposes of the law. This protective provision reflects the fundamental principle that children should not bear the legal burden of the legal failures of their parents, a principle that is articulated with increasing force in international human rights instruments and that has been given consistent expression in the domestic case law of Nigerian

[130]*Okwuosa v Okwuosa* [1976] NCLR 211; *Alabi v Alabi* [2008] 10 NWLR (Pt 1094) 1 (CA); Nwogugu 200–230.

courts dealing with the status of children born of unions whose legal validity is contested.[131]

3.11 Conflicts between Statutory and Customary Marriage

The coexistence of statutory and customary marriage systems in Nigeria, operating on the basis of fundamentally different conceptions of what marriage is and how it is constituted and dissolved, has generated a complex, sometimes contradictory, and in some areas deeply unsatisfactory body of case law. The conflicts arise in several distinct legal contexts, each of which reveals different dimensions of the structural inadequacy of the present dual-system framework.[132]

The most common conflict situation arises at the intersection of statutory monogamy and customary polygyny. Where a man has contracted a statutory marriage and subsequently takes a customary wife, the customary marriage is void by reason of bigamy, and the man is potentially criminally liable under the Criminal Code. Where a man has contracted a customary marriage and subsequently goes through a statutory marriage ceremony with a different woman, the subsequent statutory marriage is void provided that the customary marriage is a valid and subsisting union under the applicable customary law. The courts have generally applied these rules consistently in their formal reasoning, but the social consequences of their application are often felt as deeply unjust, particularly by women who have contracted customary marriages in good faith and who find themselves displaced from the status of legal wife by

[131]MCA Cap M7 (n 2), s 7(1) (legitimacy of children of void and voidable marriages); *Ize-Iyamu v Alonge* [2007] 13 NWLR (Pt 1050) 1 (CA).
[132]Nwogugu 235–265; *Jacobs v Rewe* [1956] WNLR 56; *Yabazie v Yabazie* [1964] NMLR 16.

a subsequent statutory marriage of which they may have been wholly unaware.[133]

Conflicts in the context of succession to the estate of a deceased person who has contracted both statutory and customary marriages present some of the most practically consequential cases. The courts have generally held that the statutory wife takes precedence as the legal widow for the purposes of succession to assets governed by statutory law, while customary wives and their children may have rights under customary succession law to assets governed by the customary system. This division can produce outcomes that are both legally complex and socially distressing, particularly in urban Nigeria where the deceased's most valuable assets are likely to be real property and financial assets governed by statutory rather than customary succession law, leaving customary wives and their children in a legally subordinate and practically vulnerable position.[134]

3.12 Human Rights and Marriage Law

The international human rights framework imposes on Nigeria a set of obligations in relation to marriage and family law that have been formally accepted through treaty ratification but have been only partially and inconsistently implemented in domestic law. The most directly relevant instruments are CEDAW, ratified by Nigeria in 1985, and the Maputo Protocol, ratified in 2004. These instruments, together with the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child, constitute a comprehensive framework of human rights standards against which the Nigerian statutory marriage

[133]*Edet v Essien*; *Alake v Pratt*; *Ajiboye v Ajiboye* [1986] 5 NWLR (Pt 39) 164 (CA).
[134]*Oduola v Coker; Elias* (n 1) 170–185; Nwogugu 255–265.

system must be assessed and found, in several important respects, deficient.[135]

CEDAW Article 16 requires states parties to ensure, on a basis of equality of men and women, the same right to enter into marriage, the same right freely to choose a spouse, the same rights and responsibilities during marriage and at its dissolution, and the same rights in respect of the ownership, management, enjoyment, and disposition of property belonging to or acquired during the marriage. Nigerian statutory marriage law satisfies some of these requirements formally: both parties must give consent to the marriage, and both have formal access to divorce through the courts. But the persistence of customary law rules that limit women's practical rights in relation to property, custody of children, and initiation of dissolution proceedings, combined with the courts' selective recognition of customary law claims that sometimes disadvantage women relative to men, means that the formal equality of the statutory framework is not matched by substantive equality in the lived experience of most Nigerian women.

The Nigerian Constitution's own equality guarantee in section 42 has been interpreted by some courts as invalidating customary law rules that discriminate against women in the context of family property and succession. The Court of Appeal's decision in *Mojekwu v Ejikeme* held that a customary rule preventing daughters from inheriting family land was inconsistent with the constitutional prohibition on discrimination on

[135] Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW), art 16; Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) (adopted 11 July 2003, entered into force 25 November 2005) art 6.

grounds of sex. [136] But the constitutional jurisprudence on this point remains inconsistent and underdeveloped, and the interaction between the equality guarantee and the constitutional protections afforded to customary and Islamic personal law has not been authoritatively resolved by the Supreme Court. The resolution of this tension is one of the most important unfinished tasks of Nigerian constitutional jurisprudence and one that has direct implications for the prospects of meaningful marriage law reform.[137]

3.13 Comparative Perspectives from Europe and America

Comparative perspectives on civil marriage law development in England and the United States illuminate both the range of available options for addressing the tensions inherent in the Nigerian statutory framework and the limits of the comparative enterprise when applied to legal systems operating in fundamentally different social and cultural contexts. Neither the English nor the American model provides a template that can be straightforwardly transplanted to Nigeria, but both demonstrate the range of directions in which a constitutionally grounded, rights-respecting reform of marriage law can go.[138]

In England, the Marriage (Same Sex Couples) Act 2013 extended civil marriage to same-sex couples and required civil solemnizers and most religious bodies to treat same-sex marriages in the same way as opposite-sex marriages, while protecting religious bodies that

[136]*Mojekwu v Ejikeme* [2000] 5 NNigeria 657) 402 (CA); Constitution of the Federal Republic of Nigeria, s 42.
[137]Child Rights Act (Nigeria) 2003, s 21; also Tawfiq 47–52.
[138]Marriage (Same Sex Couples) Act 2013 (UK) s 1; Civil Partnership Act 2004 (UK); Cretney 350–380.

conscientiously object from compulsion to solemnize such marriages. The Civil Partnership Act 2004, which preceded full marriage equality, created a parallel legal status for same-sex couples that provided substantially all the legal consequences of marriage under a different name. These developments illustrate the English legislative approach of incremental reform that expands legal recognition progressively while maintaining protections for conscientious objectors within a framework of general civil equality. Whether and how this approach might inform Nigerian legislative development is a question that requires engagement with both the constitutional framework and the deeply held religious and social commitments of the Nigerian population rather than simple emulation of the English model.

In the United States, the Supreme Court's decision in *Obergefell v Hodges* in 2015 constitutionalised same-sex marriage by holding that the Fourteenth Amendment's guarantees of equal protection and due process required all states to license and recognise marriages between persons of the same sex.[139] The constitutional logic of *Obergefell*, building on the foundational principle of *Loving v Virginia* that marriage is a fundamental constitutional right subject to the requirements of equal protection, illustrates what happens when the contractualist and individualist understanding of marriage is applied with full constitutional rigour: the state's ability to restrict access to marriage on any ground short of a compelling governmental interest becomes constitutionally very difficult to sustain. Whether Nigerian constitutional jurisprudence should develop in a similar direction is a question that raises issues extending far beyond the scope of this chapter, but the American experience demonstrates the

[139]*Obergefell v Hodges* 576 US 644 (2015); *Loving v Virginia* 388 US 1 (1967).

transformative potential of constitutional engagement with marriage law in ways that purely legislative approaches cannot achieve.[140]

3.14 Conclusion

Statutory marriage law in Nigeria rests on a foundation laid in the colonial period for purposes that were only partially aligned with the social realities of the population it purported to govern, and it has been left substantially unreformed in the postcolonial period despite dramatic changes in Nigerian social life, the progressive development of an international human rights framework with significant implications for domestic marriage law, and persistent evidence from the courts of the system's structural inadequacy. The gap between the formal legal framework and the social reality of marriage practice in Nigeria is not merely a matter of technical legal deficiency. It is a substantive failure that has real consequences for real people, disproportionately women and children, who are left in legally precarious positions because their marriages or family arrangements do not conform to the technical requirements of a statutory system that was never designed with their social realities in mind.[141]

The analysis of this chapter has identified several specific areas where reform is both necessary and demonstrably overdue. The minimum age for statutory marriage requires clear legislative specification and consistent enforcement across all states of the Federation. The conflict between the statutory monogamy requirement and the plural marriage practices of a large proportion of the Nigerian population requires a

[140] Herring (n 8) 80–100; John Eekelaar, Family Law and Social Policy, 2nd ed (Weidenfeld & Nicolson, 1984) 1–30.
[141] Nwogugu 265–280; Allott (n 1) 175–180; Elias 85–91.

principled legislative response that protects the rights of all wives and children rather than allowing the accidents of ceremony sequence to determine the legal standing of families constituted in good faith. The provisions governing divorce require updating to eliminate the requirement to establish fault-based facts that introduce unnecessary adversarialism into already painful family proceedings. The provisions governing custody and the financial consequences of matrimonial breakdown require development that reflects both the international human rights framework and the social conditions of contemporary Nigerian family life.[53]

Most fundamentally, the dual-system framework in which statutory and customary marriage law operate in parallel, with different and sometimes contradictory rules and different and sometimes incompatible legal consequences, needs to be replaced by a more coherent and integrated framework that recognises the validity of marriages contracted in different cultural and religious forms while applying consistent minimum standards for the protection of the fundamental rights of all parties. This is the reform agenda to which Chapter Seven returns in its conclusion. Before that, Chapters Four and Five examine the canonical and Islamic legal frameworks for marriage that constitute the other major normative systems within which Nigerian marriages are understood, contracted, and when necessary dissolved. Chapter Four turns to Catholic canon law, a system that brings to the Nigerian context not only a developed theology of marriage as sacrament but also a sophisticated jurisprudence of matrimonial validity that has been in productive and sometimes uneasy conversation with both customary tradition and statutory law for more than a century.

Chapter Four

CANON LAW AND CHRISTIAN MARRIAGE TRADITIONS

4.1 Introduction

Of all the frameworks through which marriage has been understood in the Nigerian context, the Catholic canonical tradition is at once the most theologically sophisticated, the most legally developed, and the most directly relevant to the pastoral and jurisprudential challenges facing the Church across Igbo land. This is not a claim made on confessional grounds alone. It reflects the historical fact that canon law on marriage represents the product of nearly two millennia of sustained theological reflection, conciliar definition, and systematic jurisprudential elaboration, a tradition of intellectual engagement with the nature and requirements of conjugal union that has no precise equivalent in the secular civil law traditions examined in Chapter Three or in the customary law traditions examined in Chapter Two. The canonical tradition neither despises nor dismisses those other traditions. It engages them, evaluates them, and in the best expressions of its contemporary development, seeks to enter into genuine and productive dialogue with them. But it does so from the vantage point of a theology of marriage that understands the conjugal union as something more than a social fact, a contractual arrangement, or a cultural institution: it understands marriage as a created reality elevated by Christ to the dignity of a sacrament and thus endowed

with dimensions of grace and moral significance that transcend the merely human.[142]

This chapter examines the canonical tradition in the depth its importance requires. It begins with the biblical theology of marriage that provides the scriptural foundation for the Church's understanding of the institution, treating both the Old Testament and the New Testament witness. It then develops the theological understanding of marriage as covenant and sacrament, which is the distinctive Catholic contribution to the theology of marriage and the framework within which the canonical regulation of marriage makes its deepest sense. The historical development of canon law on marriage is traced from the patristic period through the medieval canonical synthesis to the Council of Trent, and then through the 1917 Code of Canon Law to the 1983 Code that currently governs the Latin Church. The chapter analyses in detail the canonical requirements for valid marriage, including the essential properties of unity and indissolubility, the requirements of consent, canonical form, and the absence of diriment impediments. It then examines the procedures for annulment and separation, the distinctive traditions of the Eastern Catholic and Eastern Orthodox churches, the framework governing mixed and interfaith marriages, and the urgent questions of inculturation that arise when the canonical tradition encounters the African traditional marriage systems described in Chapter Two. The chapter concludes with an examination of the contemporary challenges facing Christian marriage in Nigeria.[143]

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[142] Code of Canon Law (1983) (*CIC*) c 1055 §1; Second Vatican Council, *Gaudium et Spes* (7 December 1965) §§47–52.

[143] Pope John Paul II, *Familiaris Consortio* (22 November 1981) §§3–11; Pope *Francis, Amoris Laetitia* (19 March 2016) §§36–57.

The analysis throughout is attentive to the Nigerian context and to the specific pastoral and legal challenges that arise when the universal norms of canon law are applied in a society characterised by plural marriage traditions, limited institutional resources, and deep cultural commitments that sometimes align with and sometimes stand in tension with the canonical framework. The thesis advanced in this chapter is not that canon law is simply right and African tradition simply wrong, or vice versa, but that the canonical tradition, properly understood and generously applied, contains resources for a genuinely inculturated theology and practice of Christian marriage in Nigeria that have not yet been fully developed.[144]

4.2 Biblical Theology of Marriage

The Catholic Church's canonical and theological understanding of marriage is grounded in a reading of Scripture that moves from creation through covenant to the New Testament's transformation of the marital relationship into a sign of the union between Christ and the Church. This scriptural trajectory is not a simple linear progression; it contains tensions, complexities, and unexpected turns that the theological tradition has been engaged in interpreting for centuries. But it constitutes a coherent and developing witness to the conviction that marriage is not merely a human institution invented for practical purposes but a reality that is inscribed in the very structure of creation and that participates, in the fullness of Christian revelation, in the mystery of God's own self-giving love.[145]

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[144] John Witte Jr, *From Sacrament to Contract: Marriage, Religion and Law in the Western Tradition,* 2nd ed (Westminster John Knox Press, 2012) 1–30; E I Nwogugu, *Family Law in Nigeria,* 3rd ed (Heinemann Educational Books, 1990) 235–265.

[145] Genesis 1:26–28; Genesis 2:18–25; Karl Barth, Church Dogmatics, vol III/4 (T & T Clark, 1961) 116–240.

The Augustinian synthesis of the goods of marriage, appropriated and developed by St Thomas Aquinas in his systematic theology, provided the framework within which the medieval canonical tradition organised its reflection on the purposes and requirements of valid marriage. Augustine identified three goods of marriage (*bona matrimonii*): offspring (*proles*), fidelity (*fides*), and the sacramental bond (*sacramentum*). These three goods are not merely external benefits that marriage happens to produce; in the Augustinian-Thomistic framework, they are constitutive of what marriage is in its very structure. The intention to exclude any of them positively at the moment of consent does not merely make the marriage a bad marriage; it makes the marriage invalid, because the essential object of marital consent has not been engaged. This insight, which the 1983 Code of Canon Law encodes in its provisions on partial and total simulation of consent, represents one of the most jurisprudentially productive elements of the canonical tradition's engagement with the theology of marriage.[146]

The Second Vatican Council's treatment of marriage in *Gaudium et Spes* represented a significant development in the theological tradition, though one continuous with it rather than discontinuous. The Council described marriage as an 'intimate partnership of conjugal life and love' established by God and governed by His laws, which finds its origin in the conjugal covenant of irrevocable personal consent. The Council's emphasis on the personalist dimensions of marriage, on the love between the spouses as constitutive of the institution rather than merely

[146] St Augustine of Hippo, *De Bono Conjugali,* ch 3–4, in Philip Schaff (ed), Nicene and Post-Nicene Fathers, Series I, vol 3 (Eerdmans, 1956); St Thomas Aquinas, *Summa Theologiae, Supplement*, qq 41–68.

instrumental to its reproductive purpose, marked a genuine enrichment of the tradition and has had far-reaching consequences for the subsequent development of both theology and canon law.[147]

4.3 Marriage in the Old Testament

The Old Testament witness to marriage is complex and cannot be reduced to a single normative model. The creation narratives of Genesis 1 and 2 provide the foundational theological framework: humanity is created male and female in the image of God (Genesis 1:27), and the man and woman are made for each other in a relationship of complementarity and mutual support that culminates in the declaration that 'a man leaves his father and his mother and clings to his wife, and they become one flesh' (Genesis 2:24). Jesus himself in the New Testament appeals to this text as the definitive expression of God's original intention for marriage, and the canonical tradition reads it as establishing the essential properties of unity and indissolubility that characterise marriage as God intended it from the beginning.[148]

The historical books of the Old Testament record a marital practice that diverges significantly from this creational ideal. Polygyny is practised without condemnation by the patriarchs, the judges, and the kings of Israel, including David and Solomon. Divorce is legally regulated by Deuteronomy 24:1-4, which permits a husband to issue a written bill of divorce if he finds 'some indecency' in his wife. The rabbinic schools of Shammai and Hillel disputed the permissible grounds for this divorce, with Shammai requiring actual sexual immorality and Hillel permitting divorce for any reason that displeased the husband. This dispute forms the

[147] *Gaudies et Spes* (n 1) §48; *CIC* (n 1) c 1055 §1.

[148] Genesis 2:24; Malachi 2:14–16; Gordon Wenham, Genesis 1–15, Word Biblical Commentary vol 1 (Word Books, 1987) 65–91.

backdrop to the Pharisees' question to Jesus about divorce recorded in Matthew 19, and Jesus's response to it is one of the foundational texts for the canonical doctrine of indissolubility.[149]

The prophetic use of marriage as a theological metaphor constitutes a second and theologically more generative dimension of the Old Testament witness. The prophets, beginning with Hosea and continuing through Jeremiah, Ezekiel, and Second Isaiah, deploy the image of the covenant between God and Israel as a marriage relationship: Israel is the unfaithful wife who has prostituted herself to foreign gods, and Yahweh is the faithful husband who pursues her with persistent and suffering love despite her infidelities. This prophetic use of marital imagery elevates the institution of marriage beyond its purely social and legal dimensions and invests it with a theological depth that prepares the ground for the New Testament's identification of marriage as a sign and sacrament of the relationship between Christ and the Church.[150]

4.4 Marriage in the New Testament

The New Testament's contribution to the theology of marriage is concentrated in three primary loci: Jesus's teaching on divorce in the Synoptic Gospels, Paul's extended treatment of marriage and celibacy in 1 Corinthians 7, and the magnificent passage in Ephesians 5:21-33 in which the union of husband and wife is presented as a sign of the relationship between Christ and the Church. Each of these texts has been foundational for the canonical tradition's understanding of marriage, and

[149] Deuteronomy 24:1–4; Louis Epstein, *Marriage Laws in the Bible and Talmud* (Harvard University Press, 1942) 15–50; David Instone-Brewer, *Divorce and Remarriage in the Bible* (Eerdmans, 2002) 1–90.

[150] Hosea 1–3; Ezekiel 16:1–63; Paul Ricoeur, 'The Nuptial Metaphor' in Andre LaCocque and Paul Ricoeur, *Thinking Biblically* (University of Chicago Press, 1998) 265–303.

each has been the subject of sustained and sometimes contentious interpretation.[151]

The Ephesians passage is of particular theological importance for the sacramental theology of marriage. 'Husbands, love your wives, just as Christ loved the church and gave himself up for her' (Ephesians 5:25). The comparison of the husband's love to Christ's self-giving love on the cross introduces into the theology of marriage a dimension of sacrificial love and permanent commitment that goes far beyond any contractual or merely human understanding of the conjugal relationship. The text explicitly identifies the union of husband and wife as a 'great mystery' (*mysterion mega*), a term that the Latin tradition translated as *sacramentum* and that became the foundation for the Catholic doctrine of marriage as a sacrament. Pope John Paul II's extended meditation on this passage in his Theology of the Body represents one of the most profound explorations of its theological implications in the modern tradition, tracing the 'spousal meaning of the body' through the whole arc of Scripture from creation to eschatological fulfilment.[152]

Jesus's teaching on divorce, recorded in Matthew 19:3-9, Mark 10:2-12, and with important variations in 1 Corinthians 7:10-11, establishes the indissolubility of marriage as a recovery of God's creational intention. When the Pharisees appeal to Moses's permission of divorce, Jesus replies that this was permitted 'because of the hardness of your hearts' but that 'from the beginning it was not so.' He then declares that what God has joined together, no human being may separate, and that whoever divorces a spouse and marries another commits adultery. The so-

[151] 10. Matthew 19:3–9; Mark 10:2–12; 1 Corinthians 7:1–16; Ephesians 5:21–33.
[152] Ephesians 5:25–32; Pope John Paul II, *Man and Woman He Created Them: A Theology of the Body* (Michael Waldstein tr, Pauline Books, 2006) 476–513.

called Matthean exception clause has generated centuries of theological and exegetical debate, with the Catholic tradition interpreting it as referring not to divorce and remarriage but to the dissolution of unions that were invalid from the beginning by reason of impermissible consanguinity, a reading consistent with the canonical distinction between valid and invalid marriages.[153]

4.5 Marriage as Covenant and Sacrament

The doctrine of marriage as a sacrament of the New Law was definitively defined by the Council of Trent in 1563, though the theological development that led to this definition had been underway since the patristic period. Trent declared that the grace of Christian marriage, which perfects natural love, confirms indissoluble union, and sanctifies the spouses, is conferred through the sacrament, and it anathematised anyone who denied the sacramental character of marriage or who claimed that marriage could be dissolved by heresy, cohabitation, or deliberate absence.[154]

St Thomas Aquinas's resolution of the relationship between the natural institution of marriage and the sacramental reality has remained normative for the Catholic tradition: the sacrament of marriage does not replace or abolish the natural institution but elevates it. The same reality that was, from creation, a natural good ordered toward procreation and companionship, is, in the dispensation of the New Law, elevated by Christ to the dignity of a sacrament, so that the conjugal covenant between two

[153] Matthew 19:6; CIC (n 1) c 1141 (absolute indissolubility of ratified and consummated sacramental marriage).
[154] Council of Trent, Session XXIV (11 November 1563), Doctrine on the Sacrament of Matrimony and Canon Tametsi, in Norman Tanner (ed), Decrees of the Ecumenical Councils (Georgetown University Press, 1990) vol 2, 753–759.

baptised persons is simultaneously a natural reality and a salvific sign. This elevation is not something added externally to the marriage relationship but something that transforms its inner structure, making the conjugal love of the spouses a participation in and expression of God's own love.[155]

The practical canonical consequence of this theological position is stated in canon 1055 §2 of the 1983 Code of Canon Law: 'Therefore between baptized persons a valid matrimonial contract cannot exist without it being by that very fact a sacrament.' This inseparability principle means that for two baptised persons there is no valid natural marriage that is not simultaneously a sacrament. A Catholic cannot contract a valid but non-sacramental marriage with another baptised person. The sacramentality is intrinsic to the valid marriage contract between the baptised. This principle has important practical implications for the question of mixed marriages, for the recognition of marriages contracted by baptised non-Catholics, and for the canonical status of marriages contracted by former Catholics who have formally defected from the Church.[156]

4.6 Historical Development of Canon Law on Marriage

The canonical regulation of marriage developed gradually from the New Testament period, through the patristic era, the Carolingian reforms, and the medieval canonical synthesis, to reach its classical formulation in the writings of the twelfth-century decretists and decretalists and its codified expression in the 1917 Code of Canon Law. Brundage's comprehensive study of law, sex, and Christian society in

[155] St Thomas Aquinas, *Summa Contra Gentiles, Book IV*, ch 78; Cormac Burke, 'Marriage as a Sacrament' (1992) 62 The Jurist 1, 4–15.
[156] Pope John Paul II, Familiaris Consortio (n 2) §13; Gaudium et Spes (n 1) §48.

medieval Europe documents this development in exhaustive detail, demonstrating how the Church's progressive assumption of exclusive jurisdiction over matrimonial causes was simultaneously a juridical development and a theological one: the assertion of canonical jurisdiction over marriage was justified by and in turn reinforced the understanding of marriage as an essentially ecclesiastical institution.[157]

The decisive moment in the medieval development of canonical marriage law was the debate between the schools of Bologna and Paris in the twelfth century over the question of what actually constituted the marriage bond. The Bolognese school, associated with Gratian and his *Decretum*, held that marriage was constituted by consent followed by consummation. The Parisian school, associated with Peter Lombard and later adopted as the standard canonical position, held that marriage was constituted by consent alone, with consummation adding the quality of absolute indissolubility but not being necessary for the existence of the bond. The Parisian position, adopted by papal authority from Alexander III onwards, established the principle *consensus facit nuptias* (consent makes the marriage) as the cornerstone of canonical marriage law, a principle that has remained foundational through all subsequent canonical development.[158]

The Council of Trent's decree *Tametsi* of 1563 introduced canonical form as a requirement for the validity of marriage for Catholics,

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[157] James Brundage, *Law, Sex and Christian Society in Medieval Europe* (University of Chicago Press, 1987) 1–100; R H Helmholz, *Marriage Litigation in Medieval England* (Cambridge University Press, 1974) 1–50.

[158] Gratian, Decretum, Causa XXVII–XXXVI, in Emil Friedberg (ed), *Corpus Iuris Canonici,* vol 1 (Graz, 1959); Michael Sheehan, Marriage, *Family, and Law in Medieval Europe* (University of Toronto Press, 1996) 88–120.

addressing the practical problem of clandestine marriages that had plagued the medieval Church. By requiring that Catholic marriages be contracted publicly before the parties' own parish priest and two witnesses, Trent simultaneously established the canonical form requirement, created the parish as the primary institutional locus of marriage celebration, and made it possible for the Church's courts to verify the existence and terms of marriages. The *Tametsi* decree, and the subsequent decree *Ne Temere* of 1907, constitute the direct ancestors of the canonical form requirements currently found in canons 1108 to 1123 of the 1983 Code.[159]

4.7 Marriage in the 1917 and 1983 Codes of Canon Law

The promulgation of the 1917 Code of Canon Law represented the first comprehensive codification of the Church's canonical tradition in a systematic legal code. The Code's treatment of marriage, contained in canons 1012 to 1143, preserved the substance of the canonical tradition while giving it systematic clarity. The 1917 Code defined marriage as a contract by which a man and woman mutually transfer and accept the perpetual and exclusive right over the body for acts apt for the generation of offspring (*ius in corpus*), a definition that reflected the dominant canonical understanding of the time in its emphasis on the bodily right as the primary object of marital consent and on procreation as the primary end of marriage.[160]

The 1983 Code of Canon Law, promulgated by John Paul II following the Second Vatican Council, represents a significant

[159] Council of Trent (n 13) Session XXIV; Witte (n 3) 100–180; Brundage (n 16) 564–615.
[160] Codex Iuris Canonici (1917) cc 1012–1143; CIC (1983) cc 1055–1165; Ladislas Orsy, *Marriage in Canon Law* (Michael Glazier, 1986) 1–50.

development of the 1917 Code while maintaining continuity with the essential content of the canonical tradition. The 1983 Code's foundational definition of marriage in canon 1055 reflects the Council's personalist enrichment of marriage theology: marriage is described as a covenant by which a man and woman establish between themselves a partnership of the whole of life which is ordered by its nature to the good of the spouses and the procreation and education of offspring. The substitution of *covenant* for *contract* as the primary descriptor of marriage, and the explicit inclusion of the good of the spouses alongside procreation as a constitutive end of the institution, mark the two most significant doctrinal shifts between the two Codes.[161]

The 1983 Code's treatment of matrimonial consent, contained in canons 1095 to 1107, is considerably more psychologically sophisticated than its 1917 predecessor. Canon 1095, which identifies three forms of incapacity that vitiate consent, has generated the most extensive and contested jurisprudential development of any canonical provision in the post-conciliar period. The canon provides that persons are incapable of contracting marriage who lack the sufficient use of reason, who suffer from a grave defect of discretion of judgment concerning the essential matrimonial rights and duties to be mutually given and accepted, or who for causes of a psychic nature are unable to assume the essential obligations of marriage. The third ground in particular has been the subject of extensive tribunal practice and doctrinal debate as canonical judges and jurisprudents have worked to understand what psychological

[161] CIC (n 1) c 1057 §1 (consent as the efficient cause of marriage); c 1095 (grounds of incapacity); c 1101 (simulation).

conditions qualify as causes of psychic incapacity within the meaning of the canon.[162]

4.8 Canonical Requirements for Valid Marriage

The validity of a canonical marriage depends on the satisfaction of three categories of requirement: the freedom of both parties from diriment impediments, the genuine and informed consent of both parties to the marriage as the Church understands it, and the observance of canonical form. The absence of any one of these requirements renders the marriage invalid from its inception. This juridical conclusion does not necessarily imply any moral blame on the parties; many invalid marriages are contracted in entirely good faith by persons who had no knowledge of the impediment or defect that renders their union null. The distinction between moral fault and legal invalidity is one that the canonical tradition has consistently maintained, with important pastoral consequences.[163]

4.8.1 Consent

Consent is the efficient cause of marriage in the canonical tradition: it is the act by which the parties create the marriage bond, and without it there is no marriage regardless of the performance of any ceremonial form. Canon 1057 states this principle with characteristic precision: 'Marriage is brought about through the consent of the parties, legitimately manifested between persons who are legally capable according to law; no human power can substitute for this consent.' The consent required for valid marriage must be an act of the will by which each party irrevocably gives and accepts the other in order to establish

[162] Orsy 50–120; John Beal, James Coriden and Thomas Green (eds), *New Commentary on the Code of Canon Law* (Paulist Press, 2000) 1243–1350.
[163] CIC (n 1) cc 1055–1062 (the nature and properties of marriage); cc 1095–1107 (matrimonial consent).

marriage, and it must engage the essential elements and properties of marriage as the Church understands them. A consent that positively excludes the other party, or marriage itself, or all right to the conjugal act, or an essential property of marriage such as unity or indissolubility, or an essential element or end of marriage such as the good of the spouses or the procreation and education of offspring, is not a valid marital consent.[164]

Canon 1095's three grounds of incapacity represent a significant expansion of the canonical understanding of the conditions required for valid consent. The first ground, lack of sufficient use of reason, applies to persons in states of severe mental illness, intoxication, or other conditions that deprive them of rational agency at the moment of consent. The second ground, grave defect of discretion of judgment, applies to persons who, while technically rational, lack the psychological maturity needed to appreciate the rights and duties they are undertaking in marriage and to make a genuinely free choice to undertake them. The third ground, psychic incapacity to assume the essential obligations of marriage, applies to persons who, by reason of a deep-seated psychological condition, are constitutionally incapable of fulfilling the requirements of conjugal life even if they understand what those requirements are and sincerely intend to fulfil them.[165]

The practical application of the consent requirements in the Nigerian context raises specific challenges. The cultural pressure on young people in many Nigerian communities to accept marriages arranged by their families can in some cases rise to the level of force or

[164] CIC c 1057 §§1–2; Orsy 135–165; Lawrence Wrenn, *Annulments*, 4th ed (Canon Law Society of America, 1983) 1–30.
[165] CIC c 1095 §§1–3 (lack of due discretion, grave lack of discretionary judgment, inability to assume essential obligations); Beal, Coriden and Green 1294–1315.

grave fear within the meaning of canon 1103, which provides that a marriage is invalid if contracted because of force or grave fear inflicted from without, even if inflicted unintentionally, from which the person is unable to extricate himself or herself without choosing marriage. The canonical tribunals of Nigerian dioceses have been required to navigate these difficult questions with sensitivity both to the demands of canonical law and to the social realities of their communities, distinguishing legitimate communal involvement in the marriage process from external compulsion that destroys marital freedom.[166]

4.8.2 Canonical Form

The requirement of canonical form for the validity of marriage is one of the most practically consequential provisions of the 1983 Code and one of the most directly relevant to the Nigerian situation. Canon 1108 §1 requires that only those marriages are valid which are contracted before the local ordinary or parish priest or a priest or deacon delegated by either of them, who assists, and before two witnesses. This requirement applies to all Catholics regardless of whether they are marrying a Catholic or a non-Catholic. The practical consequence in Nigeria is that a Catholic who goes through only a traditional customary marriage ceremony, without subsequently contracting a canonical marriage before a priest and witnesses, has not contracted a valid marriage in the eyes of the Church, even if the customary ceremony has been conducted with full observance of all traditional requirements.[167]

[166] CIC cc 1099–1103 (error, fraud, force and fear, condition, simulation); Orsy 165–210.

[167] CIC cc 1108–1123 (canonical form); c 1108 §1 (requirement of qualified witness and two other witnesses); c 1118 (place of celebration).

Canon 1127 provides that the diocesan bishop has authority to dispense from canonical form in individual cases for grave and urgent reasons. This dispensation, when granted, permits the marriage to be celebrated in a non-canonical form, including potentially a traditional ceremony, with the marriage being recognised as valid by the Church. The pastoral use of this dispensation in the context of African traditional marriage ceremonies is one of the instruments available for the programme of inculturation discussed in section 4.13 below, and the Diocese of Awka and other Nigerian dioceses have begun to explore how it might be deployed to permit a unified celebration that integrates the traditional and canonical dimensions of the marriage event.[168]

4.8.3 Impediments

The canonical tradition recognises two categories of impediments to valid marriage: diriment impediments, which render a marriage invalid, and prohibitive impediments, which make a marriage unlawful but not invalid. The 1983 Code lists twelve diriment impediments in canons 1083 to 1094: insufficient age (canon 1083); impotence (canon 1084); prior bond (canon 1085); disparity of cult (canon 1086); sacred orders (canon 1087); public perpetual vow of chastity in a religious institute (canon 1088); abduction (canon 1089); crime (canon 1090); consanguinity (canon 1091); affinity (canon 1092); public propriety (canon 1093); and legal relationship arising from adoption (canon 1094).[169]

The impediment of prior bond (*ligamen*) deserves particular attention in the Nigerian context. Canon 1085 renders invalid any

[168] CIC c 1127 (form for mixed marriages); c 1129 (dispensation from canonical form); Orsy (n 19) 215–240.
[169] CIC cc 1073–1094 (diriment impediments: age, impotence, prior bond, disparity of cult, holy orders, public perpetual vow, abduction, crime, consanguinity, affinity, public propriety, legal relationship, adoption).

marriage attempted by a person bound by the prior bond of a prior valid marriage. This means that a Catholic who has contracted a valid first marriage, whether canonical or civil, cannot contract a valid second marriage during the lifetime of the first spouse unless the first marriage has been declared null by a competent ecclesiastical tribunal or dissolved by papal dispensation or by the natural death of the first spouse. The large number of Nigerians who have contracted civil marriages and then separated without obtaining either a civil divorce or a canonical declaration of nullity, and who subsequently attempt to contract canonical marriages, creates a significant pastoral and jurisprudential challenge for Nigerian diocesan tribunals.[170]

4.9 Annulment and Separation

The Catholic Church does not believe that it possesses the authority to dissolve a ratified and consummated sacramental marriage. The indissolubility of such a marriage is understood as a property that belongs to the marriage bond itself, inscribed in it by the nature of the sacrament, and that no human power can remove. The canonical tradition has developed two responses to the reality of failed marriages: the declaration of nullity, which does not dissolve a marriage but declares that no valid marriage ever existed, and the separation of spouses while the bond remains.[171]

A declaration of nullity is a judicial declaration by a competent ecclesiastical tribunal that a marriage was invalid from its inception by

[170] CIC (n 1) c 1058 (all persons not prohibited by law can contract marriage); c 1075 (competence of supreme Church authority to establish impediments); Beal, Coriden and Green 1270–1295.

[171] CIC cc 1671–1691 (matrimonial processes); cc 1676–1679 (documentary process and formal trial); John Alesandro, 'General Introduction' in Beal, Coriden and Green 1635–1660.

reason of the absence of one of the essential requirements for a valid canonical marriage. Common grounds in contemporary canonical practice include lack of due discretion of judgment under canon 1095 §2, psychic incapacity to assume the essential obligations of marriage under canon 1095 §3, total simulation of consent and exclusion of an essential property or element of marriage under canon 1101 §2, grave fear under canon 1103, error of person or quality of a person directly and principally intended under canon 1097, deceit under canon 1098, conditional consent under canon 1102 §1, and defect of canonical form. The formal canonical process requires a formal trial before a collegiate tribunal of three judges and the appointment of a defender of the bond whose role is to present arguments against the declaration of nullity.[172]

Pope Francis's motu proprio *Mitis Iudex Dominus Iesus*, promulgated in 2015, reformed the matrimonial nullity process significantly, introducing a shorter process for cases in which the nullity is evident and both parties petition together, and abolishing the requirement of mandatory appeal to the second instance in cases where the first instance tribunal has upheld the marriage's validity. These reforms, directed at reducing the length and complexity of nullity proceedings and making the canonical process more accessible to ordinary Catholics, have been welcomed by pastoral practitioners and should encourage the dioceses of Nigeria to develop their tribunal systems so that persons in failed marriages can more readily access the canonical process for a declaration of nullity where grounds exist.[173]

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[172] *CIC* cc 1141–1150 (dissolution of the bond); c 1141 (absolute indissolubility of *ratum et consummatum* marriage); cc 1143–1150 (Pauline and Petrine Privileges).

[173] Pope Francis, *Mitis Iudex Dominus Iesus* (15 August 2015) (reform of matrimonial nullity processes);

Separation of spouses, governed by canons 1151 to 1155, represents the canonical response to situations where continued cohabitation is impossible or harmful but where no ground of nullity exists and the marriage bond therefore remains intact. The Code recognises both permanent separation and temporary separation for lesser but sufficient reasons. Separation does not dissolve the marriage bond or permit the parties to remarry; it merely relieves them of the obligation of cohabitation. This remedy is of particular practical importance for Catholics for whom the religious understanding of marriage as indissoluble means that civil divorce, however legally available, is morally unavailable.[32]

4.10 Marriage in the Code and Tradition of the Eastern Catholic Church

The Eastern Catholic Churches, which are in full communion with Rome while maintaining their own liturgical, theological, and canonical traditions, have their own Code of Canons, the Code of Canons of the Eastern Churches (CCEO) promulgated in 1990. The CCEO's treatment of marriage, contained in canons 776 to 866, maintains the substance of the canonical tradition shared with the Latin Church while reflecting the distinctive theological and pastoral emphases of the Eastern traditions. For Nigerian Catholics, whose Church belongs to the Latin tradition, the Eastern Catholic marriage law is not directly applicable, but its study illuminates the breadth of the Catholic tradition and provides comparative perspectives on questions where the Latin canonical tradition has sometimes been overly rigid.[174]

CIC (n 1) cc 1151–1155 (separation of spouses while bond remains).

[174] Code of Canons of the Eastern Churches (1990) (CCEO) cc 776–866; Victor Pospishil, *Eastern Catholic Marriage Law* (Saint Maron Publications, 1991) 1–80.

The most theologically significant difference between the Eastern and Latin canonical traditions on marriage concerns the role of the blessing of the priest in the constitution of the sacrament. In the Latin tradition, the ministers of the sacrament of marriage are the spouses themselves; the priest or deacon assists as the Church's official witness but does not himself confer the sacrament. In the Eastern theological tradition, the priest's blessing is itself considered an essential element of the sacramental act, so that without the priest's blessing there is no valid sacramental marriage even if the parties have exchanged valid consent. This difference in the theology of the sacrament corresponds to differences in canonical form requirements under the CCEO, which requires that marriages be celebrated with a sacred rite, meaning with the blessing of a priest.[175]

4.11 Marriage in the Eastern Orthodox Tradition

The Eastern Orthodox tradition shares with the Catholic Church a sacramental understanding of marriage and a general commitment to the indissolubility of the conjugal bond, but it diverges from Catholic canonical doctrine on the question of divorce and remarriage in ways that have significant pastoral implications. The Orthodox tradition has developed the concept of *oikonomia*, or economy, as a pastoral instrument that permits the Church, in exceptional circumstances, to recognise the death of a marriage bond and permit the remarriage of the innocent party. This practice, which the Orthodox churches justify theologically by appeal to the Matthean exception clause and to the patristic tradition of leniency toward those whose marriages have irretrievably failed, results

[175] CCEO cc 828–834 (form of celebration); cc 800–812 (consent); Pospishil (n 33) 85–150.

in a significantly more permissive practice on divorce and remarriage than obtains in the Catholic canonical tradition.[176]

Meyendorff's careful study of marriage in the Orthodox tradition argues that the Orthodox approach to divorce is not simply a capitulation to human weakness but reflects a distinctive theological anthropology in which the Church's role is not primarily that of a law-enforcing institution but of a healing community that accompanies sinners toward repentance and restoration. The second and third marriages that the Orthodox tradition permits, after appropriate periods of penance, are celebrated with prayers of penitential character that acknowledge the failure of the previous union and seek God's mercy for the new one. This pastoral approach has been cited in the debates within the Catholic Church following the 2014 and 2015 Synods on the Family as a possible model for developing a more pastorally sensitive canonical discipline without abandoning the doctrinal commitment to indissolubility.[177]

4.12 Mixed Marriages and Interfaith Marriages

The canonical regulation of marriages between Catholics and non-Catholics constitutes one of the most practically important areas of marriage law for the Nigerian Church, given the religious diversity of Nigerian society and the frequency of marriages between Catholics and members of other Christian denominations, and between Catholics and Muslims or adherents of traditional religion. The 1983 Code distinguishes between mixed marriages, which are marriages between a Catholic and a

[176] John Meyendorff, *Marriage: An Orthodox Perspective,* 3rd ed (St Vladimir's Seminary Press, 1984) 1–60; Theodore Stylianopoulos, 'Toward a Theology of Marriage in the Orthodox Church' (1978) 22 *Greek Orthodox Theological Review* 249, 250–275.
[177] Meyendorff (n 35) 61–90; Alexander Schmemann, *For the Life of the World: Sacraments and Orthodoxy*, 2nd ed (St Vladimir's Seminary Press, 1973) 81–95.

baptised non-Catholic governed by canons 1124 to 1127, and marriages with disparity of cult, which are marriages between a Catholic and an unbaptised person governed by canon 1086 together with the canonical impediment of disparity of cult.[178]

For a Catholic to contract a valid mixed marriage, the permission of the local ordinary is required, and for this permission to be granted the Catholic party must declare that he or she is prepared to remove dangers of defection from the faith and must make a sincere promise to do all in his or her power to have all the children baptised and brought up in the Catholic Church (canon 1125). A marriage with disparity of cult requires a dispensation from the impediment, together with the same promises concerning the Catholic upbringing of children. In the Nigerian context, the canonical rules governing interfaith marriage intersect in complex ways with both the customary marriage traditions described in Chapter Two and the Islamic family law examined in Chapter Five, creating pastoral situations of considerable complexity that require careful canonical and pastoral guidance.[179]

4.13 African Christianity and Marriage Inculturation

The encounter between Catholic canon law and African traditional marriage institutions has produced, across the century and a half of the Church's presence in Igboland and the broader Onitsha Ecclesiastical Region, a complex history of conflict, negotiation, and tentative accommodation that has not yet produced the theologically coherent and

[178] CIC cc 1124–1129 (mixed marriages and disparity of cult); c 1125 (conditions for permission to contract mixed marriage); c 1086 (impediment of disparity of cult).
[179] Gaudium et Spes (n 1) §§47–52; Pontifical Council for the Family, *Vademecum for Confessors Concerning Some Aspects of the Morality of Conjugal Life* (12 February 1997); Orsy (n 19) 250–270.

pastorally workable synthesis that both the canonical tradition and the African traditional heritage deserve. The early missionaries largely rejected the traditional marriage ceremonies as incompatible with Christian marriage, requiring converts to abandon the *igba nkwu nwanyi* and the Bride-price system in favour of an exclusively canonical ceremony. This approach, however pastorally well-intentioned, was both theologically reductive and pastorally counterproductive: it created a sharp opposition between Christian identity and cultural identity that has continued to generate pastoral difficulties in the Nigerian Church.[180]

The Second Vatican Council's call for inculturation, developed in the post-conciliar magisterium particularly through John Paul II's *Ecclesia in Africa* and *Familiaris Consortio*, opened the theological and pastoral space for a more generous engagement with African traditional marriage customs. The principle of inculturation holds that the Gospel must be proclaimed and celebrated in forms that are authentically African rather than merely transplanted European forms, and that local cultural elements which are consistent with the Gospel and with the essential requirements of Christian faith can and should be incorporated into the Church's liturgical and sacramental life.[181]

The theologians of inculturation, including Aylward Shorter and Benezet Bujo, have argued for an approach to African Christian marriage that neither uncritically adopts all elements of the traditional system nor simply replaces it with a European canonical model, but engages the traditional system in a process of critical discernment that identifies what

[180] Ogbu Kalu, *The Embattled Gods: Christianization of Igboland,* 1841–1991 (Minaj Publishers, 1996) 78–130; Agbonkhianmeghe Orobator, *Theology Brewed in an African Pot* (Orbis Books, 2008) 55–80.

[181] Pope John Paul II, *Ecclesia in Africa* (14 September 1995) §§43–53; Emmanuel Martey, *African Theology: Inculturation and Liberation* (Orbis Books, 1993) 80–120.

is genuinely compatible with the Gospel, what requires purification and transformation, and what must be firmly rejected. On this analysis, the communal dimension of African traditional marriage, its insistence that the union is between families and not merely between individuals, is broadly compatible with and may indeed enrich the canonical tradition's understanding of marriage as an institution with social and ecclesial dimensions that transcend the preferences of the individual spouses.[182]

In practice, many Nigerian Catholics navigate between the traditional and canonical systems through a sequence of ceremonies: first the traditional *igba nkwu nwanyi*, then the canonical church wedding, and sometimes also a civil registry marriage. This sequence, while it responds practically to the competing demands of the customary, civil, and canonical systems, is theologically unsatisfactory because it implies that there are three separate marriages rather than one marriage expressed and celebrated in different but complementary forms. The Diocese of Awka and some other Nigerian dioceses have developed guidelines for the pastoral accompaniment of couples through this process, but these guidelines stop well short of the theologically integrated approach that a genuine inculturation of Christian marriage in Igbo culture would require. Chapter Seven returns to the prospects for such an integration as the concluding argument of this book.[183]

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[182] Aylward Shorter, *Toward a Theology of Inculturation* (Orbis Books, 1988) 200–240; Benezet Bujo, *African Theology in Its Social Context* (Orbis Books, 1992) 65–95.

[183] Diocese of Awka, Guidelines on Marriage Preparation and Celebration (Catholic Secretariat of Nigeria, 2018) 12–30; Nwogugu 235–265.

4.14 Protestant and Pentecostal Views on Marriage

The Protestant Reformation's break with the canonical tradition on marriage produced a diversity of approaches that cannot be reduced to a single Protestant position. Luther's insistence that marriage was a worldly affair rather than a sacrament, and his transfer of matrimonial jurisdiction from ecclesiastical to civil courts in Protestant territories, represents one pole of the Protestant spectrum. Calvin's more structured approach, which maintained significant ecclesiastical oversight of marriage through the consistory system while denying sacramental status, represents another. The theological diversity of the Protestant Reformation on marriage has produced, over five centuries of development, a very wide range of Protestant marriage theologies and practices.[184]

Karl Barth's extended treatment of marriage in the *Church Dogmatics* represents the most systematic Protestant engagement with the theology of marriage in the twentieth century. Barth, while rejecting the sacramental theology of marriage, argued powerfully for the covenant character of the conjugal relationship as an analogue of the covenant between God and humanity in Jesus Christ. His insistence on the irreducibly covenantal character of marriage, and on the ethical demands that this covenantal character generates, provides a basis for Protestant marriage theology that is both theologically rigorous and pastorally serious, even while it differs from the Catholic sacramental understanding in important respects.[185]

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[184] Martin Luther, *The Estate of Marriage* (1522), in Walther Brandt (ed), Luther's Works, vol 45 (Fortress Press, 1962) 13–49; John Calvin, *Institutes of the Christian Religion, Book IV*, ch 19 (John McNeill ed, Westminster Press, 1960).

[185] Karl Barth, *Church Dogmatics,* vol III/4 183–240; John Witte Jr, *God's Joust, God's Justice: Law and Religion in the Western Tradition* (Eerdmans, 2006) 215–260.

In the Nigerian context, it is the Pentecostal and charismatic traditions that have grown most dramatically in the past four decades and that present the most distinctive approach to marriage among the Protestant churches. Nigerian Pentecostalism has developed a distinctive theology of Christian marriage that combines a high view of marriage as a divine institution with a strong emphasis on personal and family spiritual warfare, prophetic guidance in the choice of a spouse, and the expectation of material blessing as a sign of God's favour on a properly constituted Christian marriage. Pentecostal churches generally require their members to contract church marriages in addition to any customary ceremony, and they exercise significant informal social pressure toward the ideal of a monogamous Christian marriage.[186]

4.15 Contemporary Challenges to Christian Marriage

The contemporary challenges to Christian marriage in Nigeria and globally are simultaneously doctrinal, pastoral, and social. The doctrinal challenges arise primarily from within the Church itself, as theologians, pastoral workers, and faithful Catholics grapple with the tension between the canonical tradition's firm commitment to the indissolubility of marriage and the pastoral reality of the large and growing number of Catholics whose marriages have failed and who are in irregular situations. This tension came to a particular head in the debates preceding and following the 2014 and 2015 Synods on the Family, and in Pope Francis's post-synodal exhortation *Amoris Laetitia* of 2016.[187]

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[186] Cephas Omenyo, *Pentecost Outside Pentecostalism* (Boekencentrum Publishing House, 2006) 155–185; Matthews Ojo, *The End-Time Army: Charismatic Movements in Modern Nigeria* (Africa World Press, 2006) 130–165.

[187] Pope Francis, *Amoris Laetitia* (n 2) §§291–312; Walter Kasper, The Gospel of the Family (Paulist Press, 2014) 1–60.

Pope Francis's *Amoris Laetitia*, particularly its eighth chapter, has generated intense theological controversy by suggesting, without changing the doctrinal framework of the canonical tradition, that the pastoral accompaniment of those in irregular situations may in some cases lead to their access to the sacraments, provided that they are living with a firm purpose of amendment and that certain conditions are met. The five dubia submitted to the Pope by four cardinals in 2016 remain formally unanswered, and the resulting lack of doctrinal clarity has produced divergent pastoral practices in different dioceses and bishops' conferences.[188]

The social and cultural challenges to Christian marriage in Nigeria are no less pressing than the doctrinal ones. The interaction between the canonical marriage system and the traditional marriage systems described in Chapter Two creates systematic pastoral problems: Catholics who have contracted valid traditional marriages but have not yet celebrated a canonical wedding are in an irregular canonical situation even if their union is socially and legally recognised, and they are consequently deprived of access to the sacraments. The economic cost of canonical marriage celebrations, combined with the cost of the traditional ceremony and any civil registry formalities, makes the achievement of full canonical regularity a significant economic challenge for many young Nigerian Catholics. The gender dimensions of marriage breakdown, particularly the vulnerable position of women whose customary marriages are not recognised by civil law and whose canonical situations are irregular, raise

[188] Synod of Bishops, Relatio Synodi, Extraordinary General Assembly (October 2014) §§13–18; Final Report of the Synod of Bishops (October 2015) §§84–86.

urgent human rights concerns that the canonical tradition must engage seriously.[189]

4.16 Conclusion

Canon law on marriage is not, at its deepest level, a system of rules and prohibitions but a juridical expression of the Church's understanding of what marriage is in its God-given nature and purpose. The canonical requirements for valid marriage, the provisions governing annulment and separation, the framework for mixed and interfaith marriages, and the ongoing theological discussion about the challenges of divorce and remarriage are all expressions of a single underlying conviction: that marriage, as a creation of God elevated by Christ to the dignity of a sacrament, has an integrity and a set of essential properties that are not at the disposal of any human power, whether that of the spouses themselves, the state, or even the Church, to alter or abolish. This conviction is not a form of institutional rigidity or indifference to human suffering. It is a form of respect for the reality of marriage as God created it, a respect that generates the pastoral obligation to help all people live that reality as fully as their circumstances permit and to seek healing and restoration when they fall short of it.[190]

The encounter between this canonical tradition and the African traditional marriage systems examined in Chapter Two, and the statutory

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[189] Convention on the Elimination of All Forms of Discrimination against Women (CEDAW; adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13, art 16; Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) (adopted 11 July 2003, entered into force 25 November 2005) art 6.

[190] *Gaudium et Spes* (n 1) §47; *Familiaris Consortio* §§3–11.

marriage system examined in Chapter Three, represents one of the most important and least resolved questions in the pastoral life of the Nigerian Church. The canonical tradition has the theological resources for a genuine and generous engagement with African traditional marriage: its covenantal understanding of the conjugal bond, its insistence on the communal and ecclesial dimensions of marriage, and its developing commitment to inculturation all point toward the possibility of a theology and practice of Christian marriage in Nigeria that is authentically Catholic and authentically African. The development of such a theology requires the kind of sustained, collaborative engagement between canonical scholars, systematic theologians, pastoral workers, and cultural anthropologists that the Nigerian Church has not yet fully undertaken but that the urgency of the pastoral situation increasingly demands.[191]

The problem of multiple marriage ceremonies, which is at once the most visible and the most practically pressing manifestation of the conflict between the canonical, customary, and civil marriage systems in Nigeria, requires for its resolution not merely administrative or pastoral adjustments but a genuine theological synthesis that understands the traditional ceremony, the canonical ceremony, and the civil registration as different dimensions of a single complex social and sacramental event rather than as three separate and competing acts. Chapter Seven returns to the prospects for such a synthesis, drawing on the canonical resources identified in this chapter together with the theological insights of the inculturation tradition and the legal framework of both statutory and customary marriage law. But before that synthesis can be properly articulated, the Islamic legal tradition on marriage must be examined in its own right, as Chapter Five proceeds to do, since any account of

[191] Witte 295–332; Shorter 230–240.

marriage in Nigeria that does not engage seriously with Islamic family law is incomplete from the outset.[192]

[192] Orobator 75–80; Kalu (n 39) 120–130; Nwogugu 260–265.

Chapter Five

ISLAMIC MARRIAGE TRADITIONS AND MUSLIM FAMILY LAW

5.1 Introduction

Islam came to the territory that is now Nigeria long before Christianity, and its impact on the legal and social institutions of the northern half of the country has been deeper, more durable, and more comprehensively transformative than any subsequent colonial or missionary intervention. The jihad of Usman dan Fodio in the early nineteenth century and the subsequent establishment of the Sokoto Caliphate created a political and religious order in which Islamic law was not merely a personal code governing the ritual obligations of individual believers but the comprehensive legal framework of an entire civilization, regulating marriage, inheritance, property, criminal liability, and commercial transactions within a unified jurisprudential system grounded in the Quran and the Sunnah of the Prophet Muhammad. When British colonial administration arrived in the north at the beginning of the twentieth century, it incorporated the existing Islamic legal apparatus into the colonial administrative structure rather than replacing it, and this accommodation of Islamic family law within the Nigerian legal order has persisted, in modified but recognizable form, to the present day.[193]

The constitutional settlement of 1999 and the subsequent adoption of expanded Sharia codes by twelve northern states between 1999 and

[193] Murray Last, *The Sokoto Caliphate* (Longmans, 1967) 1–30; also M G Smith, *Government in Zazzau, 1800–1950* (Oxford University Press, 1960) 1–40.

2002 reinvigorated the role of Islamic law in Nigerian public life in ways that continue to generate constitutional controversy and inter-religious tension. The Sharia courts that operate in these states exercise jurisdiction over matrimonial and family matters for Muslim citizens, applying a body of Islamic family law that derives principally from the Maliki school of jurisprudence and that has been shaped both by the classical tradition and by the specific social and political history of northern Nigeria. This jurisdiction operates alongside, and sometimes in conflict with, the statutory marriage and family law system examined in Chapter Three and the customary marriage systems examined in Chapter Two, creating the kind of plural legal landscape that is characteristic of the Nigerian legal order as a whole.[194]

This chapter examines Islamic marriage traditions and Muslim family law in the depth and rigour that their importance for Nigerian legal and social life demands. It proceeds through an examination of the theological and jurisprudential foundations of Islamic marriage, the nature and legal incidents of the contract of *nikah*, the institution of *mahr* and its legal significance, the framework governing guardianship and consent, the controversial question of polygyny, the three principal modes of Islamic divorce, the law of child custody and maintenance, and the differences between the Sunni and Shi'a approaches to marriage. The chapter then examines the specific expressions of Islamic marriage law in northern and southern Nigeria before analysing the persistent conflicts between the Islamic, civil, and customary marriage systems. The chapter concludes with an examination of the modern challenges facing Islamic family law in Nigeria, including the pressures generated by international

[194]Constitution of the Federal Republic of Nigeria 1999 (as amended) (*Constitution*), s 38 (freedom of religion); s 277 (definition of Sharia Court of Appeal); also Philip Ostien, *Sharia Implementation in Northern Nigeria 1999–2006: A Sourcebook*, 5 vols (Spectrum Books, 2007) vol 1, 1–50.

human rights instruments, feminist scholarship, and the demands of a rapidly urbanising and educating Muslim population.[195]

5.2 Foundations of Islamic Marriage

Islamic marriage draws its theological foundations from a set of Quranic verses and Prophetic traditions that together constitute the primary sources of Islamic matrimonial jurisprudence. The Quran presents marriage as part of God's creative design for human beings, a sign of His mercy and wisdom: "And among His signs is this, that He created for you mates from among yourselves, that you may dwell in tranquillity with them, and He has put love and mercy between your hearts. Verily in that are signs for those who reflect" (Quran 30:21). This foundational text identifies three goods of marriage in Islamic theological anthropology: tranquillity (*sakinah*), love (*mawaddah*), and mercy (*rahmah*), a tripartite characterization that has resonances with the Augustinian enumeration of the goods of marriage noted in Chapter Four and that similarly points toward an understanding of marriage as an institution oriented toward deeply human goods rather than merely toward reproduction.[196]

The Prophetic traditions (*hadith*) recorded in the canonical collections of al-Bukhari and Muslim provide detailed guidance on the practical requirements of marriage, from the procedures for contracting a valid *nikah* to the rights and obligations of husband and wife in the

[195]Ruud Peters, *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-First Century* (Cambridge University Press, 2005) 1–30; also E I Nwogugu, *Family Law in Nigeria*, 3rd ed (Heinemann Educational Books, 1990) 265–310.

[196] Quran 4:1, 30:21, 2:187; also Laleh Bakhtiar (tr), *The Sublime Quran* (Kazi Publications, 2007).

domestic sphere. The Prophet Muhammad is reported to have said: "O young people! Whoever among you can support a wife should marry, for that is more modest for the gaze and more chaste for the private parts; but whoever cannot do so should fast, for that is a restraint for him." This tradition, which situates marriage within a framework of moral discipline and protection of sexual virtue, establishes the Islamic understanding that marriage is not merely a social convention or a legal arrangement but a moral and spiritual obligation for those who are able to fulfil its requirements, and an institution whose purpose includes the protection of the community's moral health.[197]

Islamic jurisprudence classifies marriage (*nikah*) as one of the most strongly recommended acts in Islamic law, indeed as an obligation for persons who fear that they will otherwise fall into sexual sin, and as meritorious for all persons of appropriate age and means. This strong jurisprudential commendation of marriage reflects the Islamic rejection of celibacy as a spiritual ideal, a rejection that distinguishes the Islamic tradition sharply from the Catholic canonical tradition examined in Chapter Four, in which celibacy for the sake of the Kingdom of God is presented as a higher calling than marriage. For Islamic jurisprudence, the fulfilment of sexual desire within marriage and the propagation of the Muslim community through the procreation of Muslim children are positive religious goods, not concessions to human weakness, and the

[197]Sahih al-Bukhari, Book of Nikah, hadith nos 5063–5065; Sahih Muslim, Book of Marriage, hadith nos 1400–1404; also Jamal Nasir, *The Islamic Law of Personal Status*, 3rd ed (Kluwer Law International, 2002) 1–25.

institution of marriage is accordingly celebrated rather than merely tolerated.[198]

5.3 Marriage under Sharia

Islamic law (*Sharia*), as a comprehensive legal and moral framework derived from the Quran, the Sunnah, the consensus of scholars (*ijma'*), and analogical reasoning (*qiyas*), governs marriage as a whole-of-life institution rather than merely as a matter of personal relationship or state registration. The classical schools of Islamic jurisprudence, the Maliki, Hanafi, Shafi'i, and Hanbali, and among Shi'a Muslims the Ja'fari school, all offer systematic and internally consistent accounts of the law of marriage, though they differ on many points of detail. In northern Nigeria, it is the Maliki school that is dominant, a consequence of the historical connection between the Saharan trade routes along which Islam spread to the region and the scholarly traditions of North and West Africa in which the Maliki school was most strongly established.[199]

The Sharia's regulation of marriage is not merely formal but substantive: it specifies not only how a marriage is to be contracted and dissolved but what the rights and obligations of the parties are during the marriage, what duties the husband owes to his wife in terms of financial maintenance (*nafaqa*), equitable treatment (*qasm*) and sexual access, and what duties the wife owes to her husband in terms of obedience (*ta'ah*) within the boundaries of what God has commanded. This comprehensive regulation of the domestic relationship distinguishes Islamic family law

[198]Nasir (n 5) 20–35; also Noel Coulson, *A History of Islamic Law* (Edinburgh University Press, 1964) 14–40; Joseph Schacht, *An Introduction to Islamic Law* (Clarendon Press, 1964) 161–175.

[199]Schacht (n 6) 161–180; Coulson (n 6) 60–100; also Wael Hallaq, *Sharia: Theory, Practice, Transformations* (Cambridge University Press, 2009) 270–310.

from the secular civil law model examined in Chapter Three, in which the law specifies the legal framework for marriage and its dissolution but largely leaves the internal conduct of the marriage to the parties' own arrangements.[200]

The classical Islamic jurists organized their treatment of marriage law around the concept of the *nikah* as a legal transaction of a specific and formally defined character. Unlike the Catholic canonical tradition's understanding of marriage as a covenant elevated to sacramental dignity, or the secular civil law tradition's understanding of marriage as a contract between equal parties creating mutual rights and obligations, Islamic jurisprudence understands *nikah* as a contract that transfers specific legal capacities between the parties: primarily, it makes sexual intercourse between the man and woman lawful (*halal*) and establishes the framework of rights and duties that govern the domestic relationship. The transactional character of the *nikah* is further expressed in the requirement of *mahr*, the dower or bridal gift, which is an essential element of the contract rather than merely a customary accompaniment to it.[201]

5.4 Nikah and the Nature of Islamic Marriage

The *nikah* is the formal contract by which an Islamic marriage is constituted, and its essential elements are specified with considerable precision by the classical jurists. The minimum requirements for a valid *nikah* are: the *ijab* (offer) made by the bride's guardian (*wali*) or, in some schools, by the bride herself; the *qabul* (acceptance) made by the groom;

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[200]Hallaq (n 7) 274–285; also Ahmad Doi, *Sharia: The Islamic Law* (Ta Ha Publishers, 1984) 111–145.

[201]Nasir (n 5) 25–55; Schacht (n 6) 163–170; also Syed Ameer Ali, *Mahommedan Law*, 5th ed (Law Publishing Company, 1985) vol 2, 1–50.

the presence of two male witnesses (or, in the Maliki school, publicity as an alternative to witnesses in certain circumstances); and the specification of the *mahr* or its promise. Different schools of jurisprudence add additional requirements or modify these in various ways, but this core structure is common to all the classical Sunni schools and broadly shared by the Shi'a tradition.[202]

The Quran itself describes the marriage bond as a *mithaqan ghalithan*, a solemn and weighty covenant (Quran 4:21), a characterisation that introduces into the Islamic understanding of marriage a dimension of sacred obligation that goes beyond the merely contractual. Islamic theologians have developed this covenantal dimension of the *nikah* in ways that are not entirely dissimilar to the covenantal theology of marriage found in the Jewish and Christian traditions, emphasising that the marriage bond creates moral and spiritual obligations between the parties that persist beyond the formal legal framework and that are ultimately accountable before God. This theological depth does not, however, eliminate the contractual character of the *nikah*; rather, it enriches the contract with a dimension of religious obligation that reinforces and deepens the legal commitments the parties undertake.[203]

The legal consequences of the *nikah* are comprehensive and extend across all dimensions of the domestic relationship. On the husband's side, the contract creates the obligations of paying the *mahr*, providing full financial maintenance (*nafaqa*) for the wife including food,

[202] Nasir (n 5) 56–90; Doi (n 8) 112–120; also Abd al-Rahman al-Jaziri, *Islamic Jurisprudence According to the Four Sunni Schools*, vol 4 (Fons Vitae, 2009) 1–60.

[203] Quran 4:21 (*mithaqan ghalithan*, a solemn covenant); Nasir (n 5) 57–62; al-Jaziri (n 10) 5–15.

clothing, and shelter at the standard appropriate to his means and her social position, treating her with kindness (*mu'ashara bi'l-ma'ruf*), and, where the husband has more than one wife, providing equitable treatment among them. On the wife's side, the contract creates obligations of sexual availability within lawful limits, management of the domestic household, and obedience to the husband in matters that are not contrary to God's commands. These reciprocal obligations are grounded theologically in the Quranic principle that spouses are garments for each other (Quran 2:187), a metaphor that expresses mutual protection, intimacy, and the covering of each other's vulnerabilities.[204]

5.5 Mahr and Marital Obligations

The *mahr* (variously translated as dower, bridal gift, or marriage portion) is one of the most distinctive and legally significant features of Islamic marriage law, and it is one whose meaning and function are widely misunderstood in cross-cultural analysis. The Quran commands: "Give women their bridal gifts as a free gift; but if they of themselves be pleased to give up to you a portion of it, then consume it with enjoyment and wholesome result" (Quran 4:4). The *mahr* is the bride's personal right and entitlement, not a payment to her family and not a purchase price for the bride as a person. It becomes her exclusive property upon the conclusion of the marriage contract and remains hers regardless of the subsequent course of the marriage. Its payment or promise is a condition of the validity of the *nikah* in all the classical schools, and a marriage contracted without any specification of *mahr* is treated as valid but requiring the

[204]Nasir (n 5) 62–85; Hallaq (n 7) 278–285; also Amira El Azhary Sonbol, *Women, the Family, and Divorce Laws in Islamic History* (Syracuse University Press, 1996) 1–40.

payment of a *mahr al-mithl*, the customary or appropriate dower for a woman of the bride's social standing.[205]

The *mahr* is typically divided into two portions: the *mahr mu'ajjal*, or prompt portion, which is paid at or before the solemnization of the marriage and which the bride may use immediately as she chooses, and the *mahr mu'ajjal*, or deferred portion, which becomes payable on the dissolution of the marriage by divorce or the death of the husband. The deferred portion functions as a form of financial security for the wife in the event of marital breakdown, providing her with resources that are legally her own and that cannot be appropriated by either her husband or her natal family. This economic protection function distinguishes *mahr* from the Igbo Bride-price examined in Chapter Two, which is paid to the bride's family and does not become the bride's personal property. The comparison illuminates both the convergence and the divergence between the two traditions: both involve a property transfer at marriage that has juridical significance for the status and security of the wife, but they operate on different theories of the wife's legal personhood and her relationship to her natal family.[206]

The *mahr* has been the subject of extensive jurisprudential analysis in the classical schools, which specify the minimum and maximum amounts permissible, the conditions under which the wife forfeits all or part of the *mahr*, the circumstances in which the deferred *mahr* falls due before the dissolution of the marriage, and the relationship between the *mahr* and the wife's entitlement to financial maintenance. In

[205]Quran 4:4 (*saduqatihinna*, their bridal gifts); Nasir (n 5) 91–120; Doi (n 8) 148–162.

[206]Nasir (n 5) 92–100; al-Jaziri (n 10) 60–90; also Lynn Welchman, *Women and Muslim Family Laws in Arab States: A Comparative Overview of Textual Development and Advocacy* (Amsterdam University Press, 2007) 55–90.

the contemporary Nigerian context, the *mahr* practice among Muslim communities in both the north and south ranges from token amounts, such as the sum of a few hundred naira or a copy of the Quran, to substantial financial commitments reflecting the educational and social standing of the parties. The interaction between the *mahr* obligation and the civil law of property, particularly in the context of marital breakdown and succession, is one of the areas where the conflict between Islamic and statutory family law creates the most practical difficulty for Nigerian courts and individuals.[207]

5.6 Guardianship and Consent

The institution of *wilayah* (guardianship) in Islamic marriage law is one of the features of the classical tradition that generates the most significant tension with the international human rights framework's requirement of the free and full consent of both intending spouses. In most schools of classical Sunni jurisprudence, a woman cannot contract a marriage without the involvement of her *wali* (guardian), who is her nearest male relative: her father, grandfather, brother, or uncle in a specified order of priority. The Maliki and Shafi'i schools require the presence and action of the *wali* as a condition of the validity of the *nikah*; without him, the marriage is either invalid or irregular. The Hanafi school, which is dominant in South Asia and Turkey but has some influence in Nigeria, takes the more liberal position that an adult woman of sound mind may contract her own marriage without a guardian, though the involvement of a guardian is considered preferable.[208]

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[207]Nasir (n 5) 100–115; also Muhammad Abu Zahrah, *Family Law in Islam: Theory and Practice* (Translated works, Islamic Council of Europe, 1986) 45–70.

[208]Nasir (n 5) 120–155; Schacht (n 6) 165–167; al-Jaziri (n 10) 90–130.

The theological justification offered by the classical jurists for the *wilayah* requirement is grounded in a conception of the woman's social vulnerability and her need for protection in a society where marriage decisions had significant implications for family alliances, property transfers, and social status. The *wali* is understood as acting in the woman's interests, not against them, and the classical jurists were attentive to the possibility of abuse: a *wali* who refused to permit a suitable marriage proposed by a competent woman (*adhl*) could be bypassed by a judge (*qadi*) who could act as the woman's guardian in his place. Nevertheless, the structural reality of the *wilayah* requirement is that it places significant power over a woman's marriage in the hands of male relatives, and its compatibility with the human rights principle of free and full personal consent has been widely contested by Muslim feminist scholars and human rights advocates.[209]

The international human rights framework, particularly CEDAW and the Convention on Consent to Marriage, requires that marriage be entered into only with the free and full consent of both parties and prohibits the practice of giving women in marriage without their consent. The tension between this requirement and the *wilayah* system is genuine and cannot be dissolved by interpretive charity alone. It has been the subject of sustained engagement by Muslim reform scholars, including Abdullahi An-Na'im, who argue for a reinterpretation of Islamic family law in the light of constitutional and human rights norms, and by more traditional scholars who maintain that the *wilayah* requirement, properly understood and applied, does not violate the woman's freedom of consent but rather provides her with the protection and support that a responsible legal system owes to persons in vulnerable situations. The Nigerian Sharia courts have navigated this tension with varying degrees of sensitivity, and

[209]Hallaq (n 7) 282–290; also Sonbol (n 12) 20–40; Welchman (n 14) 60–75.

the outcomes in specific cases have depended heavily on the disposition of the individual judge and the social context of the case.[210]

5.7 Polygyny in Islamic Law

The Quranic permission for polygyny, qualified by the condition of equal treatment among wives, is one of the most discussed and contested features of Islamic family law in both Muslim-majority societies and in comparative legal scholarship. The relevant Quranic text (4:3) states: "If you fear that you will not act justly towards the orphans, marry such women as seem good to you, two, three, four; but if you fear that you will not be equitable, then only one." This text is widely understood as permitting polygyny up to a maximum of four wives simultaneously, while making equal treatment among co-wives a condition that is practically very demanding and which the same Quran elsewhere suggests is impossible to achieve in the full sense (Quran 4:129: "You will never be able to be equal between wives, even if you are eager to do so").[211]

The classical schools of Islamic jurisprudence treat polygyny as permissible (*mubah*) but not as obligatory or even recommended, and they impose conditions including the ability to provide equally for all wives financially and the requirement of equal treatment in domestic matters including time, housing, and sexual availability. The legal enforceability of the equal treatment condition has always been limited, since it is

[210]Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (adopted 7 November 1962, entered into force 9 December 1964) 521 UNTS 231, art 1; Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (*CEDAW*), art 16.

[211]Quran 4:3; Nasir (n 5) 156–185; Doi (n 8) 147–148.

difficult to quantify and even more difficult to adjudicate, and the practical reality of polygynous marriages across Muslim societies has frequently been that co-wives do not receive equal treatment in either material or emotional terms. Modern Islamic feminist scholars, including Leila Ahmed, have argued that the Quran's own qualification of the polygyny permission with the condition of impossible equality effectively functions as a de facto prohibition of polygyny for those who read the text with full attention to its internal logic.[212]

In the Nigerian context, polygyny among Muslim men is both legally recognised and socially practised across the northern states and in Muslim communities in the south. The statutory Marriage Act's bigamy provisions, which criminalise the contraction of a second marriage during the subsistence of a statutory marriage, do not apply to marriages contracted under Islamic personal law, which occupy a constitutionally protected space as part of the Islamic personal law system. The conflict between the monogamy requirement of statutory marriage and the polygyny permission of Islamic law is managed, in practice, by the mutual non-application of the two systems: a man who marries under Islamic law is not subject to the Marriage Act's bigamy provisions, and a man who marries under the Marriage Act is prohibited from contracting an Islamic polygynous marriage during the subsistence of the statutory union. This de facto separation of jurisdictions is practically workable but constitutionally untidy, and it leaves unresolved a number of difficult

[212]Ameer Ali (n 9) vol 2, 280–295; also Leila Ahmed, *Women and Gender in Islam: Historical Roots of a Modern Debate* (Yale University Press, 1992) 55–80.

questions about the rights of co-wives under Islamic marriage and the legal status of their children in the event of the husband's death.[213]

5.8 Divorce under Islamic Law

Islamic law recognizes the reality of marital breakdown and provides for divorce as a legitimate, if regrettable, legal remedy. The Prophet Muhammad is reported to have described divorce as the most hateful of permitted acts (*abghadu'l-halal ila'l-lah al-talaq*), a characterisation that captures the Islamic tradition's ambivalence toward divorce: it is permitted, and provision for it is made in considerable jurisprudential detail, but it is regarded as a failure and a source of divine displeasure rather than as a normal or morally neutral event. This moral framework does not prevent divorce from being legally available; it situates the exercise of the legal right within a context of moral accountability before God that the purely contractualist model of secular civil law lacks.[214]

5.8.1 Talaq

The *talaq* is the husband's unilateral right to dissolve the marriage by pronouncing a declaration of repudiation. It is the most widely discussed and most frequently criticised feature of classical Islamic divorce law, particularly from a gender equality perspective. The husband may pronounce *talaq* without stating any reason, without the involvement of any judicial or official body, and without the consent of the wife. In the classical system, the *talaq* is governed by an elaborate set of rules that seek to prevent precipitate and irrevocable dissolution of the marriage

[213]Abdullahi An-Na'im, *African Constitutionalism and the Role of Islam* (University of Pennsylvania Press, 2006) 100–140; also Welchman (n 14) 75–90.

[214]Nasir (n 5) 186–240; Coulson (n 6) 100–120; Hallaq (n 7) 290–310.

while preserving the husband's ultimate authority over the continuation of the union.[215]

The classical jurisprudence distinguishes between the *talaq al-sunna*, the properly conducted repudiation that follows the Prophetic model and that is most likely to be valid and revocable, and the *talaq al-bid'a*, the innovative or irregular repudiation that departs from the Prophetic model. The *talaq al-sunna* requires that the repudiation be pronounced once during a period of the wife's purity (*tuhr*) in which the husband has not had sexual relations with her, followed by a waiting period (*iddah*) of three menstrual cycles during which the husband may revoke the *talaq* by returning to cohabitation. After three irrevocable pronouncements, the marriage is permanently dissolved and the husband cannot remarry the same woman unless she has first contracted and consummated a marriage with another man, a requirement known as *halalah* or *tahlil* that is recognised by the classical tradition but widely regarded as open to abuse.[216]

The gender inequality inherent in the *talaq* system, in which the husband possesses the unilateral power to dissolve the marriage while the wife has no equivalent power, has been the subject of reform efforts in many Muslim-majority states and of sustained scholarly critique by Muslim feminist scholars. The Quran's language on divorce, including its instruction to keep wives "in kindness or release them with kindness" (Quran 2:229), and its provisions for the *iddah* period as a time of reflection and potential reconciliation, point toward an understanding of divorce as a moral act subject to divine accountability rather than a purely

[215]Quran 2:229–232; Nasir (n 5) 190–215; Schacht (n 6) 163–164.

[216]Nasir (n 5) 195–210; al-Jaziri (n 10) 220–260; also Jamal Nasir, *The Status of Women under Islamic Law and Modern Islamic Legislation*, 3rd ed (Brill, 2009) 40–65.

private exercise of legal power. But the structural asymmetry between the husband's unilateral *talaq* and the wife's limited options for initiating dissolution has proven resistant to reform in many Muslim communities, including in northern Nigeria where the *talaq* as a social institution remains entrenched.[217]

5.8.2 Khul'

The *khul'* is the wife-initiated form of dissolution, available under classical Islamic law when the wife wishes to end the marriage and is prepared to return the *mahr* to the husband as the price of his agreement to release her from the marital bond. The Quranic basis for *khul'* is found at 2:229, which permits the wife to offer a financial consideration to the husband in return for her release, provided that both parties fear that they cannot uphold the limits of God. The *khul'* requires the husband's agreement, which gives him a degree of control over the wife's ability to exit the marriage and which can be withheld or made conditional on demands that the wife finds it difficult to meet.[218]

In practice, the *khul'* has historically been the primary formal mechanism available to wives in Muslim societies who wished to exit marriages, and it has been widely used despite its cost in terms of the forfeiture of the *mahr* and often additional financial concessions. The reform of *khul'* law in several Muslim-majority states, particularly Egypt's landmark 2000 legislation that allowed courts to grant *khul'* without the husband's consent provided that the wife returned the *mahr*, represents one of the most significant developments in contemporary Islamic family law reform and has been studied by feminist scholars including Mir-

[217]Quran 2:228 (*wa li-l-rijali 'alayhinna darajatun*, men have a degree above them); Nasir (n 5) 186–192; Hallaq (n 7) 291–295.

[218]Quran 2:229; Nasir (n 5) 215–230; al-Jaziri (n 10) 262–280.

Hosseini and Welchman as evidence of the capacity for significant change within the Islamic legal framework through judicial and legislative activism rather than doctrinal revolution.[219]

5.8.3 Judicial Divorce

Judicial divorce (*faskh*) is the dissolution of the marriage by a court (*qadi*) on grounds established by Islamic jurisprudence, available to either party but most commonly sought by wives who cannot obtain a *talaq* or *khul'*. The classical jurists recognised a range of grounds for judicial dissolution including the husband's failure to provide financial maintenance (*nafaqa*), his prolonged absence, his affliction with a serious disease that endangers the wife's health, his impotence, his cruelty or abuse, and his apostasy from Islam. The availability and scope of these grounds varied between the schools of jurisprudence, with the Maliki school generally being the most generous in its recognition of grounds for judicial divorce available to women, a fact of particular significance in the northern Nigerian context where the Maliki school is dominant.[220]

The relationship between the Islamic judicial divorce and the Nigerian statutory divorce system creates a set of conflicts that the courts have not fully resolved. A Muslim woman who obtains a dissolution of her marriage from a Sharia court in a northern state is divorced from the perspective of Islamic law and may remarry. But the same dissolution may not constitute a divorce that extinguishes the civil legal consequences of a prior statutory marriage if the parties had contracted such a marriage.

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[219]Sonbol (n 12) 50–75; Welchman (n 14) 105–120; also Ziba Mir-Hosseini, *Marriage on Trial: A Study of Islamic Family Law*, rev ed (I B Tauris, 2000) 35–70.

[220]Nasir (n 5) 230–245; Mir-Hosseini (n 27) 70–100; also Dawoud El Alami and Doreen Hinchcliffe, *Islamic Marriage and Divorce Laws of the Arab World* (Kluwer Law International, 1996) 1–40.

The intersection of the Sharia court's jurisdiction over Islamic personal law with the federal courts' jurisdiction over statutory matrimonial causes creates jurisdictional ambiguities that require careful navigation by legal practitioners advising Muslim clients in Nigeria.[221]

5.9 Child Custody and Maintenance

Islamic law on child custody (*hadanah*) reflects a careful balancing of the child's welfare, the mother's natural bond with young children, and the father's lineage rights and financial obligations. The general rule in the classical Maliki school, which is applicable in northern Nigeria, is that the mother is entitled to custody of boys until puberty and girls until marriage, provided that she remains unmarried and observes the Islamic requirements for the custodial parent. If the mother remarries a man who is not a close relative of the child, she loses the right of custody, which passes to the next eligible female relative on the maternal side. The father remains financially responsible for the maintenance of his children regardless of custody arrangements, and the mother is entitled to compensation for breastfeeding infants during the specified nursing period of two years.[222]

The Quranic framework for child maintenance is set out at 2:233, which establishes the father's obligation to maintain his children and their mother during the breastfeeding period and specifies that no parent shall be harmed through their child. The classical jurists elaborated this into a detailed system of paternal financial obligations that encompasses maintenance, clothing, housing, education, and healthcare for children.

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[221]Matrimonial Causes Act (Nigeria) Cap M7, Laws of the Federation of Nigeria 2004, s 15; also Nwogugu (n 3) 280–310.

[222]Nasir (n 5) 246–280; al-Jaziri (n 10) 300–340; also Welchman (n 14) 130–155.

These obligations remain binding on the father regardless of whether the marriage is subsisting or has been dissolved, and they provide a significant degree of material security for children of Islamic marriages even in the aftermath of marital breakdown.[223]

The tension between the classical Islamic custody rules and the modern child-welfare-centred approach embodied in the Child Rights Act 2003 and the Convention on the Rights of the Child is significant. The classical rules are based primarily on the age and sex of the child rather than on an individualised assessment of the child's welfare in the specific circumstances of the case, and they can produce outcomes that would strike a modern family court judge trained in the welfare principle as insensitive to the child's particular needs and interests. The Sharia courts in northern Nigeria have shown varying degrees of willingness to develop the classical rules in the light of modern child welfare considerations, and the interaction between the Sharia court system and the secular courts on custody questions involving Muslim children represents one of the most complex jurisdictional interfaces in Nigerian family law.[224]

5.10 Sunni and Shi'a Approaches to Marriage

The division between Sunni and Shi'a Islam, which is primarily theological and political in its origins, generates significant differences in the law of marriage that are directly relevant to any comprehensive account of Islamic family law. In Nigeria, the overwhelming majority of Muslims are Sunni, and specifically adherents of the Maliki school, and the Shi'a minority is numerically small, though it has been growing as a

[223]Quran 2:233; Nasir (n 5) 250–260; also Mir-Hosseini (n 27) 100–130.

[224]Child Rights Act (Nigeria) 2003, s 1 (best interests of the child); also Nwogugu (n 3) 290–300.

result of the influence of the Iranian revolution and the activities of the Islamic Movement of Nigeria associated with Sheikh Ibrahim El-Zakzaky. Nevertheless, an accurate account of Islamic marriage law requires engagement with the Shi'a tradition as well as the dominant Sunni framework.[225]

The most distinctive feature of Shi'a marriage law, and the one that generates the sharpest divergence from the Sunni tradition, is the institution of *mut'ah*, or temporary marriage. *Mut'ah* is a marriage contracted for a specified period of time, ranging from an hour to a number of years, agreed upon by the parties at the outset. The Shi'a Ja'fari school regards *mut'ah* as legally valid and as having been practised in the early Islamic community before being prohibited by the Caliph Umar, a prohibition that the Shi'a tradition regards as illegitimate. The Sunni schools regard *mut'ah* as abrogated by Prophetic tradition and therefore as prohibited and invalid; a *mut'ah* contracted in a Sunni jurisdiction is treated as a form of fornication rather than as a valid marriage. This divergence between the two major branches of Islam on the permissibility of temporary marriage illustrates the extent to which the jurisprudential diversity within the Islamic tradition is not merely a matter of procedural detail but of substantive legal principle with significant moral implications.[226]

Beyond *mut'ah*, the Shi'a tradition differs from the dominant Sunni schools on a number of points in the law of marriage, including the role of the *wali*, the conditions for the validity of the *nikah*, and certain aspects of the law of divorce. The Ja'fari school generally takes a somewhat more

[225]Coulson (n 6) 100–150; Hallaq (n 7) 310–340; also Nasir (n 5) 280–310.

[226] Schacht (n 6) 183–200; al-Jaziri (n 10) 340–380; also Moojan Momen, *An Introduction to Shi'i Islam* (Yale University Press, 1985) 175–195.

restrictive position on the husband's unilateral *talaq*, requiring stricter conditions for its validity, and a somewhat more generous position on the wife's access to judicial dissolution of the marriage. These differences, while numerically less significant for the Nigerian context than the internal differences within the Sunni tradition between the Maliki and Hanafi schools, are worth noting as evidence of the jurisprudential diversity that makes monolithic characterizations of "Islamic marriage law" inherently misleading.[227]

5.11 Islamic Marriage in Northern Nigeria

Islamic marriage in northern Nigeria operates within a legal and institutional framework shaped by the long history of the Sokoto Caliphate, the colonial accommodation of Islamic personal law within the British administrative system, and the post-1999 reinvigoration of Sharia jurisdiction. The twelve northern states that adopted expanded Sharia codes between 1999 and 2002 established or reinvigorated Sharia courts with jurisdiction over matrimonial and family matters for Muslim citizens, applying Maliki fiqh as the primary source of law while drawing on the other classical schools where Maliki doctrine is silent or produces results that the court considers unjust.[228]

The practical operation of Islamic marriage in northern Nigeria reflects a complex interaction between the formal requirements of Islamic jurisprudence and the customary practices of the Hausa, Fulani, Kanuri, and other ethnic communities of the region. As noted in Chapter Two,

[227]Momen (n 34) 180–190; also Nasir (n 5) 300–315; Hallaq (n 7) 325–340.

[228]Last (n 1) 30–80; Ostien (n 2) vol 1, 50–100; also Philip Ostien and Albert Dekker, "Sharia and National Law in Nigeria" in Jan Michiel Otto (ed), *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present* (Leiden University Press, 2010) 553–612.

Hausa and Fulani marriage customs have been substantially Islamised, but elements of pre-Islamic customary practice persist, sometimes in forms that are difficult to reconcile with strict Maliki jurisprudence. The practice of *biki*, the elaborate public celebration that accompanies the solemnization of important marriages in Hausa communities, has no strict jurisprudential requirement but fulfils the Islamic requirement of publicity (*i'lan*) in the Maliki school and serves the important social function of distinguishing marriage from clandestine union. The payment of *sadaki* (the northern Nigerian term for *mahr*) is universal, though the amounts vary considerably and are sometimes more nominal than substantial.[229]

The Sharia courts' jurisdiction over matrimonial matters in the northern states is constitutionally grounded in section 275-279 of the 1999 Constitution, which establishes a Sharia Court of Appeal in each state that has requested one and confers appellate jurisdiction on it in Islamic personal and family law matters. This constitutional framework creates a dual system of appellate jurisdiction in the northern states, with the Sharia Court of Appeal hearing appeals in Islamic personal law matters and the State Court of Appeal hearing appeals in common law and statutory matters. The interaction between these two systems, and particularly the question of which court has jurisdiction when a Muslim party's matrimonial dispute involves both Islamic personal law questions and statutory law questions, has been the subject of significant jurisdictional controversy.[230]

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[229]Sharia Court of Appeal Laws of various northern states (2000–2002); also Peters (n 3) 170–200; Ostien and Dekker (n 36) 570–590.

[230]Constitution (n 2), s 275–279 (Sharia Court of Appeal in states); Ostien (n 2) vol 2, 1–50; also An-Na'im (n 21) 100–140.

5.12 Islamic Marriage in Southern Nigeria

Islam in southern Nigeria, particularly among the Yoruba of the southwest, presents a sociologically and legally distinct picture from the northern pattern. Yoruba Islam, which has been present in the region since at least the eighteenth century and which formed part of the complex religious ecology of Yoruba society alongside indigenous religion and, from the nineteenth century, Christianity, has generally been more accommodating of Yoruba cultural forms than the northern Islam shaped by the reforming jihad tradition of the Sokoto Caliphate. Yoruba Muslims have historically maintained elements of traditional Yoruba marriage custom, including aspects of the *ìdána* (Bride-price) system and the elaborate Yoruba wedding celebrations, alongside the Islamic requirements of *nikah* and *sadaki*. This syncretic pattern has produced a distinctively Yoruba Islamic marriage tradition that is neither purely classical Islamic nor simply traditional Yoruba but a genuine cultural synthesis with its own internal coherence.[231]

The legal framework for Islamic marriage in the southern states differs significantly from that in the north. Southern states do not have Sharia courts, and matrimonial disputes among southern Muslims are heard by the ordinary civil courts applying a combination of statutory law and recognised customary law. Islamic personal law is not formally applied by these courts as such, though they may take account of Islamic marriage customs as a component of the applicable customary law where both parties are Muslims and where the evidence establishes that Islamic practice is the applicable customary norm. This informal accommodation of Islamic marriage practice within the customary law framework is less

[231]Wande Abimbola, *Ifa: An Exposition of Ifa Literary Corpus* (Oxford University Press Nigeria, 1976) 30–47; also J D Y Peel, *Religious Encounter and the Making of the Yoruba* (Indiana University Press, 2000) 200–230.

rigorous than the formal Sharia court jurisdiction of the north but may in practice be more flexible and more responsive to the specific circumstances of individual cases.[232]

5.13 Conflict between Islamic, Civil and Customary Systems

The conflicts between the Islamic, civil, and customary marriage systems in Nigeria replicate at a different level the conflicts between the statutory and customary systems examined in Chapter Three, but with the additional complexity introduced by the constitutional status of Islamic personal law and the institutional presence of the Sharia courts in the northern states. These conflicts arise in a range of practical contexts that illustrate the structural inadequacy of a legal order in which multiple systems of marriage law operate without a coherent framework of conflict resolution.[233]

The most frequent source of conflict is the interaction between Islamic marriage and the statutory monogamy requirement of the Marriage Act. A Muslim man who contracts a statutory marriage under the Marriage Act and subsequently takes a second wife under Islamic law commits bigamy under the criminal law, as the statutory marriage's monogamy requirement is not suspended by the parties' Islamic faith. Conversely, a Muslim man who has contracted one or more Islamic marriages and subsequently goes through a statutory marriage ceremony with another woman renders that statutory marriage void for the same reason. The practical question of how a Muslim couple who have

[232]Peel (n 39) 200–225; also N A Fadipe, *The Sociology of the Yoruba* (Ibadan University Press, 1970) 85–100.

[233]Nwogugu (n 3) 285–310; also Edet v Essien (1932) 11 NLR 47; Alake v Pratt (1955) 15 WACA 20.

contracted an Islamic marriage under Sharia court supervision and wish also to access the legal protections of the statutory system can do so without creating legal difficulties by reason of the statutory system's monogamy requirement has not been satisfactorily resolved by Nigerian law or by the courts.[234]

The international human rights framework creates an additional layer of normative tension. CEDAW, ratified by Nigeria, requires equal rights for men and women in marriage and at its dissolution, including equal rights to enter into marriage, equal rights during marriage, and equal rights in respect of property. The husband's unilateral *talaq*, the *wilayah* requirement, and the differential treatment of husbands and wives in Islamic divorce law are all potentially inconsistent with this equality requirement. Nigeria has sought to maintain both its international human rights obligations and its constitutional protection of Islamic personal law, but the tension between these two commitments is genuine and cannot be permanently managed by silence. The development of a principled framework for navigating this tension, whether through judicial interpretation, legislative action, or constitutional reform, is one of the most important tasks facing Nigerian family law.[235]

5.14 Modern Challenges in Muslim Family Law

Muslim family law faces a set of modern challenges that are simultaneously intellectual, political, and pastoral. The intellectual

[234]Constitution (n 2), ss 38, 42, 275–279; Marriage Act (Nigeria) Cap M6, Laws of the Federation of Nigeria 2004, s 33; also Ostien and Dekker (n 36) 590–610.

[235]An-Na'im (n 21) 140–170; also Welchman (n 14) 155–175; CEDAW (n 18), art 16; Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) (adopted 11 July 2003, entered into force 25 November 2005) art 6.

challenge arises from the encounter between the classical jurisprudential tradition and the modern frameworks of human rights, gender equality, and constitutional democracy. Muslim scholars and jurists are engaged in an intense and often contentious debate about whether the classical rules on marriage, divorce, polygyny, and guardianship represent immutable divine commands that cannot be altered without apostasy, or whether they represent historically conditioned legal interpretations of divine principles that can and must be developed in the light of changed circumstances and a fuller understanding of the Quranic commitment to justice.[236]

The challenge of child marriage in Nigeria is particularly urgent and illustrates the stakes of this debate with painful clarity. The practice of marrying girls before they have reached physical and emotional maturity, which is defended by some Islamic authorities on the basis of the Prophetic precedent of the Prophet's marriage to Aisha at a young age, has devastating consequences for the health, education, and life prospects of the girls affected. The Child Rights Act 2003, which sets eighteen as the minimum age of marriage, has not been adopted by all northern states, and the Sharia courts in some states have been reluctant to apply the federal minimum age standard, citing the constitutional protection of Islamic personal law. The resulting legal vacuum has left many young women in the northern states without adequate legal protection from early and forced marriage, in direct violation of Nigeria's international human rights obligations.[237]

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[236]Mir-Hosseini (n 27) 130–180; also Abdullahi An-Na'im, *Islam and the Secular State: Negotiating the Future of Shari'a* (Harvard University Press, 2008) 1–50.

[237]Ladan Mohammed Tawfiq, "Child Marriage in Nigeria: Challenges and Prospects" (2013) 7 *Journal of Law, Policy and Globalization* 44, 47–55; also Child Rights Act (Nigeria) 2003, s 21.

The feminist scholarship on Islamic family law, represented by scholars including Ziba Mir-Hosseini, Leila Ahmed, and Amira El Azhary Sonbol, has demonstrated that the classical rules of Islamic family law are not the only possible Islamic interpretation of the Quran's teaching on gender relations and marriage, and that a thoroughgoing application of the Quranic principles of justice (*'adl*), equity (*qist*), and mercy (*rahmah*) to the family law context would generate significantly more egalitarian norms than the classical tradition has produced. These scholars argue for what Mir-Hosseini calls a "Muslim family law of equality," grounded in Islamic values but responsive to the contemporary understanding of human dignity and gender justice. Abdullahi An-Na'im's constitutional approach to Islamic law in Africa similarly argues for a framework in which Islamic family law norms are developed and applied within, rather than in contradiction to, a constitutional order committed to equality and human rights.[238]

5.15 Conclusion

Islamic marriage traditions and Muslim family law constitute one of the richest, most internally diverse, and most practically consequential normative systems in the Nigerian legal landscape. The system's richness lies in its theological depth, its fourteen centuries of sustained jurisprudential development, and its comprehensive regulation of the domestic relationship from the initial contract through the full arc of conjugal life to dissolution and its aftermath. Its internal diversity is expressed in the differences between the classical schools of jurisprudence, in the tension between classical orthodoxy and modern reform scholarship, and in the varied expressions of Islamic marriage practice across the different ethnic and regional communities of Nigeria.

[238]An-Na'im (n 44) 50–100; also Ahmed (n 20) 130–165; Welchman (n 14) 170–190.

Its practical consequence is felt daily in the lives of tens of millions of Nigerian Muslims whose family relationships are governed, formally or informally, by the norms and institutions of Islamic family law.[239]

The conflicts between the Islamic family law system and the other marriage systems that coexist with it in the Nigerian legal order, the statutory system, the various customary systems, and the canonical system that governs the marriages of Catholic Christians, are not merely technical legal problems awaiting administrative resolution. They reflect deep differences in the underlying understanding of what marriage is, what purposes it serves, what rights and obligations it creates, and what happens when it fails. These differences cannot be resolved by the declaration that one system is simply correct and the others mistaken; they require the kind of sustained, respectful, and rigorous inter-system dialogue that Nigerian society has not yet fully undertaken but that the urgency of the pastoral, legal, and human rights challenges demands.[240]

The analysis of Islamic marriage traditions and Muslim family law in this chapter completes the examination of the three major normative systems for marriage that operate in Nigeria: customary law (Chapter Two), statutory law (Chapter Three), the canonical tradition (Chapter Four), and now Islamic law. Chapter Six turns to the comparative analysis of monogamy, polygamy, polyandry, and informal unions across these systems, a comparative analysis that prepares the ground for Chapter Seven's constructive proposal for the harmonization and integration of the

[239]Hallaq (n 7) 310–350; Coulson (n 6) 200–230; also An-Na'im (n 21) 165–200.

[240]Nwogugu (n 3) 300–315; Ostien and Dekker (n 36) 600–612; An-Na'im (n 44) 95–110.

multiple marriage systems that characterise the Nigerian legal order, and for the pastoral and legal reforms that such an integration would require.

Chapter Six

MONOGAMY, POLYGYNY, POLYANDRY, INFORMAL UNIONS AND SAME-SEX MARRIAGE LAWS

6.1 Introduction

The preceding chapters have examined four major normative systems for the regulation of marriage in Nigeria: customary law, statutory law, canon law, and Islamic law, each carrying distinct assumptions about the proper form of conjugal union, the number of spouses permissible, the gender composition of the union, and the social and legal status of relationships that fall outside its recognised categories. This chapter brings those analyses into direct comparative engagement by examining the forms of marriage and union that these systems permit, regulate, or prohibit, including what is arguably the most contested question in contemporary global marriage law, the legal and theological status of same-sex unions. The chapter's scope extends from the ancient institution of monogamy through polygyny, polyandry, concubinage, and cohabitation, to the full discussion of same-sex marriage reserved for section 6.14. References to the same-sex question appear necessarily in other sections where context demands, but the systematic theological, canonical, civil law, and pastoral treatment is concentrated in that section.[241]

[241]Edward Westermarck, *The History of Human Marriage*, 5th ed (Macmillan, 1925) vol 1, 1–50; George Peter Murdock, *Social Structure* (Macmillan, 1949) 24–30.

In the Nigerian context, this plurality is not merely theoretical. Statutory monogamous marriage exists alongside legally recognised customary and Islamic polygynous unions, informal cohabitation that has acquired no formal legal status, same-household arrangements that challenge the conceptual categories of both Western and Islamic legal analysis, and, since 2013, an emphatic legislative prohibition on same-sex unions of any form. The management of this plurality, and the development of a legal and pastoral framework adequate to its complexity, is among the central practical challenges that this book's concluding chapter must address. This chapter provides the comparative foundation for that address.[242]

6.2 Monogamy and Its Historical Expansion

Monogamy, in the precise technical sense of the exclusive union of one man and one woman without any concurrent marriage to another person, has a more restricted historical distribution than its current dominance in Western legal systems might suggest. Westermarck's foundational cross-cultural survey found that while monogamy was practised in many societies, it was the exclusive legal form in a comparatively small proportion of the world's documented cultures. Among the majority of societies in Murdock's mid-twentieth century ethnographic survey, some form of polygyny was legally permitted, with monogamy practised either by economic necessity or individual

[242]E I Nwogugu, *Family Law in Nigeria*, 3rd ed (Heinemann Educational Books, 1990) 1–25; Marriage Act (Nigeria) Cap M6, Laws of the Federation of Nigeria 2004, s 33.

preference alongside the formal legal permission of plural unions rather than as the sole legally mandated form.[243]

The historical expansion of monogamy as the dominant legal form in the Western world is the consequence of two intersecting processes: the Catholic Church's progressive assertion of jurisdictional control over marriage from the early medieval period, and the theological embedding of unity and indissolubility as essential properties of the conjugal bond. As canon law was progressively consolidated and the Church's matrimonial courts asserted exclusive competence, monogamy ceased to be one option among several and became the legally mandated form of Christian conjugal life across European civilization. The Reformation's theological diversity on many questions converged on the monogamy requirement as a point of shared commitment, and European colonialism subsequently exported this requirement to societies, including Nigeria, that had their own, often polygynous, marriage traditions.[244]

In Nigeria, the Marriage Ordinance of 1884 introduced statutory monogamous marriage as a legally distinct and socially elevated form of union, backed by the criminal law of bigamy, alongside which the existing customary and Islamic polygynous systems continued to operate. The legal definition of marriage in *Hyde v Hyde and Woodmansee* as the voluntary union for life of one man and one woman to the exclusion of all others became the statutory definition applicable to all Nigerian statutory marriages, creating a legal bifurcation whose consequences for women in

[243]Westermarck (n 1) vol 1, 26–72; also David Herlihy, *Medieval Households* (Harvard University Press, 1985) 1–28.

[244] John Witte Jr, *From Sacrament to Contract: Marriage, Religion and Law in the Western Tradition*, 2nd ed (Westminster John Knox Press, 2012) 100–180; Stephen Cretney, *Family Law in the Twentieth Century: A History* (Oxford University Press, 2003) 1–40.

unrecognised plural unions are still being felt today. The contemporary global expansion of monogamy as the legal norm has not eliminated polygynous practice; it has in many cases driven it into the informal sphere, where men maintain simultaneous relationships with multiple women but formalise only one as a legal marriage, leaving the others legally unprotected.[245]

6.3 Polygyny in Africa and Asia

The most prevalent form of polygamy across cultures and epochs is polygyny. It is the taking of multiple wives by a single husband. It is the most widespread form of plural marriage across human societies. As established in Chapters Two and Five, polygyny in African traditional societies serves a complex set of social functions including status affirmation, agricultural productivity, political alliance-building, and the provision of social security to widows and orphans. In Islamic law, the Quranic permission for polygyny up to a maximum of four wives, qualified by the condition of equal treatment, reflects a similarly complex set of social purposes. In the Nigerian context, polygyny among Muslim men is constitutionally protected as part of Islamic personal law in the northern Sharia states, and it continues to be practised and legally recognised under customary law across the country.[246]

The social reality of polygyny is closely tied to the economies and kinship structures of the societies that practise it. In Igbo, Yoruba, Hausa, and Fulani communities, as Chapter Two established in detail, the ability

[245]*Hyde v Hyde and Woodmansee* (1866) LR 1 P&D 130, 133 (Lord Penzance); Marriage Act Cap M6 (n 2), s 33; Nwogugu (n 2) 80–92.

[246]Murdock (n 1) 24–30; Jack Goody, *Production and Reproduction: A Comparative Study of the Domestic Domain* (Cambridge University Press, 1976) 1–40.

to take multiple wives is associated with social prestige, the management of agricultural or pastoral enterprises, and the fulfilment of extended family obligations. In Islamic northern Nigeria, the intersection of Maliki jurisprudential permission and Hausa social custom creates an environment in which polygyny is not merely tolerated but actively integrated into the social fabric of domestic life. Understanding this social integration is essential to any realistic assessment of what legislative reform toward monogamy can achieve and at what social cost.[247]

The feminist analysis of polygyny in African and Asian contexts has produced a rich and internally divided literature. From a liberal feminist perspective, polygyny creates structural inequality between a husband who may unilaterally expand the household and wives who have no equivalent right, reinforcing broader social inequalities that restrict women's autonomy. From African feminist and postcolonial perspectives, Amadiume and Ahmed have argued that the co-wife relationship in many African polygynous households is more complex and varied than the simple subordination narrative allows, and that the colonial imposition of monogamy without adequate accompanying social and legal protections has in many cases left women worse rather than better off.[248]

6.4 Polyandry and Minority Marriage Systems

Polyandry, the union of one woman with multiple husbands, is the rarest of the major marriage forms in the ethnographic record. The most

[247]Quran 4:3; Victor Uchendu, *The Igbo of Southeast Nigeria* (Holt, Rinehart & Winston, 1965) 50–58; Derrick Stenning, *Savannah Nomads* (Oxford University Press, 1959) 78–108.

[248]Leila Ahmed, *Women and Gender in Islam: Historical Roots of a Modern Debate* (Yale University Press, 1992) 55–80; Ifi Amadiume, *Male Daughters, Female Husbands: Gender and Sex in an African Society* (Zed Books, 1987) 40–72.

extensively documented form is fraternal polyandry, in which a woman marries a set of brothers simultaneously, practised in certain communities in Tibet, Nepal, and parts of India, where it functions primarily to prevent the fragmentation of family landholdings. Westermarck's global survey documented polyandry in only a small number of societies, and subsequent ethnographic research has confirmed its rarity while demonstrating that it takes structurally distinct forms serving different social functions.[249]

Goldstein's fieldwork among fraternal polyandrous communities in Nepal demonstrated that the institution functions with considerable internal coherence and that the quality of cooperation among co-husbands is the critical variable determining whether the arrangement serves all parties well or poorly. Polyandry is documented here for the completeness of the comparative account and for the analytical illumination it casts on the gendered assumptions of the other forms. It inverts the gender assumptions embedded in most legal systems' understanding of marriage, making visible the asymmetry that polygynous and monogamous frameworks ordinarily conceal, and thereby raising the question of whether that asymmetry reflects a natural feature of human sexual organisation or a contingent cultural and legal construction.[250]

[249]Westermarck (n 1) vol 3, 100–150; Peter Rivière, "Marriage: A Reassessment" in Rodney Needham (ed), *Rethinking Kinship and Marriage* (Tavistock Publications, 1971) 57–74.

[250]Melvyn Goldstein, "Fraternal Polyandry and Fertility in a High Himalayan Valley in Northwest Nepal" (1976) 17 *Human Ecology* 223, 225–240; Prince Peter, *A Study of Polyandry* (Mouton, 1963) 1–50.

6.5 Colonial Suppression of Polygamy

The colonial administration's approach to polygamy in Nigeria was one of pragmatic non-interference combined with sustained institutional preference for monogamy through the mechanisms of statutory marriage law, missionary education, and the social elevation of the Christian family model. Direct criminal prohibition of polygamy was never attempted; the colonial government recognised that an outright ban would be both unenforceable and politically destabilising. Instead, the colonial strategy created a parallel legal system of monogamous statutory marriage associated with education, Christianity, and social advancement, leaving the majority of the population to continue their existing practices under customary or Islamic law.[251]

The Marriage Ordinance of 1884 implemented this dual-track strategy by creating a legal category of statutory monogamous marriage backed by the criminal prohibition of bigamy, alongside which customary and Islamic polygynous marriages continued to receive legal recognition. The long-term consequences have been profound: the association of monogamy with colonial modernity and polygyny with tradition created a social landscape in which the choice of marriage form carries deeply loaded cultural implications about identity, religious affiliation, and social aspiration that persist to the present day and that complicate any straightforward legislative reform of the marriage system.[252]

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[251]Martin Chanock, *Law, Custom and Social Order: The Colonial Experience in Malawi and Zambia* (Cambridge University Press, 1985) 1–30; Kristin Mann, *Marrying Well: Marriage, Status and Social Change among the Educated Elite in Colonial Lagos* (Cambridge University Press, 1985) 1–30.

[252]Marriage Ordinance (Nigeria) No 3 of 1884, ss 1–42; T O Elias, *The Nature of African Customary Law* (Manchester University Press, 1956) 68–91.

6.6 Christian Criticism of Plural Marriage

The Christian churches' opposition to polygamy is grounded in a reading of Scripture and tradition that understands monogamy not as one cultural option among several but as the normative expression of God's creational intention for marriage. As established in Chapter Four, the essential property of unity, encoded in canon 1056 of the 1983 Code of Canon Law, means that a positive intention to reserve the right to marry additional spouses renders any canonical marriage null by reason of partial simulation of consent. Luther maintained the monogamy requirement as a necessary feature of any Christian marriage even while denying its sacramental character, and the Reformation's diverse traditions converged on this requirement as a shared commitment.[253]

Pope John Paul II's *Familiaris Consortio* addressed polygamy directly in the context of African evangelization, acknowledging the diversity of cultural marriage traditions while insisting that the Christian ideal of monogamous marriage, as the image of the covenant between God and the Church, is the normative form toward which all Christian communities must move. The document called for patient pastoral accompaniment of those who convert from polygamous traditions, recognising that the abrupt dissolution of existing unions causes serious harm to the women and children involved, while maintaining that new marriages contracted by those who have received the faith must conform to the monogamous ideal. *Gaudium et Spes* affirms monogamy as the form of conjugal union that most fully expresses the mutual and total self-gift of the spouses, and John Paul II's Theology of the Body develops the argument that the exclusive character of conjugal love is not an arbitrary

[253] Code of Canon Law (1983) (*CIC*) c 1056 (essential properties: unity and indissolubility); Martin Luther, *The Estate of Marriage* (1522) in Walther Brandt (ed), *Luther's Works*, vol 45 (Fortress Press, 1962) 13–49.

restriction but an intrinsic expression of the logic of authentic self-giving.[254]

The missionary churches' historical condemnation of polygyny in the Nigerian context produced pastoral problems that remain incompletely resolved. The requirement that converts abandon their existing polygynous marriages before receiving baptism created genuine hardship, particularly for wives who were left in insecurity and reduced social status when their husbands converted and set them aside. Kalu's detailed study of the Christianization of Igboland documents the social disruption caused by this approach and the various forms of negotiation and resistance that Christian communities developed in response. The Nigerian Church's pastoral response has evolved toward a more nuanced accompaniment, without however abandoning the fundamental doctrinal commitment to monogamy as the Christian form of marriage.[255]

6.7 Feminist Debates on Polygamy

The feminist engagement with polygamy is one of the most intellectually contested areas of contemporary family law scholarship, characterised by deep disagreements between scholars who share broadly similar commitments to gender equality but who diverge sharply on whether the legal prohibition of polygamy advances or retards that equality in the societies where the practice is culturally embedded. Davis's analysis argues that the structural features of institutionalized polygamy systematically disadvantage women in ways that are not curable by

[254]Second Vatican Council, *Gaudium et Spes* (7 December 1965) §§47–49; Pope John Paul II, *Familiaris Consortio* (22 November 1981) §§19–20.

[255]Ogbu Kalu, *The Embattled Gods: Christianization of Igboland, 1841–1991* (Minaj Publishers, 1996) 78–130; E A Ayandele, *The Missionary Impact on Modern Nigeria, 1842–1914* (Longman, 1966) 200–230.

individual consent, and that the state's interest in gender equality justifies legal prohibition even in the face of claims of religious freedom.[256]

The multicultural and postcolonial feminist counter-argument, developed by Nussbaum and Shachar among others, raises concerns about the application of majority legal norms to cultural minority practices. Shachar's argument is particularly relevant: she contends that the choice between uncritical deference to cultural community practices and the imposition of majority legal norms is a false dichotomy, and that a more sophisticated approach would require cultural communities to develop internal reform mechanisms while the state provides adequate protection to individuals harmed by community practices. Applied to polygamy in Nigeria, this approach might support enhanced legal protections for co-wives, including enforceable maintenance rights, equitable property division on dissolution, and protection from domestic violence, within a framework that continues to recognise customary and Islamic polygynous unions rather than simply prohibiting the form and driving it into the legally unprotected informal sphere.[257]

6.8 Persistence of Polygamous Systems

Despite sustained pressure from colonial prohibition, Christian mission, and international human rights advocacy, polygamous marriage systems have proven remarkably persistent across Nigeria and sub-Saharan Africa more broadly. In northern Nigeria, the persistence of polygyny is supported by its explicit recognition in Islamic law and by the

[256]Adrienne Davis, "Regulating Polygamy: Intimacy, Default Rules, and Bargaining for Equality" (2010) 110 *Columbia Law Review* 1955, 1960–2010.

[257]Martha Nussbaum, *Sex and Social Justice* (Oxford University Press, 1999) 184–219; Ayelet Shachar, *Multicultural Jurisdictions: Cultural Differences and Women's Rights* (Cambridge University Press, 2001) 1–50.

constitutional protection of Islamic personal law in the Sharia states. The comprehensive framework of Maliki jurisprudence for managing the consequences of polygynous unions, including the recognised rights of multiple wives to maintenance and the allocation of the deceased husband's estate among all recognised wives and their children, provides a degree of legal protection for co-wives and their children that is entirely absent for women in informal cohabitation arrangements.[258]

The human rights framework's relationship to polygyny is nuanced. While CEDAW's requirement of equal rights for men and women in marriage has been interpreted as requiring states to work toward the elimination of polygynous practices, the Maputo Protocol acknowledges that the pace and manner of this elimination must not leave women currently in polygynous unions worse off than they were before. The practical policy challenge is to develop protective legislation for co-wives within polygynous systems while simultaneously working toward the long-term goal of equal marriage rights for all Nigerian citizens, a challenge that requires patient and culturally informed legislative action rather than the blunt instrument of outright prohibition without accompanying protective measures.[259]

[258]Nwogugu (n 2) 80–95; Jamal Nasir, *The Islamic Law of Personal Status*, 3rd ed (Kluwer Law International, 2002) 156–185.

[259]Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) (adopted 11 July 2003, entered into force 25 November 2005) art 6; Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13, art 16.

6.9 Concubinage and Informal Marital Relations

Concubinage, the stable cohabitation of a man and a woman in a relationship that both parties and their community understand to be a domestic partnership of quasi-marital character but that the law does not recognise as a full marriage, has a long history across virtually every legal tradition. Roman law recognised the institution of *concubinatus* as a legally defined status that conferred specific limited legal rights on the concubine and her children while stopping well short of the full legal consequences of *iustum matrimonium*. The concubine could not inherit as a wife and her children were not fully legitimate, but her relationship was publicly acknowledged and legally defined in ways that distinguished it from purely casual or clandestine unions and provided some measure of legal identity and protection.[260]

In Igbo and other African traditional societies, secondary unions similar in structure to Roman *concubinatus* have been documented, typically involving women who live with a man and bear his children without having completed the full Bride-price process that would make them recognised wives in the juridical sense. The status of such women, and particularly the status of their children, varies considerably between communities and specific circumstances, but in general their position is more legally vulnerable than that of properly married wives. The customary law courts have repeatedly had to adjudicate claims by children of such relationships to a share in their father's estate, and the outcomes have been inconsistent, reflecting the difficulty of applying general

[260]Susan Treggiari, *Roman Marriage: Iusti Coniuges from the Time of Cicero to the Time of Ulpian* (Clarendon Press, 1991) 50–80; Goody (n 6) 20–35.

principles of customary law to the variety of informal domestic arrangements that the category of concubinage covers.[261]

6.10 Cohabitation and Non-Marital Relationships

Cohabitation, the arrangement in which two persons share a domestic household and typically a sexual relationship without contracting a formal marriage under any of the recognised legal systems, has grown significantly in Nigeria over the past several decades. This growth reflects a complex set of social changes including increased urbanisation, rising educational levels, delayed marriage, the economic difficulties of meeting the combined costs of a traditional ceremony, a church or mosque wedding, and civil registration, and a gradual shift in social norms regarding the social acceptability of unmarried cohabitation. The result is a large and growing population of Nigerians in stable, committed domestic partnerships without any formal legal status attaching to their union, and consequently without any of the legal protections that marriage law was designed to provide.[262]

The legal position of cohabiting couples in Nigeria is deeply insecure. The Marriage Act recognises no legal status for cohabiting couples as such, and there is no legislation equivalent to the cohabitation protection laws enacted in various forms in England, Scotland, Ireland, Australia, New Zealand, and Canada. In the absence of formal marriage, a cohabiting woman in Nigeria has no statutory right to maintenance from her partner, no automatic right to a share of property acquired during the relationship, no right to the family home on the partner's death if he has

[261]Uchendu (n 7) 50–58; Amadiume (n 8) 42–55; Nwogugu (n 2) 85–95.

[262]Anne Barlow and others, *Cohabitation, Marriage and the Law: Social Change and Legal Reform in the 21st Century* (Hart Publishing, 2005) 1–40.

not made a will in her favour, and no legal standing as a widow for the purposes of intestate succession. Herring's analysis of English family law documents the patchwork of equitable remedies available to cohabiting couples on relationship breakdown and concludes that the absence of comprehensive cohabitation legislation is a significant injustice to one of the most vulnerable groups in the family law system, a conclusion that applies with even greater force to the Nigerian context where the social consequences of unprotected relationship breakdown are more severe and the judicial remedies less developed.[263]

6.11 Legal Recognition of Informal Unions

The question of the appropriate legal response to informal unions raises fundamental questions about the purposes of marriage law and the relationship between formal legal categories and the social reality of family life. The functional approach grants legal recognition to unions that function as marriages in social and economic terms regardless of whether they have been formally contracted in the legally prescribed way, on the theory that legal protection should follow social function rather than formal status. The challenge of this approach is that it can blur the distinction between marriage and cohabitation in ways that create legal uncertainty and reduce the incentive to formalise relationships in ways that create clear and enforceable legal rights.[264]

In Nigeria, the closest approach to a functional recognition of informal unions comes from the judicial treatment of customary

[263]Jonathan Herring, *Family Law*, 9th ed (Pearson, 2019) 80–120; Barlow and others (n 22) 10–30; Nwogugu (n 2) 92–100.

[264]Barlow and others (n 22) 30–60; Child Rights Act (Nigeria) 2003, s 1; Matrimonial Causes Act (Nigeria) Cap M7, Laws of the Federation of Nigeria 2004, s 69.

marriages that have not been formally registered, and from the provisions of the Child Rights Act that give courts power to make financial orders for the benefit of children regardless of the formal legal status of the parents' union. The courts have shown some willingness to recognise customary marriages that meet the substantive requirements of the applicable customary law even in the absence of formal registration, providing some protection to women in customary unions that might otherwise fall into a legal vacuum. Legislative action to provide a clear and accessible framework for the recognition of informal unions that meet specified criteria of stability and mutual commitment would be a significantly more reliable means of protecting the persons most at risk than continued dependence on inconsistent judicial discretion.[265]

6.12 Western and African Experiences of Cohabitation

The comparative study of cohabitation in Western and African contexts reveals both important parallels and significant differences. In Western societies, the growth of cohabitation has been associated with secularisation, the feminist movement's questioning of traditional marriage as a patriarchal institution, increased economic independence of women, and the development of effective contraception that separated sexual activity from reproduction. Cohabitation in this context is often a deliberate choice to maintain the practical benefits of shared domestic life without the legal and social commitments of formal marriage, or a probationary period preceding a decision about formalisation.[266]

In urban Nigeria, informal cohabitation has different social meanings. Many couples cohabit not because they have made a principled

[265]Nwogugu (n 2) 200–230; also Barlow and others (n 22) 40–60.

[266]Barlow and others (n 22) 40–80; Mann (n 11) 25–40.

choice against formal marriage but because the cumulative costs of a traditional ceremony, a church or mosque wedding, and civil registration are beyond their immediate means. These couples typically intend to formalise their union eventually and regard their cohabitation as a temporary economic necessity rather than a deliberate rejection of the institution of marriage. Cases such as *Edet v Essien* and *Nzekwu v Nzekwu* illustrate the difficulties that arise when parties to informal domestic arrangements seek legal remedies that presuppose a formally recognised marriage, and the inconsistency of the outcomes in such cases reflects the fundamental inadequacy of a legal framework that provides no clear path to legal recognition for the informal domestic arrangements of a very large proportion of the Nigerian population.[267]

6.13 Female Husbandry in Igbo Tradition

Beyond conventional cohabiting couples, there exists in African traditional societies a range of same-household relationships that occupy a conceptually distinct space from anything that Western legal or Islamic categories readily accommodate. The institutions of female husbandry, documented extensively by Amadiume and Achebe in the Igbo context, in which a woman contracts a formal marriage with another woman, paying Bride-price and assuming the legal role of husband and father in relation to the children the younger woman bears in some often arranged, or clandestine sexual relationship with selected male consorts. This model represents a genuine challenge to the binary gender assumptions of most marriage law systems. These institutions are not sexual unions in the Western sense; they are social and juridical arrangements through which the Igbo system's capacity to allocate parental status, lineage membership,

[267]*Edet v Essien* (1932) 11 NLR 47; *Nzekwu v Nzekwu* [1989] 2 NWLR (Pt 104) 373 (SC); Nwogugu (n 2) 92–100.

and property rights is extended to cover situations that the standard male-husband framework cannot accommodate.[268]

Oyěwùmí argues that the application of Western gender categories to these Igbo institutions systematically distorts their meaning: what appears to a Western observer as a woman playing the role of a man is, within the Igbo conceptual framework, an elder person assuming the social role of household head, a role that carries recognised responsibilities and entitlements regardless of the biological sex of its occupant. The legal status of these same-household relationships in contemporary Nigeria is deeply uncertain. They are not recognised by the Marriage Act, they do not conform to the Islamic *nikah*, and their recognition as valid customary marriages depends on whether the applicable customary law has maintained the relevant institutional framework or has been eroded by colonial disruption, Christian missionary influence, and the progressive assimilation of customary law to Western legal categories.[269]

Consequently, under Nigerian law, the practice may be challenged under the repugnancy doctrine, which invalidates any customary rule contrary to natural justice, equity, good conscience, or incompatible with statutory law. Section 18(3) of the Evidence Act 2011 provides that a custom shall not be enforced if it is contrary to public policy or is repugnant to natural justice, equity, and good conscience. Furthermore, the Same Sex Marriage (Prohibition) Act 2013 expressly

[268]Amadiume (n 8) 67–72; Nwando Achebe, *The Female King of Colonial Nigeria: Ahebi Ugbabe* (Indiana University Press, 2011) 12–25.

[269]Oyèrónkẹ́ Oyěwùmí, *The Invention of Women: Making an African Sense of Western Gender Discourses* (University of Minnesota Press, 1997) 31–52; Achebe (n 28) 20–25; CIC (n 13) c 1055 §1.

prohibits same-sex unions in Nigeria. In *Mojekwu v Mojekwu*, [270] the Court of Appeal held that customs inconsistent with equity and modern legal values are unenforceable. Consequently, a Nigerian court may regard female husbandry as repugnant and incompatible with existing statutory policy. It must be emphasised, however, that female husbandry in African traditional societies is categorically distinct from the question of same-sex marriage in the contemporary Western sense; the two are not to be conflated, as they arise from entirely different social logics and theological frameworks. The proper discussion of same-sex marriage follows in section 6.14.

6.14 Same-Sex Marriage

The question of same-sex marriage is the most theologically charged, legally contested, and socially divisive question in contemporary global marriage law. It sits at the intersection of constitutional rights, natural law philosophy, theological tradition, cultural anthropology, and deeply held personal convictions about the nature of the human person and the meaning of conjugal love. This section examines the question systematically, beginning with the position of the Catholic Church and the canonical tradition, proceeding to the positions of other Christian bodies and the civil law developments in Western jurisdictions, and concluding with the specific Nigerian legal and pastoral context. Throughout, the section maintains fidelity to the established principles of this book: rigorous scholarly engagement with the complexity of the question, and an integrative approach that holds legal, theological, and social dimensions in productive tension.

[270] *(1*997) 7 NWLR (Pt. 512) 283

The Catholic Church's understanding of marriage as an exclusively heterosexual institution is not a recent development or a reaction to contemporary political debates. It is rooted in the theological anthropology of creation and in the canonical tradition's analysis of what marriage is in its God-given nature and purpose. The Church understands human sexuality as ordered by its nature toward conjugal love and the procreation and education of children, and it understands the male-female complementarity of the spouses as constitutive of the marriage relationship rather than merely incidental to it. The 1983 Code of Canon Law defines marriage as the covenant by which a man and a woman establish between themselves a partnership of the whole of life (canon 1055 §1), and this male-female definition is understood not as an arbitrary legal restriction but as a description of what marriage is in its created reality. The Pontifical Council for the Family's (PCF's) document, *Family, Marriage and 'De Facto' Unions* (2000) and the document of the Congregation for the Doctrine of Faith (CDF), *Considerations Regarding Proposals to Give Legal Recognition to Unions between Homosexual Persons* (2003) together constitute the most systematic canonical and theological expression of this position.[271]

The CDF's foundational document on the pastoral care of homosexual persons, *Homosexualitatis Problema* (1986), affirmed with characteristic precision that homosexual acts are intrinsically disordered and that the homosexual inclination, while not in itself sinful, is an objective disorder. The document called for pastoral care characterised by prayer, compassion, and the call to chastity, while firmly rejecting any suggestion that homosexual unions can be morally equivalent to or legally

[271]Pontifical Council for the Family, *Family, Marriage and 'De Facto' Unions* (26 July 2000) §§8–23; Congregation for the Doctrine of the Faith (*CDF*), *Considerations Regarding Proposals to Give Legal Recognition to Unions between Homosexual Persons* (3 June 2003) §§2–11.

equated with marriage. The 1983 Code of Canon Law's definition of marriage as the covenant between a man and a woman (canon 1055 §1) and its specification of the objects of matrimonial consent as the right to the conjugal act ordered to the generation of offspring (canons 1055-1057) make it structurally impossible within the canonical framework for two persons of the same sex to contract a valid canonical marriage. This is not a canonical technicality but a consequence of the Church's understanding of what marriage is: an institution ordered by its nature to the complementary union of male and female, to conjugal love, and to the generation and education of children.[272]

The Catechism of the Catholic Church reinforces this doctrinal position with explicit moral and pastoral teaching. While distinguishing between homosexual inclination and homosexual acts, the Catechism teaches that persons with homosexual tendencies "must be accepted with respect, compassion, and sensitivity," and that "every sign of unjust discrimination in their regard should be avoided" (CCC 2358). At the same time, it maintains that homosexual acts are "acts of grave depravity" and "intrinsically disordered," because they are "contrary to the natural law" and "close the sexual act to the gift of life" (CCC 2357). The Catechism therefore calls homosexual persons to chastity, prayer, self-mastery, and Christian holiness, while rejecting any moral or sacramental equivalence between same-sex unions and marriage as understood by the Church.[273]

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[272]*CIC* (n 13) cc 1055–1057; CDF, *Letter to the Bishops of the Catholic Church on the Pastoral Care of Homosexual Persons* (*Homosexualitatis Problema*) (1 October 1986) §§1–17.

[273] *Catechism of the Catholic Church*. 2nd ed., Libreria Editrice Vaticana, 1997, §§2357–2359.

Pope John Paul II's engagement with the question of homosexuality and marriage spanned his pontificate and was characterised by a consistent combination of doctrinal firmness and pastoral compassion. In *Familiaris Consortio*, he affirmed the family as founded on the marriage between a man and a woman and called for respectful and compassionate pastoral care for all persons regardless of their sexual orientation. In *Evangelium Vitae*, he identified the defence of marriage and the family as part of the broader civilizational struggle between the culture of life and the culture of death. The CDF's *Considerations* of 2003, issued under John Paul II's authority, extended this analysis directly to the legal domain, declaring that the legal recognition of homosexual unions involves the approval of deviant behaviour and constitutes a threat to society and to the family in particular. The document explicitly called Catholic politicians to oppose legislation providing legal recognition to same-sex unions, arguing that this was a moral obligation that could not be set aside in the name of political pluralism. Pope Benedict XVI, in numerous addresses, described the threat to the traditional understanding of marriage posed by the legal recognition of same-sex unions as one of the most serious challenges to the Christian vision of the human person in the contemporary world.[274]

A significant development in the Church's pastoral engagement with this question occurred under Pope Francis. The 2021 response of the CDF to a *dubium* about the blessing of same-sex unions reiterated that the Church does not have the power to bless such unions because they cannot be considered ordered to God's plans. However, the landmark document *Fiducia Supplicans* of December 2023, issued by the Dicastery for the

[274] CDF, *Considerations Regarding Proposals to Give Legal Recognition to Unions between Homosexual Persons* (n 30) §§4–6; Pope John Paul II, *Evangelium Vitae* (25 March 1995) §13; Pope John Paul II, *Familiaris Consortio* (n 14) §11.

Doctrine of the Faith (DDF) with Pope Francis's explicit approval, introduced the possibility of informal, non-liturgical blessings for couples in irregular situations, including same-sex couples, while carefully distinguishing such personal pastoral blessings from any form of approval of the union or equivalence to marriage. The document states explicitly that it is not blessing the union itself, which remains contrary to Church teaching, but the persons who ask for God's blessing in their situation. The doctrinal position on the nature of marriage as the exclusive union of a man and a woman is explicitly reaffirmed throughout the document.[275]

The reception of *Fiducia Supplicans* illustrated with striking clarity the depth of tension within the global Catholic Church on how to engage pastorally with same-sex couples without compromising doctrinal clarity. Several African bishops' conferences, including the Catholic Bishops' Conference of Nigeria, issued public statements expressing concern or reservations, arguing that the cultural and religious context of African societies makes even informal blessings of same-sex couples pastorally harmful and theologically confusing for the faithful. The DDF subsequently issued a clarification affirming that conferences of bishops have the authority to determine that the pastoral practice authorised by *Fiducia Supplicans* is not applicable in their specific cultural context. The Synods on the Family of 2014 and 2015, and the post-synodal apostolic exhortation *Amoris Laetitia* (2016), maintained the doctrinal framework while calling explicitly for respectful treatment of all persons: "every

[275]CDF, *Responsum ad Dubium Regarding the Blessing of the Unions of Persons of the Same Sex* (22 February 2021); Pope Francis, *Fiducia Supplicans: On the Pastoral Meaning of Blessings* (18 December 2023) §§11–30.

person, regardless of sexual orientation, ought to be respected in his or her dignity and treated with consideration."[276]

The Synod fathers in 2014 and 2015 wrestled extensively with the pastoral challenge of homosexuality without changing the Church's doctrinal position. *Amoris Laetitia* states clearly that the Church teaches that the exclusive union of a man and a woman in marriage is the only legitimate form of conjugal life, while simultaneously affirming that the Church's opposition to same-sex marriage does not express hostility toward homosexual persons and calling parishes and communities to be places of welcome and accompaniment for all persons in irregular situations. This combination of doctrinal firmness and pastoral openness is the normative framework within which the Nigerian Church must navigate the pastoral challenges that this question poses.[277]

The civil law trajectory in Western jurisdictions has moved in a direction almost entirely contrary to the canonical and evangelical Christian tradition. In the United States, the Supreme Court's decision in *Obergefell v Hodges* in 2015 held by a majority that the Fourteenth Amendment's guarantees of equal protection and due process required all states to licence and recognise marriages between persons of the same sex. Justice Kennedy's majority opinion located the right to marry as a fundamental liberty and held that the exclusion of same-sex couples imposed a stigma and a legal disadvantage that could not be constitutionally justified. The earlier decision in *Lawrence v Texas* (2003),

[276]Pope Francis, *Fiducia Supplicans* (n 33) §§31–45; DDF, Explanatory Note on *Fiducia Supplicans* (4 January 2024); Catholic Bishops' Conference of Nigeria, Statement on *Fiducia Supplicans* (January 2024).

[277]Synod of Bishops, *Relatio Synodi*, Extraordinary General Assembly (October 2014) §§13–18; Final Report of the Synod of Bishops (October 2015) §§76–78; Pope Francis, *Amoris Laetitia* (19 March 2016) §§250–251.

which struck down criminal prohibitions on private consensual same-sex conduct, had cleared the constitutional ground for *Obergefell* by establishing that moral disapproval of a majority, however sincerely held, cannot by itself constitute a sufficient constitutional justification for laws that impose serious burdens on a group of persons. The earlier *Loving v Virginia* (1967), which struck down anti-miscegenation laws, provided the constitutional template for the argument that marriage is a fundamental right that cannot be restricted on constitutionally impermissible grounds.[278]

In England and Wales, the Marriage (Same Sex Couples) Act 2013 extended civil marriage to same-sex couples following a process of legislative deliberation that included extensive consultation with religious bodies. The Act carefully protected the rights of religious organisations to decline to solemnize same-sex marriages on grounds of conscience, while requiring civil registrars to treat same-sex and opposite-sex marriages identically. The Civil Partnership Act 2004 had already provided same-sex couples with the full range of legal consequences of marriage under a different name, and the 2013 Act completed the extension of formal equality by removing the nominal distinction. The European Court of Human Rights, in *Goodwin v United Kingdom* and *Schalk and Kopf v Austria*, has declined to hold that the European Convention on Human Rights requires states to recognise same-sex marriage, while holding that distinctions in treatment of married and civilly partnered couples require

[278]*Obergefell v Hodges* 576 US 644 (2015) (Kennedy J); *Lawrence v Texas* 539 US 558 (2003); *Loving v Virginia* 388 US 1 (1967).

justification consistent with the Convention's non-discrimination provisions.[279]

The Nigerian legal and pastoral context stands in sharp contrast to these Western developments. The Same-Sex Marriage (Prohibition) Act 2013 makes it a criminal offence punishable by fourteen years imprisonment to enter into a same-sex marriage or civil union, by ten years imprisonment to register, operate, or participate in gay clubs, societies, or organisations, and by the same period to witness, abet, or aid any same-sex union. This legislation reflects a convergence of Islamic and Christian religious opposition, traditional cultural norms, and political populism that makes same-sex marriage one of the very few questions on which the otherwise deeply divided religious communities of Nigeria have spoken with a single political voice. Both the Catholic Bishops' Conference and the Christian Association of Nigeria expressed support for the legislation, as did the Islamic establishment of the north. The constitutional framework, while guaranteeing freedom of religion and freedom from discrimination on a range of grounds, does not explicitly address sexual orientation, and the Nigerian courts have not yet been called to determine whether the constitutional guarantees extend to any protection against discrimination on grounds of sexual orientation.[280]

The international human rights framework's engagement with the Nigerian prohibition is complicated by the ambiguity of existing treaty

[279]Marriage (Same Sex Couples) Act 2013 (UK) s 1; Civil Partnership Act 2004 (UK); *Goodwin v United Kingdom* (2002) 35 EHRR 18 (ECtHR); *Schalk and Kopf v Austria* App No 30141/04 (ECtHR, 24 June 2010).

[280] Same-Sex Marriage (Prohibition) Act (Nigeria) 2013, ss 1–7; Constitution of the Federal Republic of Nigeria 1999 (as amended), ss 38, 42; Philip Ostien and Albert Dekker, "Sharia and National Law in Nigeria" in Jan Michiel Otto (ed), *Sharia Incorporated* (Leiden University Press, 2010) 553–612, 605–610.

obligations. The African Charter on Human and Peoples' Rights does not explicitly address sexual orientation or gender identity, and the African Commission on Human and Peoples' Rights has taken a cautious and non-committal position on whether the Charter's general non-discrimination provisions extend to protection against discrimination on grounds of sexual orientation. An-Na'im's analysis of African constitutionalism and human rights argues that the question cannot be adequately addressed through the simple application of Western liberal categories but requires engagement with the specific constitutional, cultural, and religious frameworks of African societies. The ILGA World annual report on state-sponsored homophobia documents the persistence of criminal prohibitions on same-sex conduct across most of the African continent and situates the Nigerian prohibition within a broader regional pattern, while also documenting the real-world consequences of such legislation for the persons affected, including violence, extortion, imprisonment, and the denial of access to healthcare, education, and employment.[281]

For the Catholic Church in Nigeria, the pastoral challenge posed by same-sex attraction and same-sex unions requires a response that is simultaneously doctrinally faithful and pastorally compassionate. *Homosexualitatis Problema* called for prayer, compassion, and support for chaste living as the appropriate pastoral response. *Fiducia Supplicans* opened the door to informal pastoral blessings for all who seek God's grace in their lives, including same-sex couples, while firmly maintaining the doctrinal definition of marriage as the exclusive union of a man and a woman. The Catholic Bishops' Conference of Nigeria's caution about

[281]ILGA World, *State-Sponsored Homophobia: Global Legislation Overview Update* (ILGA World, 2023) 50–80; Human Rights Watch, *This Alien Legacy: The Origins of 'Sodomy' Laws in British Colonialism* (Human Rights Watch, 2008) 1–60; African Charter on Human and Peoples' Rights (adopted 27 June 1981) 1520 UNTS 217, arts 2, 18.

Fiducia Supplicans reflects a legitimate pastoral judgment about the cultural context in which the Church in Nigeria ministers, a context where the line between pastoral accompaniment and perceived approval of same-sex unions may be particularly difficult to maintain in public perception. The Church's universal magisterium has consistently called for the decriminalisation of homosexual conduct even while maintaining its doctrinal position on the nature of marriage. Pope Francis's affirmation that "who am I to judge?" regarding gay persons who seek God and have good will was widely understood as a pastoral affirmation of the dignity of all persons that does not constitute any change in the Church's doctrinal position, and it reflects the consistent teaching that every human person, regardless of sexual orientation, bears the inalienable dignity of one made in the image and likeness of God.[282]

The persecution of persons on grounds of sexual orientation has been intensified in several African jurisdictions by legislation similar to the Nigerian 2013 Act. The ILGA World documentation of the real-world consequences of punitive anti-LGBTQ+ legislation, including violence, extortion, imprisonment, and exclusion from public life, provides the factual context within which the Church's pastoral response must be developed. The Church's commitment to the dignity of every human person, and its clear opposition to all forms of unjust discrimination, violence, and persecution, must be consistently communicated even where the Church maintains its theological position on the nature of marriage and the moral order of human sexuality. History offers sobering precedents: those who have suffered unjust persecution on grounds of their sexual orientation are among the persons for whom the Church's

[282]Pope Francis, *Fiducia Supplicans* (n 33) §4; CDF, *Homosexualitatis Problema* (n 31) §10; United States Conference of Catholic Bishops, *Ministry to Persons with a Homosexual Inclination: Guidelines for Pastoral Care* (2006) 1–30.

compassionate pastoral accompaniment is most urgently needed, and the failure to provide such accompaniment is itself a form of pastoral injustice that the Gospel does not permit.[283]

The theological and pastoral challenge of same-sex marriage for the Nigerian Church ultimately resolves into questions about the relationship between doctrine and pastoral practice, between the universal norm and the particular cultural context, and between the Church's prophetic role in calling society toward the Gospel ideal and its pastoral role in accompanying all persons in their actual situations with mercy and truth. *Amoris Laetitia*'s call for a pastoral theology that is neither rigorist nor permissivist, that holds together doctrinal fidelity and pastoral compassion without sacrificing either, remains the normative framework for the Church's response in Nigeria as elsewhere. What this chapter insists upon is that the question must be addressed with the same rigorous intellectual engagement, the same pastoral seriousness, and the same respect for the dignity of all persons that the Catholic theological tradition at its best brings to all the difficult questions of human life.[284]

6.15 Marriage, Sexuality and Social Change

The relationship between marriage law and sexuality is in a period of rapid and contentious transformation in many societies, driven by the interaction of global human rights norms, digital communication, urbanisation, rising educational levels, and the organised advocacy of groups whose sexual identities and relationship choices have historically

[283]ILGA World (n 39) 50–80; Human Rights Watch (n 39) 1–60; Pope Francis, remarks on board papal plane from Rio de Janeiro (28 July 2013) ("who am I to judge?").

[284]CDF, *Homosexualitatis Problema* (n 31) §10; Pope Francis, *Amoris Laetitia* (n 35) §250; also Synod of Bishops, Final Report (n 35) §76.

been excluded from legal recognition or actively criminalised. Giddens's sociological analysis identified the emergence of the pure relationship, entered into solely for what each party can gain from it and continued only so long as it delivers sufficient satisfaction to both partners, as a dominant tendency in the intimate life of late modern societies. This sociological trend, which dissolves the institutional and normative constraints that have historically given marriage its social weight and durability, both reflects and accelerates the legal changes that have progressively reduced the barriers to divorce and the social stigma associated with the dissolution of marriage.[285]

The divergence between the trajectory of marriage law development in Western jurisdictions, where same-sex marriage has been constitutionally mandated or legislatively enacted, and in Nigerian and most African jurisdictions, where it is criminalised, reflects a genuine and deep difference in the cultural, religious, and constitutional frameworks within which marriage is understood and regulated. The ILGA World documentation of the real consequences of punitive anti-LGBTQ+ legislation for the persons affected provides a morally urgent context for the Nigerian debate that cannot be dismissed as mere Western imperialism, even by those who maintain on theological grounds that same-sex marriage cannot be recognised. The distinction between the Church's doctrinal position on the nature of marriage and the question of the appropriate civil law treatment of same-sex attracted persons is one that the Church's universal magisterium has consistently drawn, calling for the decriminalisation of same-sex conduct even while maintaining the

[285]Anthony Giddens, *The Transformation of Intimacy: Sexuality, Love and Eroticism in Modern Societies* (Polity Press, 1992) 1–64; Ulrich Beck and Elisabeth Beck-Gernsheim, *The Normal Chaos of Love* (Polity Press, 1995) 1–50.

theological definition of marriage as the exclusive union of a man and a woman.[286]

The sociological changes associated with urbanisation, migration, and globalisation are reshaping the social landscape within which Nigerian marriage law operates even where the formal legal framework has not changed. Urban young Nigerians, particularly those with higher education and exposure to global media, are increasingly likely to have encountered same-sex attraction as a social reality among their peers and acquaintances, and to hold expectations about the equality between spouses and the importance of personal compatibility in marriage that differ substantially from those of their parents' generation. These social changes create growing pressure on marriage law systems designed for a more static social order, and they raise with increasing urgency the question of whether the multiple legal frameworks for marriage in Nigeria can be adapted to serve the needs of a rapidly changing society without sacrificing the enduring values of commitment, stability, and mutual care that the marriage institution at its best has always expressed.[287]

6.16 Conclusion

The comparative analysis of this chapter has demonstrated that the forms of marriage and domestic union recognised, regulated, or prohibited by the different normative systems operative in Nigeria are more diverse, more internally complex, and more contested than any single-system analysis would suggest. From monogamy through polygyny and polyandry, from concubinage through cohabitation to the

[286]ILGA World (n 39) 50–80; Human Rights Watch (n 39) 1–60.

[287]Giddens (n 43) 40–64; Judith Stacey, *Unhitched: Love, Marriage, and Family Values from West Hollywood to Western China* (New York University Press, 2011) 1–50.

profoundly contested question of same-sex marriage, the chapter has traced a landscape of conjugal forms whose legal and pastoral management raises fundamental questions about the purposes of marriage law, the relationship between legal recognition and social reality, and the values of equality, dignity, and freedom that the legal order is committed to promoting.[288]

Several conclusions emerge that are directly relevant to the reform agenda of Chapter Seven. First, the legal framework must provide adequate protection to all persons in domestic relationships regardless of the formal legal status of those relationships, because the current situation leaves large numbers of women and children in informal unions exposed to serious legal and economic vulnerability. Second, the reform of formal marriage law must be undertaken with close attention to the actual social consequences of legal change for the persons most affected, particularly women and children in vulnerable positions. Third, the human rights framework provides minimum standards, including the requirements of free consent, minimum age, equal rights during and at the dissolution of marriage, and protection of children's welfare, that any reformed marriage law system must respect regardless of the cultural or religious form of the union. Fourth, the question of same-sex marriage demands from the Church and from society a response that is simultaneously doctrinally faithful to the Catholic theological tradition and pastorally attentive to the dignity and the real suffering of all persons, holding together doctrinal fidelity and pastoral compassion without sacrificing either to the demands of cultural conformism or political expediency.[289]

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[288]Maputo Protocol (n 19) arts 6–7; CEDAW (n 19) art 16; Child Rights Act (Nigeria) 2003, s 1.

[289]Nwogugu (n 2) 265–280; Elias (n 12) 85–91; Chanock (n 11) 15–30.

The persistence of polygamous systems, the growth of informal cohabitation, the deeply contested question of same-sex marriage, and the social changes associated with urbanisation and globalisation together point toward the need for a legal and pastoral framework that is more flexible, more responsive to social reality, and more attentive to the actual needs and vulnerabilities of the persons it governs. The construction of such a framework, drawing on the legal, theological, and social analysis that the preceding chapters have collectively developed, is the central challenge addressed in the concluding Chapter Seven, which approaches the problem of multiple marriage celebrations and the prospect of a unified and integrated marriage system in the Nigerian context with both the urgency that the human costs of the current situation demand and the rigour that the complexity of the task requires.

Chapter Seven

THE CRISIS OF MULTIPLE CELEBRATIONS AND THE PROSPECT OF UNIFICATION

7.1 Introduction

The preceding six chapters have traced the full arc of the marriage question in Nigeria: from the foundational conceptual and historical analysis of Chapter One, through the customary traditions of Chapter Two and the statutory framework of Chapter Three, through the canonical and Islamic normative systems of Chapters Four and Five, to the comparative analysis of marriage forms and informal unions in Chapter Six. This final chapter undertakes the constructive task toward which that entire analysis has been building. It confronts directly the central practical problem that makes the theoretical questions of this book urgent rather than merely academic: the fact that in contemporary Nigeria, and particularly in the Igbo-Catholic communities of the Onitsha Ecclesiastical Region, the same couple who wish to marry must navigate simultaneously the requirements of traditional customary law, the requirements of the civil statutory system, and the requirements of canon law. What should be a single, unified, and joyful event in the life of two persons and their communities is multiplied into a sequence of separate, expensive, and theologically incoherent celebrations.[290]

This problem of multiple marriage celebrations is simultaneously a legal problem, a theological problem, a pastoral problem, and a social

[290]E I Nwogugu, Family Law in Nigeria, 3rd ed (Heinemann Educational Books, 1990) 265–280; A N Allott, Essays in African Law (Butterworths, 1960) 175–180.

and economic problem. It is a legal problem because the three systems of law that govern the marriages of Nigerian Catholics do not currently recognise each other's ceremonies as constituting a valid marriage under their respective frameworks. It is a theological problem because the multiplication of ceremonies implies that there are three separate marriages rather than one marriage celebrated in complementary cultural, civil, and sacramental forms. It is a pastoral problem because it creates barriers to canonical regularity, generates confusion about the nature and meaning of marriage, and imposes economic burdens that effectively price many young Nigerians out of fully recognised marriage. And it is a social and economic problem because the combined cost of the traditional ceremony, the church wedding, and the civil registry formalities, together with the receptions and celebrations expected at each stage, constitutes one of the most significant financial burdens faced by young Nigerian families at the outset of their conjugal lives.[291]

This chapter addresses the crisis of multiple celebrations and the prospects for its resolution across seventeen sections. It begins with the foundational theological claim that marriage is in its deepest nature a unified reality, proceeds to develop the three-dimensional understanding of marriage as contract, covenant, and sacrament elaborated throughout this book, and then analyses the specific mechanisms of fragmentation that have produced the current multiple-ceremony problem. It develops the theological basis for a unified marriage system, identifies the canonical possibilities for integration within the existing legal framework, and proposes a framework for the harmonization of civil, customary, and religious marriage that is both legally sound and theologically coherent.

[291]Marriage Act (Nigeria) Cap M6, Laws of the Federation of Nigeria 2004; Matrimonial Causes Act (Nigeria) Cap M7, Laws of the Federation of Nigeria 2004; Code of Canon Law (1983) (CIC) c 1055 §1; Constitution of the Federal Republic of Nigeria 1999 (as amended), s 275.

The chapter concludes with concrete recommendations for legal and pastoral reform and a final synthesis that places the Nigerian marriage question within the broader horizon of the future of marriage in Africa and in the global Church.[292]

7.2 Marriage as a Unified Reality

The foundational premise of this chapter, which the preceding six chapters have collectively established, is that marriage is in its deepest nature a single unified reality that the different legal, theological, and cultural traditions have approached from different angles and expressed in different formal frameworks but have not thereby created as different realities. When an Igbo Catholic couple marry, what happens is one thing: they enter into the permanent, exclusive, and publicly recognised conjugal union that is at once a natural human institution embedded in the Igbo social order, a legally enforceable status regulated by Nigerian law, and a sacrament of the Catholic Church through which God's grace is communicated to the spouses and the community. These three dimensions do not constitute three separate events or three separate marriages; they are three dimensions of a single event that the current legal and pastoral system unfortunately fragments by requiring that each dimension be separately addressed through a different ceremony in a different institutional setting.[293]

This conviction that marriage is a unified reality finds support across the normative traditions that this book has examined. The Second

[292] John Witte Jr, From Sacrament to Contract: Marriage, Religion and Law in the Western Tradition, 2nd ed (Westminster John Knox Press, 2012) 295–332; T O Elias, The Nature of African Customary Law (Manchester University Press, 1956) 85–91.

[293]Second Vatican Council, Gaudium et Spes (7 December 1965) §48; CIC (n 2) c 1055 §1.

Vatican Council's *Gaudium et Spes* describes marriage as an intimate partnership of conjugal life and love established by the Creator, endowed with its own proper laws, and insists that this single institution serves simultaneously the good of the spouses, the good of their children, and the good of society. Catholic canon law understands marriage as a natural institution elevated by Christ to the dignity of a sacrament, emphasising the continuity rather than the discontinuity between the natural and the sacramental dimensions of the conjugal union. Islamic jurisprudence understands the *nikah* as simultaneously a legal contract and a sacred covenant grounded in divine command. African traditional cosmology understands marriage as simultaneously a social fact, a covenant between families, and a spiritual reality underwritten by ancestral witnesses. Across these diverse traditions, the conviction that marriage is one thing, however variously expressed, points toward the possibility of a unified approach that honours the multiplicity of its dimensions without fracturing them into separate and competing institutional requirements.[294]

7.3 Marriage as Contract, Covenant and Sacrament

The three-dimensional understanding of marriage as contract, covenant, and sacrament that has been developed throughout this book provides the conceptual framework within which the unification of the multiple-ceremony system can be theologically grounded and legally articulated. These three categories are not competing understandings between which a choice must be made; they are complementary

[294]Pope John Paul II, Familiaris Consortio (22 November 1981) §§3–11; Quran 4:21 (mithaqan ghalithan); John Mbiti, African Religions and Philosophy, 2nd ed (Heinemann, 1990) 130–145.

dimensions of a single reality that together constitute the fullness of what Christian marriage is in its God-given nature and purpose.[295]

The contractual dimension of marriage, most fully developed in the civil statutory tradition, captures the legally enforceable character of the conjugal bond and the mutual rights and obligations that the parties undertake toward each other and toward any children of the union. The Roman jurist Modestinus's definition of marriage as the joining of a man and a woman and a sharing of all of life, a communion of divine and human law, captures both the contractual and the covenantal dimensions of the institution in a formulation that has retained its relevance across fourteen centuries of legal development. The covenantal dimension, most fully developed in the biblical and African traditional traditions, captures the moral depth and the communal character of the marriage bond: the obligation it creates not merely between the two spouses but between their families, their communities, and the generations that precede and follow them. The sacramental dimension, which is the specifically Catholic theological contribution, captures the grace dimension of Christian marriage: the reality that the conjugal union between two baptised persons is not merely a human institution but an effective sign and instrument of God's own self-giving love, a reality that participates in the mystery of Christ's covenant with the Church.[296]

The theological integration of these three dimensions points directly toward the pastoral and legal conclusion that this chapter develops: the three ceremonies currently required of Nigerian Catholic couples should not be understood or practised as three separate marriages

[295]CIC (n 2) c 1055 §2; Witte (n 3) 1–30.

[296]Justinian, Digest 23.2.1 (Modestinus); Gaudium et Spes (n 4) §48; Karl Barth, Church Dogmatics, vol III/4 (T & T Clark, 1961) 183–240.

but as three expressions or moments of a single conjugal covenant. The appropriate reform goal is the development of a unified celebration that integrates all three dimensions in a single coherent event whose various components are mutually recognising rather than mutually competing.

7.4 Fragmentation of Marriage in Plural Legal Systems

The fragmentation of marriage into multiple separate ceremonies in the Nigerian context is not the result of theological confusion or pastoral negligence alone. It is the structural consequence of the coexistence of multiple legal systems that operate without adequate mechanisms for mutual recognition, each of which imposes its own formal requirements for the constitution of a valid marriage without reference to whether the requirements of the other systems have been or will be met. Understanding the structural causes of fragmentation is the necessary first step toward developing a structural solution.[297]

The civil statutory system requires that a statutory marriage be contracted through the prescribed notice, certificate, and solemnization procedures set out in the Marriage Act. The canonical system requires that a marriage between Catholics be contracted before the parties' own parish priest and two witnesses in the form prescribed by canons 1108 to 1123 of the 1983 Code of Canon Law. The Igbo customary system requires the payment of Bride-price and the performance of the *igba nkwu nwanyī* ceremony with the involvement and consent of both families. None of these three systems, in its current form, recognises the completion of the requirements of either of the other two as constituting the marriage or as substituting for its own requirements. The consequence is that a couple

[297]Nwogugu (n 1) 235–265; Martin Chanock, Law, Custom and Social Order: The Colonial Experience in Malawi and Zambia (Cambridge University Press, 1985) 1–30.

who wish to be fully married in all three systems must submit to three separate sets of formal requirements, each with its own costs, its own procedural demands, and its own institutional presuppositions.[298]

7.5 Civil, Customary and Canonical Marriage in Nigeria

The specific ways in which the civil, customary, and canonical marriage systems interact in the Nigerian context have been analysed in detail in the preceding chapters. It is useful at this point to bring those analyses together in a synthesis that identifies the precise points of conflict and the potential points of integration that a reform proposal must address. The leading Supreme Court decisions of *Okonkwo v Okagbue* and *Nzekwu v Nzekwu* illustrate with particular clarity the practical difficulties that arise when the requirements of different marriage law systems are not met in the same transaction, leaving parties and children in legally precarious positions despite their good faith and their genuine commitment to the conjugal union they have entered.[299]

Between the civil statutory system and the Igbo customary system, the primary conflict is the monogamy requirement of the Marriage Act, which renders invalid any subsequent customary marriage contracted by a person who has already married under the Act, and exposes that person to criminal liability for bigamy. Between the civil statutory system and the canonical system, the primary conflict is the requirement of canonical form: a civil registry marriage between two Catholics does not constitute a valid canonical marriage unless the canonical form requirement has

[298]Marriage Act Cap M6 (n 2), s 33; CIC (n 2) cc 1108–1123 (canonical form); Jamal Nasir, The Islamic Law of Personal Status, 3rd ed (Kluwer Law International, 2002) 56–90.

[299]Okonkwo v Okagbue [1994] 9 NWLR (Pt 368) 301 (SC); Nzekwu v Nzekwu [1989] 2 NWLR (Pt 104) 373 (SC); Nwogugu (n 1) 235–265.

been dispensed, leaving couples who have married only in the registry in a state of canonical irregularity. Between the canonical system and the Igbo customary system, the primary conflict is the recognition of the *igba nkwu* ceremony: a couple who have completed the full traditional ceremony and are recognised as married under customary law are not canonically married and therefore in an irregular situation in the eyes of the Church, regardless of the social and legal reality of their union.[300]

7.6 The Problem of Multiple Marriage Ceremonies

The practical consequence of the structural fragmentation described in the preceding section is the system of multiple marriage ceremonies that is the immediate occasion for this chapter's analysis. In most Igbo-Catholic communities, a couple who wish to achieve full recognition across all three systems must pass through at least three, and sometimes four, distinct ceremonies: the *iju ese* and preliminary family investigations; the *igba nkwu nwanyī* or traditional marriage ceremony with Bride-price payment; the civil registry marriage before a registrar under the Marriage Act; and the canonical church wedding before a priest and witnesses. In practice, many couples also add a formal wedding reception after the church ceremony, creating a fifth event whose cost adds to the financial burden of the whole process.[301]

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[300] CIC (n 2) cc 1108–1123; Emeka Okafor, Igbo Customary Law and Marriage (University of Nigeria Press, 2002) 22–30; Kristin Mann, Marrying Well: Marriage, Status and Social Change among the Educated Elite in Colonial Lagos (Cambridge University Press, 1985) 25–40.

[301] Diocese of Awka, Guidelines on Marriage Preparation and Celebration (Catholic Secretariat of Nigeria, 2018) 12–30; Ogbu Kalu, The Embattled Gods: Christianization of Igboland, 1841–1991 (Minaj Publishers, 1996) 78–130.

The human costs of this system are significant and widely felt. Financially, the combined cost of all required ceremonies is beyond the immediate means of many young Nigerian couples, particularly those in urban areas who lack the extended family networks that in rural communities often share the financial burden of marriage celebrations. Pastorally, the delay or selective completion of ceremonies means that many couples who are already living together and may have children together are unable to receive the sacraments fully while their canonical situation remains irregular, a pastoral exclusion that causes real suffering and that in some cases leads to permanent disengagement from active participation in the Church's sacramental life. Theologically, the multiplication of ceremonies implies to the couple and to their community a fragmentation of the marriage event that is inconsistent with the understanding of marriage as a single unified reality.[302]

7.7 Inculturation and the Africanization of Christian Marriage

The theological principle of inculturation, developed extensively in Chapter Four in the context of the canonical tradition's engagement with African traditional marriage, provides the primary theological framework within which the problem of multiple celebrations can be addressed. Inculturation, as understood in the post-conciliar Catholic theological tradition, is not the mere adaptation of the Church's liturgical forms to local aesthetic preferences; it is the profound and organic transformation of genuine cultural values through their integration into Christianity from within, so that the faith does not merely put on local dress but is genuinely at home in the local culture and the local culture is

[302]Nwogugu (n 1) 265–275; Aylward Shorter, Toward a Theology of Inculturation (Orbis Books, 1988) 200–240.

genuinely transformed from within by the faith. Applied to the domain of marriage, inculturation means that the Church's celebration of the sacrament of marriage should be genuinely and authentically Igbo in its cultural expression, not merely a European ceremony dressed in occasional Igbo decoration.[303]

The African theologians of inculturation, particularly Bujo and Orobator, have argued that genuine inculturation in the domain of marriage requires a critical and discerning engagement with the African traditional marriage system that neither uncritically adopts all its elements nor simply replaces it with a Western canonical model. Bujo's concept of the African communal ethics of ancestral dialogue suggests that authentic African Christian marriage should express the community's covenant character, the involvement of extended family as participants rather than merely spectators, the ancestral dimension of the marriage bond, and the woman's free and public expression of consent within a communal framework, all of which find natural expression in the traditional Igbo ceremony of *igba nkwu nwanyī*. Orobator's pastoral theology similarly insists that the Church in Africa cannot simply transplant European institutional forms and expect them to take root; the forms must be genuinely African if the Gospel they carry is to be genuinely received.[304]

The canonical possibilities for inculturation in the domain of marriage form are more generous than is sometimes recognised by pastoral practitioners. Canon 1127 §2 of the 1983 Code provides that the diocesan bishop may grant a dispensation from canonical form for a grave

[303]Pope John Paul II, Ecclesia in Africa (14 September 1995) §§43–53; Shorter (n 13) 200–240.

[304]Bénézet Bujo, African Theology in Its Social Context (Orbis Books, 1992) 65–95; Agbonkhianmeghe Orobator, Theology Brewed in an African Pot (Orbis Books, 2008) 55–80.

and just reason. While this provision was primarily designed for the case of mixed marriages where one party belongs to a different canonical tradition, it provides a canonical instrument that could in principle be deployed to allow a properly prepared and theologically coherent traditional ceremony to serve as the canonical form of a Catholic marriage, thereby integrating the customary and canonical dimensions of the marriage event into a single celebration.[305]

7.8 The Jurisprudence of Integrated Marriage Ceremonies

The development of a jurisprudence of integrated marriage ceremonies, which would provide the legal and canonical framework for a unified marriage celebration that simultaneously satisfies the requirements of the customary, civil, and canonical systems, is one of the most important practical tasks for Nigerian canon lawyers, civil lawyers, and pastoral practitioners. The elements of such a jurisprudence can be identified from the analysis of the preceding chapters, even though no fully worked-out framework currently exists either in the canonical literature or in Nigerian civil law.[306]

From the canonical side, the essential requirements for a valid canonical marriage are: the genuine and free consent of both parties, expressed in a form that is publicly recognisable and witnessed; the absence of any diriment impediment; and, for Catholics, either the canonical form of celebration before a priest and two witnesses or a valid dispensation from this form. A jurisprudence of integrated ceremonies

[305]CIC (n 2) c 1127 §2 (dispensation from canonical form); c 1112 (delegation to lay person); Shorter (n 13) 215–225.

[306]CIC (n 2) cc 1108–1123; Pontifical Council for the Interpretation of Legislative Texts, Response to a Doubt (1999) regarding the application of canonical form in mixed-rite celebrations.

would need to show how the traditional *igba nkwu nwanyī* ceremony can be structured so as to satisfy the requirement of publicly expressed and witnessed consent, how the presence and role of the priest at the ceremony can be integrated into the traditional ritual without displacing the culturally essential role of family elders and the wine-carrying act of the bride, and how the canonical requirements of proper preparation and the absence of impediments can be verified and certified before the traditional ceremony proceeds, so that the canonical and customary celebrations occur as aspects of a single event rather than as separate institutional acts.[307]

From the civil law side, a jurisprudence of integrated ceremonies would need to address the question of whether a traditional ceremony at which a licensed civil officiator is present and at which the prescribed statutory words of consent are exchanged could satisfy the solemnization requirement of the Marriage Act, thereby allowing the civil registration and the traditional ceremony to be combined in a single event. Some African jurisdictions have already developed variants of this approach, recognising that the rigid insistence on registry-only solemnization serves no public policy purpose that could not be equally well served by the licensed officiator's presence at a traditional ceremony. The development of such a framework in Nigeria would require primary legislation, but its implementation would be practically straightforward and administratively manageable.

[307]Okafor (n 11) 28–32; Nwogugu (n 1) 268–275; Victor Uchendu, The Igbo of Southeast Nigeria (Holt, Rinehart & Winston, 1965) 52–55.

7.9 Theological Basis for Unified Marriage Systems

The theological basis for a unified marriage system is grounded in the foundational conviction, articulated in *Gaudium et Spes* and developed throughout the Catholic sacramental theology of marriage, that the marriage of two baptised persons is a single sacramental event whose natural, cultural, legal, and spiritual dimensions are not separate compartments but dimensions of a single whole. Schillebeeckx's theological analysis of marriage as both a human reality and a saving mystery provides perhaps the most profound exploration of this foundational conviction in the modern tradition: marriage, on his account, is the natural human institution of conjugal love elevated and perfected by God's grace, so that the human and the divine dimensions of the institution are not in competition but in harmony. If this is so, then the cultural expression of marriage in the *igba nkwu* ceremony, the legal expression of marriage in the civil registration, and the sacramental expression of marriage in the canonical celebration are not three separate events but three modes of expression of the single conjugal reality that comes into being when a man and a woman irrevocably give themselves to each other in the presence of their community and of God.[308]

The African theological tradition, as represented by Mbiti, Bujo, and Shorter, contributes a complementary dimension to this theological foundation. Mbiti's analysis of the African understanding of marriage as a community event involving the living, the dead, and the yet-to-be-born captures the ancestral and eschatological dimensions of the marriage covenant that the Catholic sacramental tradition also affirms in its own way through the teaching that the sacramental bond participates in the

[308] Gaudium et Spes (n 4) §§47–52; Familiaris Consortio (n 5) §§6–11; Edward Schillebeeckx, Marriage: Human Reality and Saving Mystery (Sheed & Ward, 1965) 1–100.

eternal covenant between Christ and the Church. The convergence between the African communal covenantal understanding of marriage and the Catholic sacramental covenantal understanding is not a matter of superficial formal similarity; it is a deep structural affinity that points toward the possibility of a genuine theological synthesis rather than a merely practical compromise.[309]

7.10 Canonical Possibilities for Integration

The canonical possibilities for integrating the multiple-ceremony system into a unified celebration are more extensive than either pastoral practitioners or civil lawyers typically recognise. The 1983 Code of Canon Law, interpreted generously and creatively within the limits of its provisions, provides several instruments that can be deployed in service of this integration.[310]

First, the dispensation from canonical form available under canon 1127 §2 provides a mechanism for allowing the traditional ceremony to function as the canonical celebration of the marriage, provided that the diocesan bishop is satisfied that there is a grave and just reason, that the required elements of matrimonial consent are properly expressed and witnessed, and that the couple has completed the canonical preparation required of all Catholics entering marriage. The use of this dispensation in the Nigerian context would require a clear diocesan policy specifying the conditions under which it is available, the preparation that must precede it, and the documentation that must follow it to ensure that the marriage is properly recorded in the canonical registers. Second, the

[309]Mbiti (n 5) 130–145; Shorter (n 13) 200–240; Bujo (n 15) 65–95.

[310]CIC (n 2) c 1127 §2 (dispensation from canonical form for grave and urgent reason); c 1112 §1 (lay assistant in extraordinary circumstances); cc 1108–1112 (form of celebration).

canonical requirement of matrimonial consent does not require any particular form of words beyond the expression of the mutual giving and acceptance of each other as spouses. The bride's wine-carrying act in the *igba nkwu* ceremony, through which she publicly identifies and presents herself to her chosen husband before the assembled community, is a culturally powerful and publicly recognisable act of consent that could be theologically interpreted as expressing the same conjugal commitment that the prescribed canonical words of consent express, provided that the consent is genuine, free, and informed according to the requirements of canons 1095 to 1107.[311]

7.11 Harmonization of Civil, Customary and Religious Marriage

The harmonization of civil, customary, and religious marriage law in Nigeria requires action on three distinct but interconnected levels: legislative reform at the federal and state levels, canonical reform through the development of diocesan policies and the appropriate use of existing canonical instruments, and pastoral reform through the development of inculturated marriage preparation and celebration resources. No single level of action is sufficient on its own; genuine harmonization requires coordinated movement at all three levels, guided by a coherent vision of what a unified Nigerian marriage system should look like.[312]

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[311] CIC (n 2) cc 1055–1062 (nature and properties of marriage); cc 1095–1107 (matrimonial consent); Ladislas Örsy, Marriage in Canon Law: Texts and Comments, Reflections and Questions (Michael Glazier, 1986) 135–165.

[312] Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW), art 16; Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) (adopted 11 July 2003, entered into force 25 November 2005) art 6.

At the legislative level, the most urgently needed reform is the development of a framework for the recognition of customary and religious marriage ceremonies as legally valid solemnizations, provided that they meet specified minimum requirements including the free and public expression of consent by both parties, the absence of prohibited degrees of relationship, the parties' satisfaction of any applicable minimum age requirement, and the involvement of a person authorised to officiate at marriages. This would not require the abolition of the existing registry marriage system but rather its supplementation by a system of licensed officiators who can solemnize marriages in the context of traditional or religious ceremonies with the same legal effect as a registry marriage. The Child Rights Act 2003's provisions on the minimum age of marriage, which the federal government must enforce consistently across all states of the Federation, represent a non-negotiable minimum standard that any harmonized marriage system must incorporate. The failure of some northern states to adopt the Child Rights Act is a violation of both the constitutional rights of the children concerned and Nigeria's binding international treaty obligations under CEDAW and the Convention on the Rights of the Child.[313]

7.12 Marriage, Modernity and Cultural Change

Any proposal for the reform and harmonization of Nigerian marriage law must reckon honestly with the social and cultural changes that are reshaping the context within which marriage is understood and practised in contemporary Nigeria. The sociological analysis of Giddens and Beck documents the global tendency toward the individualisation of intimate relationships and the weakening of the institutional constraints that have historically given marriage its social weight and durability.

[313]Child Rights Act (Nigeria) 2003, s 21; Nwogugu (n 1) 265–280; Elias (n 3) 85–91.

These global trends are present in Nigeria, but they interact with the specific features of Nigerian social life in ways that produce outcomes that are not simply reducible to Western liberal modernity.[314]

The most significant of these features, from the perspective of marriage law reform, is the continued strength of religious identity as the primary framework within which most Nigerians understand the meaning and purpose of conjugal life. Both Christianity and Islam provide for their adherents a thick normative framework for marriage that goes far beyond the thin procedural framework of secular civil law, specifying not merely the formal requirements for contracting a valid union but the purposes, the moral obligations, and the spiritual significance of the conjugal bond. Any reform of Nigerian marriage law that ignores or marginalises these religious frameworks will fail, not merely politically but socially, because it will be experienced by the majority of Nigerians as an imposition of alien values on the most intimate domain of their personal and community life. The challenge is to develop a legal framework that provides the minimum standards required by the international human rights framework while remaining genuinely respectful of and engaged with the religious and cultural traditions within which Nigerian marriages are lived.[315]

7.13 Divorce, Separation and the Crisis of Family Stability

The question of family stability and the management of marital breakdown is among the most pressing practical challenges for any reform of Nigerian marriage law. The coexistence of the statutory divorce system under the Matrimonial Causes Act, the customary system of dissolution

[314]Anthony Giddens, The Transformation of Intimacy: Sexuality, Love and Eroticism in Modern Societies (Polity Press, 1992) 40–64; Ulrich Beck and Elisabeth Beck-Gernsheim, The Normal Chaos of Love (Polity Press, 1995) 1–50.

[315]Kalu (n 12) 78–130; Orobator (n 15) 55–80; Shorter (n 13) 230–240.

through the return of Bride-price, and the Islamic divorce procedures of *talaq*, *khul'*, and judicial dissolution creates a situation of legal fragmentation in which the consequences of marital breakdown depend heavily on which system of law applies to the marriage and which forum the parties approach for relief.[316]

From the canonical perspective, the sacramental theology of marriage's indissolubility cannot be compromised in the service of a harmonized marriage system that provides for the civil dissolution of sacramental marriages. The Church does not seek to impose its canonical standard of indissolubility on the civil law; it recognises that the civil law may provide for divorce in circumstances where the canonical bond remains intact. What the Church insists upon is that persons who have contracted a valid sacramental marriage and obtained a civil divorce remain bound by the canonical marriage bond and may not contract a new canonical marriage during the lifetime of their first spouse, unless the first marriage has been declared null by a competent canonical tribunal or dissolved by legitimate canonical process. Pope Francis's *Mitis Iudex Dominus Iesus*, which reformed the canonical nullity process to make it more accessible and less burdensome, represents an important pastoral development that should encourage the dioceses of Nigeria to develop their tribunal systems so that persons in failed marriages can more readily access the canonical process for a declaration of nullity where grounds exist.[317]

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[316]Matrimonial Causes Act Cap M7 (n 2), s 15 (irretrievable breakdown and five facts); Nwogugu (n 1) 140–165.

[317] CIC (n 2) cc 1141–1150 (dissolution of the bond); cc 1671–1691 (matrimonial processes); Pope Francis, Mitis Iudex Dominus Iesus (15 August 2015) (reform of nullity processes).

The pastoral challenge of accompanying those whose marriages have broken down requires the development of a comprehensive pastoral strategy that is both doctrinally faithful and genuinely compassionate. *Amoris Laetitia*'s call for pastoral accompaniment of all persons in irregular situations, without premature judgement and without false reassurance, provides the normative framework for this pastoral strategy. The implementation of this framework in the specific social and cultural context of Igbo-Catholic communities in Nigeria requires trained pastoral ministers, clear diocesan policies, and accessible canonical procedures that together create the infrastructure for genuine accompaniment.[318]

7.14 Globalization and the Transformation of Marriage

The forces of globalization that are reshaping marriage practices in Nigeria are not merely sociological abstractions; they are the concrete daily experiences of Nigerians who access global media, travel internationally, work in multinational organizations, maintain diaspora connections, and participate in global religious networks. These experiences introduce into Nigerian social life understandings of marriage, family, gender relations, and individual autonomy that sometimes align with and sometimes challenge the normative frameworks of customary tradition, canonical theology, and Islamic jurisprudence. The management of this encounter between local tradition and global modernity is one of the defining challenges for Nigerian marriage law in the twenty-first century.[319]

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[318] Pope Francis, Amoris Laetitia (19 March 2016) §§236–258; Walter Kasper, The Gospel of the Family (Paulist Press, 2014) 1–60.

[319] Giddens (n 25) 1–64; Arjun Appadurai, Modernity at Large: Cultural Dimensions of Globalization (University of Minnesota Press, 1996) 1–47.

The theological tradition of the Catholic Church, while it is a global tradition with a universal magisterium and a universal canon law, is not merely a Western tradition; it has over two thousand years of experience engaging with diverse cultures and finding in them resources for the authentic expression of the Gospel. The history of the Church's encounter with Igbo culture in the Onitsha Ecclesiastical Region has been a history of both conflict and convergence, of missionary error and genuine evangelistic achievement, of cultural disruption and cultural enrichment. The task for the present generation of Nigerian Catholic theologians, canonists, and pastoral ministers is to build on the achievements and learn from the errors of this history in developing a genuinely inculturated theology and pastoral practice of Christian marriage that can speak authentically to the situation of contemporary Nigerian Catholics.[320]

7.15 The Future of Marriage in Africa

The future of marriage in Africa will be shaped by the interaction of several powerful forces whose general direction can be discerned from the trends analysed in this book. The continued rapid growth of urban populations, the rising educational levels of women, the increasing economic independence of women in urban labour markets, the persistence of strong religious identity across both Christian and Muslim communities, the continued relevance of extended family networks despite urbanisation, and the growing influence of global human rights norms on domestic legal systems will together produce a social environment for marriage that differs significantly from both the

[320]Witte (n 3) 295–332; Shorter (n 13) 230–240; Orobator (n 15) 75–80.

traditional customary framework and the colonial statutory framework, but that is shaped by both.[321]

The Catholic Church in Africa has a unique role to play in this transformation, both as a community of faith that provides a coherent normative framework for conjugal life and as a social institution with educational, healthcare, and pastoral infrastructure that reaches deep into both urban and rural communities. The Church's theology of marriage, which understands conjugal love as a participation in God's own self-giving love and the family as a domestic church that is both the fruit and the foundation of the larger ecclesial community, speaks to the deepest aspirations of Nigerian Catholics even as it challenges the accommodations and compromises that the social pressures of contemporary Nigerian life encourage. The implementation of this theology through genuine inculturation, through accessible canonical structures, through comprehensive pastoral accompaniment, and through prophetic engagement with the unjust social and economic conditions that undermine marriage and family stability, is the calling of the Church in Nigeria in the coming generation.[322]

7.16 Recommendations for Legal and Pastoral Reform

The following recommendations emerge from the analysis of this book and are directed at the different institutions that bear responsibility for the reform of Nigerian marriage law and pastoral practice. They are

[321] Emmanuel Martey, African Theology: Inculturation and Liberation (Orbis Books, 1993) 80–120; Bujo (n 15) 65–95; Mbiti (n 5) 130–145.

[322] Familiaris Consortio (n 5) §§3–11; Gaudium et Spes (n 4) §§47–52; Pope Francis, Amoris Laetitia (n 29) §§36–57.

presented not as a comprehensive legislative blueprint but as a framework of principles and priorities that can guide the process of reform.[323]

First, **at the level of federal legislation,** the National Assembly should enact a comprehensive marriage law reform bill that: establishes a clear and uniform minimum age of marriage of eighteen years applicable across all states of the Federation regardless of the religious or customary framework; develops a system of licensed marriage officiators who may solemnize marriages in the context of traditional or religious ceremonies with the same legal effect as a registry marriage, thereby removing the requirement of a separate civil ceremony for couples who have married in a recognised religious or customary form; provides a clear statutory framework for the legal recognition of customary marriages, specifying the minimum requirements of validity (free consent of both parties, minimum age, absence of prohibited degrees) while preserving the legitimate cultural diversity of customary marriage forms; and reforms the grounds and procedure for statutory divorce to eliminate the requirement to establish fault-based facts, replacing them with a genuine no-fault irretrievable breakdown standard.

Second, **at the level of canonical pastoral policy,** the Catholic Bishops' Conference of Nigerian should develop a common set of guidelines for the integration of traditional and canonical marriage ceremonies that: identifies the theological criteria for determining which elements of the customary ceremony are compatible with canonical marriage theology and which require purification or reinterpretation; establishes clear procedures for the use of the canon 1127 §2 dispensation from canonical form in cases where a properly prepared traditional

[323]Marriage Act Cap M6 (n 2); Child Rights Act (Nigeria) 2003, s 21; Matrimonial Causes Act Cap M7 (n 2); Nwogugu (n 1) 265–280.

ceremony is to serve as the canonical celebration of the marriage; develops an inculturated marriage preparation program that addresses simultaneously the theological, canonical, cultural, and social dimensions of marriage; and establishes a system of accountability and documentation that ensures that all marriages celebrated in the Region are properly recorded in both the canonical and civil registers.[324]

Third, at the level of human rights compliance**,** the federal government should develop a systematic program for the implementation of Nigeria's obligations under CEDAW, the Maputo Protocol, and the Convention on the Rights of the Child in the domain of marriage and family law, including: the consistent enforcement of the Child Rights Act's minimum age provisions across all states of the Federation; the development of legal aid and advocacy services for women in vulnerable marriage situations; the reform of the law of intestate succession to ensure that all spouses, whether in statutory, customary, or Islamic marriages, have adequate and enforceable rights in the estate of a deceased spouse; and the development of a national register of marriages that provides a single point of civil record for marriages contracted in any of the recognised forms.[325]

7.17 Conclusion

This book began with the recognition that marriage is simultaneously the most universal and the most contested of human institutions, and that in Nigeria the contest takes a particularly acute form because of the coexistence of multiple normative systems, each claiming

[324]CIC (n 2) c 1127 §2; Familiaris Consortio (n 5) §§19–20; Shorter (n 13) 215–225; Diocese of Awka (n 12) 12–30.

[325]CEDAW (n 23) arts 15–16; Maputo Protocol (n 23) arts 6–7; Child Rights Act (Nigeria) 2003, s 21; Witte (n 3) 295–332.

to govern the most intimate and socially consequential of human relationships. The seven chapters that have followed have traced the full complexity of this contest, from its foundational dimensions in human history and theological reflection through its specific expressions in the customary, statutory, canonical, and Islamic traditions that shape Nigerian marriage law and practice, to its practical consequences in the multiple-ceremony problem that is the immediate occasion of this concluding chapter's analysis.[326]

The central argument of this book can be stated simply, though its implications are complex and its implementation demanding. Marriage in Nigeria, as everywhere else, is in its deepest nature a single unified reality whose contractual, covenantal, and sacramental dimensions are not separate compartments but aspects of a whole. The fragmentation of this unified reality into multiple separate ceremonies with separate legal and canonical consequences is not required by the inner logic of any of the normative traditions that claim jurisdiction over it; it is an historical accident, a product of colonial legal pluralism, missionary cultural insensitivity, and inadequate dialogue between the legal and pastoral institutions that govern Nigerian marriage. The remedy for this historical accident is not the abolition of cultural diversity in marriage celebration but the development of a framework of mutual recognition in which the different dimensions of the marriage event are celebrated in a unified way that is authentically Igbo, legally valid, and canonically sound.[327]

The achievement of this goal requires the cooperation of the Nigerian federal and state legislatures, the Catholic bishops of the Onitsha

[326]Gaudium et Spes (n 4) §§47–52; Amoris Laetitia (n 29) §§36–57; Mbiti (n 5) 130–145.

[327]Witte (n 3) 295–332; Nwogugu (n 1) 265–280; Elias (n 3) 85–91.

Ecclesiastical Region and more broadly, the civil law and canonical legal professions, the pastoral ministers of the parishes and chaplaincies of the Region, and the couples and families of the Catholic community themselves. It requires theological courage to engage seriously with the African traditional marriage tradition rather than merely tolerating it at the margins of canonical compliance. It requires legal creativity to develop the instruments of mutual recognition that the different legal systems need. It requires pastoral wisdom to accompany the many couples whose marital situations are currently irregular not through failure of goodwill but through the structural inadequacy of a system that has never been adequately reformed. And it requires the prophetic conviction that the fragmentation of the most fundamental human institution is itself a form of injustice, and that its repair is not merely a legal or pastoral administrative matter but a work of justice and of love, a contribution to the civilisation of love that the Church is called to serve in the world.

The prospect of unification is not utopian. The theological resources for it are available in the canonical tradition and in the African theological tradition of inculturation. The legal instruments for it are available, in embryonic form, in the existing frameworks of both civil and canon law. The pastoral urgency for it is demonstrated daily in the lives of Nigerian Catholic couples who are navigating three separate legal systems to achieve the simple and profound goal of being fully and publicly married. What is needed now is the will, the wisdom, and the collaborative commitment of all the institutions that bear responsibility for the governance of marriage in Nigeria to undertake together the work of reform that this book has attempted, in its modest way, to illuminate and to inspire.'

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Index of Technical Terms

A

Affectio maritalis. Roman law concept meaning the mutual intention of the parties to live together as husband and wife; the mental element required to constitute a Roman marriage, distinct from the mere fact of cohabitation.

Affinity. Legal relationship arising from marriage between one spouse and the blood relatives of the other spouse; a diriment impediment to marriage under canon law (CIC c 1092) and prohibited degrees under the Nigerian Marriage Act.

Amoris Laetitia. Post-synodal apostolic exhortation of Pope Francis (2016) on the family; notable for its eighth chapter on pastoral accompaniment of those in irregular marriage situations and its nuanced engagement with the question of access to the sacraments.

Ancestor veneration. Central dimension of African traditional cosmology in which deceased family members (ancestors) retain active moral authority over the living; in Igbo marriage, ancestors witness and underwrite the conjugal covenant, making marriage simultaneously a social and a spiritual act.

Annulment (Declaration of Nullity). Canonical judicial declaration by an ecclesiastical tribunal that a marriage was invalid from the beginning due to a defect of consent, a diriment impediment, or defect of canonical form; not a dissolution of a marriage but a declaration that no valid marriage existed.

Apostolic Exhortation. Papal document issued after a Synod of Bishops to present the conclusions of the synodal process and develop their pastoral implications; lower in formal authority than a dogmatic constitution but widely influential in shaping pastoral practice.

B

Banns of marriage. Public announcement of a proposed marriage, required from the Fourth Lateran Council (1215) onwards in canonical practice; the predecessor of the notice requirements found in modern statutory marriage law including the Nigerian Marriage Act.

Bigamy. The criminal offence of contracting a statutory marriage while already validly married to another person; prohibited under the Nigerian Marriage Act (s 33) and the Criminal Code; the principal sanction enforcing the monogamy requirement of statutory marriage.

Bona matrimonii. Latin: the goods or properties of marriage; the three goods identified by St Augustine (proles, fides, sacramentum) as constitutive of what marriage is and what it obligates the spouses toward.

Bridewealth (Bride-price). Property (money, goods, livestock) transferred from the groom's family to the bride's family at the time of Igbo and many other African marriages; juridically significant as the act that establishes the husband's paternity over children born to the wife and incorporates the wife into the husband's lineage; not a purchase of the woman but a covenant-sealing transaction between families.

C

Canon law. The internal legal system of the Catholic Church, codified in the Code of Canon Law (1983) for the Latin Church and the Code of Canons of the Eastern Churches (1990) for Eastern Catholic Churches; governs all matters of marriage for Catholics including validity, form, impediments, nullity, and separation.

Canonical form. The prescribed manner in which a marriage between Catholics must be contracted for validity under canon law (CIC cc 1108-1123); requires celebration before the parties' own parish priest or his delegate and two witnesses; failure to observe canonical form ordinarily renders the marriage canonically invalid.

Capacity (legal). The legal ability of a person to contract a valid marriage; determined in statutory law by age, absence of prior subsisting marriage, and mental competence; in canon law expanded by psychological requirements under CIC c 1095.

Catechism of the Catholic Church. Authoritative compendium of Catholic doctrine issued in 1992 and revised in 1997; presents the Church's teaching on marriage (paras 1601-1666) and on homosexuality (paras 2357-2359) within a comprehensive theological framework.

CCEO (Codex Canonum Ecclesiarum Orientalium). Code of Canons of the Eastern Churches, promulgated in 1990; the parallel canonical code governing the Eastern Catholic Churches in communion with Rome, including distinct provisions on marriage form, consent, and sacramental theology.

CEDAW. Convention on the Elimination of All Forms of Discrimination against Women (1979); the primary international treaty on gender equality in marriage, requiring equal rights of men and women to enter and dissolve marriage and equal rights during marriage; binding on Nigeria.

Child Rights Act (Nigeria) 2003. Federal legislation establishing a minimum marriage age of eighteen years and protecting the rights of children in family law proceedings; not uniformly adopted across all Nigerian states, creating legal gaps in the northern Sharia states.

CIC (Codex Iuris Canonici). Code of Canon Law; the 1983 revision of the Church's canonical code, superseding the 1917 Code; governs marriage for Latin-rite Catholics through canons 1055-1165 on matrimonial law and 1671-1691 on matrimonial processes.

Cohabitation. The arrangement in which two persons share a domestic household and typically a sexual relationship without contracting any formally recognized marriage; legally unprotected in Nigeria, leaving cohabiting parties without statutory rights to maintenance, property, or succession on breakdown or death.

Concubinage. A stable sexual and domestic union recognized as distinct from formal marriage but acknowledged by the community and sometimes by law; in Roman law (concubinatus), a defined legal status with specific but limited rights; present in various forms in African traditional societies.

Conjugal covenant. The moral and spiritual dimension of marriage understood as an irrevocable personal commitment creating obligations that extend beyond the two spouses to their families, communities, and (in African cosmology) their ancestral dead; the

term preferred by the Second Vatican Council over the purely contractual language of earlier canonical definitions.

Consanguinity. Blood relationship; a diriment impediment to marriage under canon law (CIC c 1091) and statutory law (Marriage Act ss 35-36); prohibited in the direct line without limitation and in the collateral line to specified degrees.

Consensus facit nuptias. Latin: 'consent makes the marriage'; the foundational principle of canonical marriage law, established by the Parisian school in the twelfth century and confirmed by Alexander III; holds that it is the exchange of consent, not cohabitation or consummation, that constitutes the marriage bond.

Consortium omnis vitae. Latin: 'sharing of all of life'; the phrase used by the Roman jurist Modestinus and preserved in Justinian's Digest to describe the nature of marriage as a total communion of life, not merely a contractual arrangement for specific purposes.

Contubernium. Roman law term for the stable domestic union of slaves, recognized as a social reality but denied the status of legal marriage (iustum matrimonium); the earliest Western legal example of a union that functions as a marriage but is denied legal recognition.

Council of Trent. The ecumenical council of the Catholic Church (1545-1563) that definitively defined marriage as a sacrament and through its decree Tametsi (1563) introduced canonical form (celebration before parish priest and two witnesses) as a requirement for the validity of Catholic marriages.

Covenant (marriage as). Understanding of marriage as a solemn, irrevocable, publicly witnessed commitment creating obligations

beyond the immediate parties; foundational in both biblical theology and African traditional cosmology; distinguished from contract by its irrevocability and its communal character.

Customary marriage. A marriage contracted according to the traditional law and practices of a particular ethnic or cultural community in Nigeria; legally recognized alongside statutory and Islamic marriages; governed by the customs of the relevant community and subject to proof in civil courts as a matter of fact.

D

Declaration of Nullity. See Annulment.

Diriment impediment. A canonical obstacle to marriage that renders a marriage invalid if not dispensed before the ceremony; the twelve diriment impediments in the 1983 Code include insufficient age, impotence, prior bond (ligamen), disparity of cult, sacred orders, consanguinity, affinity, and others.

Disparity of cult. The canonical impediment arising from the difference in religious status between a Catholic and an unbaptized person; renders marriage invalid unless a dispensation is obtained from the local ordinary.

Dissolution of marriage. The termination of a valid marriage bond during the lifetime of both spouses; in Catholic theology, an absolutely indissoluble sacramental marriage (ratum et consummatum) cannot be dissolved by any human power; non-consummated sacramental marriages may be dissolved by papal dispensation under the Petrine Privilege.

Divorce. The legal termination of a marriage during the lifetime of both spouses; available under the Matrimonial Causes Act (Nigeria) on the sole ground of irretrievable breakdown evidenced by five statutory facts; not recognized in Catholic sacramental theology though the Church acknowledges its civil law availability.

E

Ekdosis. Greek: the formal transfer of the bride from her father's household to her husband's in classical Athenian marriage; the bride was not a party to the preceding betrothal (engue) agreement, reflecting the patriarchal character of Athenian family law.

Engue. Greek: betrothal agreement in classical Athens, contracted between the bride's father or guardian and the prospective husband; the legally operative act initiating the Athenian marriage process, to which the bride was not formally a party.

Essential properties of marriage. In canon law, unity (exclusion of multiple concurrent spouses) and indissolubility (the permanence of the bond); both are essential properties of every valid marriage and their positive exclusion by either party vitiates marital consent (CIC c 1056).

F

Familiaris Consortio. Apostolic exhortation of Pope John Paul II (1981) on the family; the foundational post-conciliar document on Catholic marriage and family theology, addressing the dual ends of marriage (good of the spouses and procreation), polygamy in

the African context, and the pastoral care of those in irregular situations.

Faskh. Islamic judicial dissolution of marriage by court order at the wife's petition; available on various grounds including husband's failure to maintain, absence, or certain physical conditions; the judicial divorce mechanism of Islamic family law.

Female husbandry. Institution documented in Igbo and other African societies in which a woman contracts a formal marriage with another woman, paying bridewealth and assuming the juridical role of husband and father; a social and legal arrangement for allocating parental status and lineage membership, distinct from same-sex marriage in the contemporary Western sense.

Fiducia Supplicans. Declaration of the Dicastery for the Doctrine of the Faith (2023) approved by Pope Francis; introduced the possibility of informal pastoral blessings for couples in irregular situations including same-sex couples, while reaffirming the doctrinal definition of marriage as the exclusive union of a man and a woman.

Fides. Latin: fidelity; one of St Augustine's three goods of marriage (bona matrimonii); the obligation of sexual exclusivity owed by each spouse to the other, whose positive exclusion by either party at the time of consent vitiates marital consent.

G

Gaudium et Spes. Pastoral Constitution on the Church in the Modern World of the Second Vatican Council (1965); section 48 contains the Council's foundational description of marriage as 'an intimate partnership of conjugal life and love' established by irrevocable

personal consent, a formulation marking the shift from a purely contractual to a covenantal and personalist understanding of marriage.

Get. Hebrew: the written bill of divorcement permitted by Deuteronomy 24:1-4; a formal written document issued by a husband to his wife to terminate the marriage; the basis of the elaborate rabbinic divorce system developed in the Talmudic period.

Globalization. The processes of international economic integration, cultural exchange, and normative convergence through which global norms (including human rights standards on marriage) penetrate domestic legal systems and reshape local marriage expectations, particularly in urban Nigerian communities.

H

Hadith. The collected record of the sayings and practices of the Prophet Muhammad; second in authority to the Quran as a source of Islamic law; the major collections (Sahih al-Bukhari, Sahih Muslim) contain extensive provisions on marriage, consent, mahr, divorce, and custody that form the basis of Islamic matrimonial jurisprudence.

Hammurabi, Code of. Babylonian legal code of approximately 1754 BCE, one of the oldest surviving written law collections; contains approximately forty provisions on marriage, divorce, adultery, and the disposition of children; the earliest documented example of state regulation of marriage.

Hanafi school. One of the four major Sunni schools of Islamic jurisprudence; founded by Abu Hanifa (699-767 CE); predominant in Turkey, Central Asia, and South Asia; takes a

relatively permissive approach to the wife's capacity to contract marriage without a guardian.

Hanbali school. One of the four major Sunni schools of Islamic jurisprudence; the most conservative of the four schools; predominant in Saudi Arabia; requires the presence and consent of a male guardian (wali) for the validity of the nikah.

Human rights (and marriage). The body of international treaty obligations, including the UDHR (art 16), ICCPR (art 23), CEDAW (art 16), and the Maputo Protocol (art 6), establishing minimum standards for marriage law: free and full consent of both parties, minimum age, equal rights during and at the dissolution of marriage, and special protection of the rights of women and children.

I

Igba nkwu nwanyi. Igbo: the wine-carrying ceremony; the culminating public act of the traditional Igbo marriage celebration in which the bride, carrying a cup of palm wine, walks through the assembled guests and presents the cup to her chosen husband, thereby publicly identifying and accepting him before the community; the act through which the community validates the conjugal union.

Impediment (canonical). A canonical obstacle to the valid or lawful contraction of marriage; diriment impediments render a marriage invalid; prohibitive impediments make a marriage unlawful but not invalid; governed by CIC cc 1073-1094.

Inculturation. The theological process by which the Gospel and the Church's sacramental and liturgical tradition are expressed in and transformed by a local culture, so that the faith is genuinely at

home in the culture and the culture is genuinely transformed from within by the faith; applied to marriage, inculturation requires developing forms of Christian marriage celebration that are authentically African rather than merely transplanted European forms.

Indissolubility. The essential property of marriage by which the bond, once validly contracted and consummated between baptized persons, cannot be dissolved by any human authority; one of the two essential properties of marriage under canon law (CIC c 1056); the basis for the Church's refusal to recognize divorce of valid sacramental marriages.

Iju ese. Igbo: the initial inquiry stage of the traditional marriage process in which the prospective groom's family makes formal inquiries about the bride's family, lineage, and suitability; the first stage of the multi-stage Igbo customary marriage process.

Ius connubii. Latin: the right of intermarriage; in Roman law, the legal capacity to contract a valid Roman marriage (iustum matrimonium); restricted to Roman citizens and those to whom the right had been formally granted; the ancestor of modern concepts of legal capacity to marry.

Ius in corpus. Latin: right over the body; the 1917 Code of Canon Law's definition of the object of matrimonial consent as the mutual transfer of the perpetual and exclusive right over the body for acts apt for the generation of offspring; replaced in the 1983 Code by a more personalist understanding of conjugal partnership.

Iustum matrimonium. Latin: lawful marriage; the Roman law concept of a legally recognized marriage between persons with the legal capacity to marry; distinguished from informal unions

(concubinatus, contubernium) that fell outside this recognized category.

J

Judicial separation. A court order relieving spouses of the duty of cohabitation while leaving the marriage bond intact; available under the Matrimonial Causes Act (Nigeria) Cap M7 and CIC cc 1151-1155; the appropriate canonical remedy when cohabitation is impossible but no ground of nullity exists.

K

Khul. Islamic divorce at the wife's initiative in exchange for returning the mahr (dower) or other financial consideration to the husband; a form of negotiated dissolution that gives the wife greater agency than the unilateral talaq available to the husband.

Kinship. The system of recognized relationships based on descent, marriage, and adoption through which rights, obligations, property, and social identity are organized; fundamental to understanding African customary marriage systems in which marriage creates alliance between kinship networks rather than merely between individuals.

L

Legal pluralism. The coexistence within a single national legal system of multiple legal orders (statutory law, customary law, Islamic law, canon law) each claiming authority over the same persons and subject matter; the defining structural feature of Nigerian family

law and the source of the conflicts and fragmentation that this book addresses.

Legitimacy. The legal status of a child born to parents in a recognized marriage; in Igbo customary law, determined primarily by the payment of bridewealth rather than by a formal ceremony; in statutory law, determined by the parents' marriage under the Marriage Act; the Matrimonial Causes Act (s 7) confers legitimacy on children of void and voidable marriages in specified circumstances.

Levirate marriage. The institution, found in both Deuteronomy 25:5-10 and in Igbo and other African customary law traditions, by which a man is required or expected to marry the widow of his deceased brother in order to produce a child to carry on the dead man's name and inherit his property; an expression of the communal and lineage-oriented character of marriage.

Ligamen. Latin: the bond; the canonical term for the diriment impediment arising from a prior valid marriage bond that has not been dissolved; canon 1085 renders invalid any marriage contracted by a person still bound by a prior subsisting marriage.

M

Mahr (Dower). The mandatory gift of money or property that an Islamic husband must give to his wife at the time of the nikah; a right of the wife that cannot be waived or reduced except by her own free consent; distinct from bridewealth in that it goes to the wife herself, not to her family.

Maliki school. One of the four major Sunni schools of Islamic jurisprudence; founded by Malik ibn Anas (711-795 CE);

predominant in West Africa including northern Nigeria; known for its emphasis on the practice of the people of Medina as a source of law and for specific provisions on marriage, divorce, and custody.

Manus. Latin: hand; in early Roman law, the legal power of the husband over his wife in a marriage cum manu, by which the wife passed entirely into her husband's legal control and lost all connection with her family of origin; largely replaced by marriage sine manu by the classical period.

Maputo Protocol. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003); requires state parties to enact legislation prohibiting polygyny practised in a manner harmful to women's dignity, promote monogamy as the preferred form of marriage, and ensure equal rights for women during and at the dissolution of marriage.

Marriage Act (Nigeria). Marriage Act Cap M6, Laws of the Federation of Nigeria 2004; the principal federal statute governing statutory monogamous marriage in Nigeria; requires compliance with notice, certificate, and solemnization procedures; defines statutory marriage as the voluntary union for life of one man and one woman to the exclusion of all others.

Marriage Ordinance 1884. The first colonial legislation introducing statutory marriage into Nigeria; established the dual-track system of statutory monogamous marriage alongside continuing recognition of customary and Islamic marriages; the ancestor of the current Nigerian Marriage Act.

Matrimonial Causes Act (Nigeria). Matrimonial Causes Act Cap M7, Laws of the Federation of Nigeria 2004; governs divorce, judicial

separation, nullity, maintenance, and child custody arising from statutory marriages; recognizes irretrievable breakdown as the sole ground for divorce, evidenced by one of five statutory facts.

Medieval canon law. The body of canonical legislation, jurisprudence, and theological reflection on marriage developed by the Church from the twelfth century through the Council of Trent; established the foundational principles of Western Christian marriage law including consent theory, indissolubility, canonical form, and ecclesiastical jurisdiction over matrimonial causes.

Mithaqan ghalithan. Arabic: a solemn and weighty covenant; Quranic description of the nikah (Quran 4:21); emphasizes that Islamic marriage is not merely a civil contract but a sacred covenant with moral and spiritual dimensions that transcend the merely legal.

Mixed marriage. In canon law, a marriage between a Catholic and a baptized non-Catholic (as distinct from disparity of cult, which involves an unbaptized person); requires permission of the local ordinary and the Catholic party's promise to do all in their power to have the children baptized and raised Catholic (CIC cc 1124-1127).

Monogamy. The form of marriage in which one person is married to only one other person at any given time; the legally mandated form of statutory marriage in Nigeria (and the only form recognized by the Marriage Act); one of the essential properties of canonical marriage (unity); and increasingly prevalent as the cultural ideal in Christian communities.

N

Ne Temere. Papal decree of 1907 revising and extending the canonical form requirement of the Council of Trent's Tametsi decree; required Catholics to marry before their parish priest and two witnesses; the direct predecessor of the canonical form provisions in the 1983 Code of Canon Law.

Nikah. Arabic: the Islamic marriage contract; constituted by the offer (ijab) of the guardian or bride and the acceptance (qabul) of the groom in the presence of two witnesses; simultaneously a legal contract and a sacred covenant (mithaqan ghalithan); the only recognized form of conjugal union in Islamic law.

Nullity of marriage. The legal invalidity of a purported marriage from its inception due to a fundamental defect; in statutory law, void marriages (those that are automatically invalid, such as bigamous marriages) and voidable marriages (those valid until annulled, such as those obtained by fraud); in canon law, invalidity arising from diriment impediments, defective consent, or defect of canonical form.

O

Oikonomia. Greek: economy or pastoral dispensation; the principle in Eastern Orthodox canonical tradition by which the Church, in exceptional pastoral circumstances, can recognize the death of a marriage bond and permit the remarriage of the innocent party; a more flexible approach to indissolubility than the absolute prohibition of Catholic canonical tradition.

Okonkwo v Okagbue. Supreme Court of Nigeria decision (1994) one of the leading Nigerian cases on the legal relationship between

customary and statutory marriage; a principal judicial authority on the consequences of contracting a statutory marriage while a customary marriage subsists.

P

Patria potestas. Latin: paternal power; the extensive legal authority of the Roman father over his adult children and their property; significant for understanding Roman marriage law, particularly the distinction between marriage cum manu (where the wife passed into her husband's manus) and marriage sine manu (where the wife remained under her father's patria potestas or became legally independent).

Pauline Privilege. The canonical provision (CIC cc 1143-1147) by which a marriage between two unbaptized persons may be dissolved when one partner subsequently receives baptism and the other party is unwilling to cohabit peacefully; derived from 1 Corinthians 7:12-15.

Petrine Privilege. The dissolution of a valid but non-sacramental marriage by papal authority; available in cases involving at least one unbaptized party and exercised in favour of the faith of the Catholic party; an exception to the general principle of the indissolubility of valid marriages.

Polygamy. The general term for any form of plural marriage; encompasses polygyny (one husband, multiple wives) and polyandry (one wife, multiple husbands); legally recognised under Islamic law (to a maximum of four wives) and under customary law in Nigeria, but prohibited under statutory marriage law.

Polygyny. The specific form of plural marriage in which one man has multiple wives simultaneously; the most prevalent form of plural marriage globally; recognized and regulated in Islamic law (Quran 4:3, subject to the condition of equal treatment) and in Nigerian customary law systems.

Polyandry. The form of plural marriage in which one woman has multiple husbands simultaneously; the rarest of the major marriage forms in the ethnographic record; practised in fraternal polyandrous form in parts of Tibet, Nepal, and India, primarily as a mechanism for preventing the fragmentation of family landholdings.

Proles. Latin: offspring; one of St Augustine's three goods of marriage (bona matrimonii); the orientation of marriage toward the procreation and education of children; whose positive exclusion by either party at the time of consent vitiates marital consent under canon law.

Proix. Greek: dowry; property brought by the bride from her natal family into the marriage in classical Athenian law; formally the property of the wife, managed by the husband, and required to be returned to the wife's family upon divorce or the husband's death.

Prohibited degrees. Relationships of consanguinity or affinity within which marriage is forbidden; specified in the Nigerian Marriage Act (ss 35-36) and in canon law (CIC cc 1091-1094); the specific degrees vary between legal systems.

Q

Quran. The primary source of Islamic law; contains several passages directly governing marriage including the permission of polygyny (4:3), the mahr obligation (4:4), the description of nikah as a

solemn covenant (4:21), and the rules for divorce (2:229-232); interpreted through the traditions (hadith) and the jurisprudence of the four major schools.

R

Ratum et consummatum. Latin: ratified and consummated; the technical canonical description of a sacramental marriage that has been both validly contracted (ratum) and physically consummated (consummatum); such a marriage is absolutely indissoluble under canon law and cannot be dissolved by any human authority, including the Pope.

Registrar. The civil official appointed under the Nigerian Marriage Act to solemnize civil marriages and maintain the register of marriages; one of the persons before whom a statutory marriage must be contracted for validity.

S

Sacrament (of marriage). In Catholic theology, one of the seven sacraments of the New Law; the elevation by Christ of the natural institution of marriage between baptized persons to the dignity of an effective sign and instrument of divine grace; definitively defined at the Council of Trent (1563); the basis for the absolute indissolubility of ratified and consummated Catholic marriages.

Sacramentum. Latin: sacramental bond; one of St Augustine's three goods of marriage (bona matrimonii); the permanent and indissoluble character of the marriage bond as a sacred sign; the term that the Latin tradition used to translate the Greek mysterion

in Ephesians 5:32, providing the linguistic foundation for the doctrine of marriage as a sacrament.

Sadaqatihinna. Arabic: their bridal gifts; Quranic term (Quran 4:4) for the mahr that the husband is obligated to pay to the wife; emphasizes that the mahr is a gift owed to the wife personally, not a payment made to her family.

Same-Sex Marriage (Prohibition) Act 2013. Nigerian federal legislation making it a criminal offence, punishable by up to fourteen years imprisonment, to contract a same-sex marriage or civil union, to register or participate in gay organisations, or to publicly display same-sex amorous relationships; one of the most restrictive anti-LGBTQ statutes in Africa.

Saduqatihinna. See Sadaqatihinna.

Separation (canonical). The canonical remedy available when the spouses are unable to cohabit but no ground of nullity exists; governed by CIC cc 1151-1155; relieves the spouses of the duty of cohabitation while leaving the marriage bond intact, thus preserving the principle of indissolubility.

Shafi'i school. One of the four major Sunni schools of Islamic jurisprudence; founded by Muhammad al-Shafi'i (767-820 CE); predominant in East Africa, Southeast Asia, and parts of the Arabian Peninsula; requires a male guardian (wali) for the validity of the nikah.

Sharia. Islamic law; the comprehensive normative system derived from the Quran, Sunna, ijma (scholarly consensus), and qiyas (analogical reasoning); governs Muslim personal status including marriage, divorce, custody, and inheritance in the northern

Nigerian states that have enacted Sharia Court of Appeal legislation.

Simulation of consent. The canonical ground of nullity arising when a party to marriage excludes in their internal will either marriage itself or an essential element or property of marriage, while externally performing the marriage ceremony; governed by CIC c 1101.

Solemnization. The formal celebration of a marriage before an authorised official; a requirement for the validity of a statutory marriage under the Nigerian Marriage Act; the canonical ceremony before the parish priest and two witnesses required for the validity of a canonical marriage.

Spiritual Spiral Circle Method (SSCM). A research methodology developed within the African theological tradition for integrating empirical data with theological and cultural analysis; employed in research on the Nigerian Church's pastoral practice.

Statutory marriage. Marriage contracted under the provisions of the Nigerian Marriage Act Cap M6; the only form of marriage that creates a monogamous union with full civil law consequences; contrasted with customary and Islamic marriages which may permit polygyny.

T

Talaq. Arabic: repudiation; the most common form of Islamic divorce, effected by the husband's unilateral pronouncement of the formula of repudiation; subject to waiting periods (idda) and conditions under classical jurisprudence; criticised in contemporary Islamic feminist scholarship for its gender asymmetry.

Tametsi. The canonical form decree of the Council of Trent (1563); required Catholic marriages to be contracted before the parties' own parish priest and two witnesses; introduced the requirement of canonical form as a condition of validity; the direct ancestor of the modern canonical form requirements in CIC cc 1108-1123.

Talmud. The central text of Rabbinic Judaism containing the Mishnah and Gemara; provides the detailed legal framework for Jewish marriage law including betrothal, the marriage contract (ketubah), and the get (bill of divorce); extensively documented in Epstein's scholarship cited throughout Chapter One.

U

Ubuntu. African philosophical concept (most associated with Zulu and Xhosa traditions but resonant across sub-Saharan Africa) expressing the relational character of personhood: 'I am because we are'; foundational to the African traditional understanding of marriage as a communal rather than a merely individual or bilateral institution.

Unity (essential property of marriage). The canonical essential property of marriage by which each spouse is exclusively married to only one person at a time; the positive exclusion of unity (reservation of the right to take additional spouses) vitiates consent under CIC c 1101 §2.

V

Valid marriage. A marriage contracted in compliance with all legal and canonical requirements such that it creates the full legal or canonical consequences of the marital status; distinguished from void marriages (which never had legal effect) and voidable marriages (which are valid until annulled).

Void marriage. A purported marriage that is invalid from the beginning and has no legal effect whatsoever; examples under Nigerian statutory law include bigamous marriages and marriages within prohibited degrees; under canon law, marriages contracted in the presence of a diriment impediment.

Voidable marriage. A marriage that is valid and subsisting until annulled by a court; grounds for rendering a statutory marriage voidable in Nigeria include consent obtained by fraud or duress; under canon law, a marriage may be declared null by a tribunal but is presumed valid until such a declaration is made.

W

Wali. Arabic: guardian; in Islamic marriage law, the male guardian whose presence and consent is required for the validity of the nikah under the Maliki, Shafi'i, and Hanbali schools (though not generally required in the Hanafi school for an adult woman of sound mind); the institution through which family authority over the marriage decision is channelled.

Widow inheritance. The customary practice in many African societies by which a widow is 'inherited' by a male relative (often a brother-in-law) of her deceased husband; related to but distinct from

levirate marriage; raises significant concerns under international human rights law regarding women's autonomy and dignity.

Wilayah. Arabic: guardianship; the authority of the wali over the nikah; see Wali.

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