

# Canonical Jurisprudence Versus Local (Nigerian) Canonical Jurisprudence: Compatible? Impossible?

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This paper examines the task along the path to an acceptance or discovery of Nigerian canonical jurisprudence in line with the orthodox canonical jurisprudence. Are the two compatible or is the connection impossible? The Roman Rota, the second highest tribunal of the Apostolic See, judges cases at all levels, but especially at the appellate stage for the entire Roman Catholic world. With its competence of safeguarding rights within the Church promotes unity in jurisprudence and, through its decisions, offers guidance and support to lower tribunals. The Roman Rota guarantees orthodoxy in doctrine and unity in practice, while allowing room for inculturation. Even while still a growing Church, the Church in Nigeria has come a long way in the area of authenticity in doctrine and inculturation. The argument of the thesis lies in the fact that being young, the Church in Nigeria could have something to contribute to enrich the Universal Church from her cultural perspective. However, issues such as cultural contexts, communal influence etc., constitute crucial questions for discussion along the path leading to the discovery of an authentic canonical jurisprudence.

*Keywords:* canonical jurisprudence, communal influence, cultural context, inculturation, jurisprudence, Nigerian canonical jurisprudence, Roman Rota

## Preamble

Governance and administration of justice in the Church are strictly regulated and must adhere to the sacred discipline (Daniel, 2017, p. 297). This discipline presupposes an appreciation for justice in the relationship among Christ's faithful, which has as one of its sources, the form of jurisprudence which is a key component of the Church's canonical tradition and scholarly discipline (Daniel, 2017, p. 297; Lombardia, 2024; Francis, 2022, Article 200). In the milieu of contemporary issues among other things, marital stability and nullity are brought into the discussion. One of the arguments presented could be the permissibility of the development of local (Nigerian) jurisprudence versus the orthodox rotal jurisprudence. Canonical jurisprudence is the practical science of law, the prudence concerning law in the Church; the science of law that develops from actual canonical judicial cases (Huel, 2000, p. 79). Generally, the authority of the Roman Rota is the principal source for providing guidance to ecclesiastical tribunals throughout the world on the proper functioning and the administration of justice. The significance of rotal jurisprudence within the Church has consistently been remarkable, due to the expertise and experience of the judges, as well as the authority they hold as papal judges (John Paul II, 1984; Woestman, 2002).

The paper argues that even though the Church in modern day Nigeria is still young and growing in the faith, her multi-cultural context and values could be reckoned with in the area of authenticity in doctrine and in

inculturation. Hence, she could have something to offer to enrich the Church from this rich cultural context and heritage.

What follows is an exploratory and descriptive presentation of the canonical jurisprudence and a search for a local one which could be typically Nigerian. More specifically, it discusses the question of compatibility or impossible connection between canonical jurisprudence of the Roman Rota in particular and local/Nigerian canonical jurisprudence. It further considers the areas of the Nigerian cultural context and communal influence as elements for discussion and for possible inculturation and incorporation into canonical jurisprudence.

### **Jurisprudence**

Jurisprudence (from Latin, *ius, iuris, prudentia*) denotes prudence, discretion of/concerning law<sup>1</sup>; the science or philosophy of law. It is the practical science of law; the prudence concerning law.

#### **Canonical Jurisprudence**

Canonical jurisprudence is the science and art of applying, interpreting, and supplementing codified law through rescripts and judicial rulings (Wrenn, 1998, p. 1; Daniel, 2021; Dugan, Navarro, & Caparros, 2016). This jurisprudence utilizes the codified law when an expressly provided law is fitted to a corresponding situation. This happens when, for instance, Can. 1101 §2 of the 1983 Code of Canon Law, which states that the exclusion of perpetuity by a “positive act of the will” vitiates marriage, is fitted to a case where one party positively intended to seek for and obtain a divorce if the marriage proved unhappy (Wrenn, 1998, p. 1).

Jurisprudence which is canonical also interprets the law. It fulfils this role by clarifying the meaning of a law that is unclear, particularly when applied to specific situations. For instance, the application of Can. 1101 §2 to a case where one party believed so firmly in a dissoluble marriage could be cited once again. The interpretation is that the error itself would inevitably be applied to a particular marriage and would therefore, in practice, translate to (since it would certainly lead to) a positive exclusion of perpetuity. Another example could be Can. 1083 §2 n. 1 of the 1917 Code of Canon Law states that a marriage is invalid if an error concerning a person’s quality is so significant that it effectively becomes an error about the person themselves. Initially, this concept of error regarding quality was interpreted strictly, applying only in cases where a specific quality was the sole means of identifying an otherwise unknown individual. For instance, a person wanted to marry one of the twin sisters who looked alike. One of the twin sisters was with brown hair, while the other had black. The man wanted to marry the girl with brown hair. By mistake the black haired girl came along. Without recognizing the error the man gave his consent. The marriage is invalid. Canonical jurisprudence slowly introduced a broad interpretation to the above canon. It addressed situations where a moral, social, or legal quality is so closely linked to the individual that, without it, the person would be perceived as entirely different. The next codification thus brought in Can. 1097 §2 (1983 Code of Canon Law). This principle states that an error regarding a quality of a person, even if it was the reason for entering into the marriage, does not invalidate the marriage unless that specific quality was directly and primarily intended as a condition for the marriage. Therefore, if someone entered into marriage believing the other person to be free from any commitments, but that person was already legally married, the marriage contract would be considered invalid (Pazhayampallil & Padinjarathala, pp. 179-180; Huels, 2016).

Canonical law also serves as a supplement to codified type of law by establishing new norms in situations where the law lacks explicit provisions. The Jurisprudence of the Apostolic Signatura and the Roman Rota (as

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<sup>1</sup> www.iisj.es. Accessed on 20/02/2026.

well as the practice of the departments of the Roman Curia) constitute a source of supplementary norms when legal provisions are lacking. An instance could be cited with the current Can. 1095 (of the 1983 Code of Canon Law), which was absent as a canon in the 1917 Code. Yet that lacuna was filled by the jurisprudence of the Roman Rota which had evolved in the interim (Canon Law Society of Great Britain and Ireland, Canadian Canon Law Society, Sheehy, & Morrissey, 1995, p. 19). This is an example of supplementation, which saw the pre-Code development of the notion of lack of due competence finally culminate in Can. 1095, n. 3 of the 1983 Code. Another example would be declaring a marriage invalid on the grounds that an essential property of marriage was excluded not by a positive act of the will (cf. Can. 1101 §2) but by an inadequate commitment (Wrenn, 1998, p. 1).

The canonical jurisprudence under consideration primarily originates from the Supreme Tribunal of the Apostolic Signatura and the Roman Rota. The Rotal Anthology, which compiles all matrimonial cases adjudicated by the Roman Rota between 1971 and 1988, illustrates the prevailing trends in canonical development of marriage law during this period of significant change. The systematic arrangement of more than 800 published decisions allows canonists to gain access to rotal jurisprudence and assist them in identifying which rotal decisions are most pertinent for their work or study (Mendonca, 1992, p. viii).

### **The Roman Rota and Its Competence**

The Roman Rota is one of the three tribunals of the Apostolic See: Apostolic Signatura, Roman Rota and Penitentiary. It is the “ordinary tribunal constituted by the Roman Pontiff to receive appeals” from ecclesiastical tribunals (cf. Can. 1443). The title engrosses a significant meaning:

The Roman Rota, often referred to as “The Wheel,” likely earned its name either because the judges originally sat in a circle, or due to a circular design on the chamber floor at Avignon where the term was first used around A.D. 1350. Another theory suggests that the name came from the practice of rotating cases among judges on a wheeled bookstand. Regardless of its origin, the Rota has kept both the name and the wheel as its emblem. (Wrenn, 1998, p. 4)

The Roman Rota is the second highest tribunal of the Apostolic See. It judges cases at all levels, but especially at the appellate stage for the entire Roman Catholic Church. The Roman Rota is particularly influential in Church tribunals in the Universal Church as a source of jurisprudence on marriage law (Huel, 2000, p. 79). The apostolic constitution, *Pastor Bonus*, the principal legislation governing the Roman Curia in number 126, acknowledges the role of the Roman Rota and states that besides “safeguarding rights within the Church”, it “fosters unity of jurisprudence and, by virtue of its own decisions, provides assistance to lower tribunals” (John Paul II, 1988). The Roman Rota guarantees orthodoxy in doctrine and unity in practice, while allowing room for inculturation. A decision, *coram Egan*, of 9 December 1982 highlights the normative value of the jurisprudence of the Roman Rota, which cannot be attributed to the jurisprudence of local tribunals.<sup>2</sup> The jurisprudence of the Roman Rota supplies practical norms to other tribunals, from the complex of uniform decisions which are issued. The address of the Holy Father, Pope John Paul II explains succinctly that the influence of the Roman Rota on the functioning of regional and diocesan ecclesiastical tribunals should be especially appreciated. The Rota’s jurisprudence has always served as, and must continue to be, a reliable point of reference for these tribunals (John Paul II, 1986; Woestman, 2002, p. 190).

Canonical jurisprudence is rooted in the Sacred Scriptures, Natural Law, Church Customs, Councils, especially first and second Ecumenical Vatican Councils, Fathers of the Church, Papal writings, Bishops’ pastoral

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<sup>2</sup> Cf. *coram Egan*, *Birminghamien*, 9.XII.1982: *SRR Dec* 74, 612-618, nn. 2-7.

letters, Civil Law, Concordats, etc. (Coriden, 2004, p. 33; Pope Leo XIV, 2025; Hervada, 2020).

The specific competencies of the Roman Rota (Francis, 2022, p. 115) are not limited to matrimonial issues, but extend to other spheres as defined by the canons of the 1983 Code:

Can. 1405 §3. It is reserved to the Roman Rota to judge:

1° Bishops in contentious cases, without prejudice to Can. 1419, §2;

2° the Abbot primate or Abbot superior of a monastic congregation and the supreme Moderator of a religious institute of pontifical right;

3° dioceses and other ecclesiastical persons, physical or juridical, which have no Superior other than the Roman Pontiff.

Can. 1444 §1. The Roman Rota judges:

1° in second instance, cases which have been judged by ordinary tribunals of first instance and have been referred to the Holy See by a lawful appeal;

2° in third or further instance, cases which have been processed by the Roman Rota itself or by any other tribunal, unless there is a question of an adjudged matter.

§2. This tribunal also judges in first instance the cases mentioned in Can. 1405, §3 and any others which the Roman Pontiff, either on his own initiative or at the request of the parties, has reserved to his tribunal and has entrusted to the Roman Rota. These cases are judged by the Rota also in second or further instances, unless the rescript entrusting the task provides otherwise.<sup>3</sup>

Thus, the Roman Rota is the chief source of canonical jurisprudence for all other tribunals. It successfully established the traditional jurisprudence to which all the other tribunals turn, especially in the area of utilizing the law (Wrenn, 1998, p. 5).

### **Local/Nigerian Canonical Jurisprudence**

Local jurisprudence normally refers to the jurisprudence of individual tribunals apart from that of the Roman Rota (Daniel, 2017, p. 297). This denotes the jurisprudence that single tribunals may bring about or develop in the course of handling cases presented to their tribunal (Daniel, 2017, pp. 297-298).

Local jurisprudence naturally arises from the influence of specific elements of local culture, which play a role in shaping the legal or juridical facts of particular cases (Daniel, 2017, pp. 271-304). Local jurisprudence is developed through the decisions of local tribunals, which are tasked with playing an essential role in making justice readily accessible and addressing practical cases that may be influenced by the culture and mindset of the people involved (Benedict XVI, 2008, p. 86). Benedict XVI emphasizes that in rendering decisions by the local tribunals, all rulings must consistently be founded on the principles and universal norms of justice (Benedict XVI, 2008, p. 86). This obligation just like some other juridical norms has specific significance in the Church due to the necessity of essential communion and harmony of praxis in the Church (Benedict XVI, 2008, p. 86). The essence of staying in communion is for the protection of what is common to the Universal Church is specifically entrusted to the Supreme Authority and to the bodies that, in accordance with the law (*ad normam iuris*), participate in its sacred authority (Benedict XVI, 2008, p. 86).

The jurisprudence of local tribunals is generally assumed to have no inherent capacity for evolution in relation to the unified jurisprudence of the broader canonical order, due to the limitations of their jurisdiction (Arias, 1976, p. 1020). In any event, if a case before a local tribunal presents a novel question or a more insightful approach to addressing a particular issue—always in line with legal norms—it is possible for the local tribunal

<sup>3</sup> Cf. Woestmann, John Paul II, 17 January 1998, 247.

to influence a new direction in jurisprudence. If the case ultimately reaches the Roman Rota, it could contribute to the broader development of canonical jurisprudence (Peña, 2010, 3: 1401).

Local tribunals do not elicit new norms. At best they adopt and apply the norms already established by the Roman Rota to particular cultural circumstances and conditions. Aririguzo highlights a situation whereby a tribunal investigates a case filed about a marriage which was contracted

believing erroneously that the woman or man is fertile and not sterile, because the main intention in getting married is to have an heir (as in the Igbo-Nigerian culture), or “virginity” as in the Indian culture in which such an element is retained as a *conditio sine qua non*. (Aririguzo, 2012, p. 137; Ghirlanda, 2006, p. 106)

Pope Benedict XVI, in any case, underscores the importance of preventing the development of divergent local forms of jurisprudence. He emphasizes the need for the effective dissemination of Rotal jurisprudence, ensuring its more “uniform application” across all Church tribunals (Benedict XVI, 2008, p. 87). He states:

It is inappropriate to suggest any conflict between rotal jurisprudence and the rulings of local tribunals. Due to the Church’s universality and the variety of juridical cultures in which she operates, there is always the risk that *sensim sine sensu*, “local forms of jurisprudence” emerge, gradually moving further from the shared interpretation of positive law and the Church’s teachings on marriage. It is hoped that measures are explored to make rotal jurisprudence more visibly unifying and easily accessible to those administering justice, ensuring its consistent application across all Church tribunals. (Benedict XVI, 2008, pp. 86-87)

Thus, the Roman Pontiff highlights the risk that local tribunals could fall into by gradually and imperceptibly distancing themselves from the more common teachings of the Church on matrimony (Benedict XVI, 2008, pp. 86-87).

### **Canonical Jurisprudence Versus Nigerian Canonical Jurisprudence: Compatible? Impossible?**

Culture permeates every aspect of life—social, economic, political, and religious. From birth, individuals are shaped by the culture they inherit, and they continue to live, work, and die within its framework, as no human experience is free from cultural influence. While culture molds individuals, they also encounter and are influenced by various other cultures throughout life, for better or worse. As a human-divine institution, the Church both shapes and is shaped by the cultures it interacts with. Its unique Gospel-centered culture engages in a dynamic exchange with the surrounding cultural context in which it is embedded (Quevedo, 2009).

A good knowledge and understanding of inculturation underlines that it involves the

[i]ncarnation of Christian life and of the Christian message in a particular context, in such a way that this experience not only finds expression through elements proper to the culture in question but becomes a principle that estimates, directs and unifies the culture, transforming and remarking it so as to bring about “a new creation.”

Inculturation signifies an intimate transformation of the authentic cultural values by their integration into Christianity and the implantation of Christianity into different human cultures. A sound inculturation cannot overlook the Church’s unequivocal conviction that culture as a human creation is inevitably marked by and needs to be healed, ennobled and perfected by the Gospel. (Pazhayampallil, 2012, p. 1161; Vatican Council II Dogmatic Constitution, 1964, n. 17)

Every culture must be able to understand and accept marriage as an institution established from the beginning by the Creator. Marriage, as established by God, is a sacred, faithful, and lifelong union between a man and a woman, grounded in an intimate community of life and love. In this union, both partners commit themselves fully to one another and embrace the profound responsibility of bringing children into the world and nurturing them.

The call to marriage is deeply rooted in the human heart. While man and woman are equal in dignity, they are distinct in their creation, yet designed to complement one another. This complementarity, particularly their sexual differences, draws them into a loving union that is always open to the gift of procreation.<sup>4</sup> Catholic marriage, is a marriage is a covenant through which a man and a woman establish a lifelong partnership, inherently directed toward the well-being of the spouses and the procreation and education of children. Christ the Lord elevated this union to the dignity of a sacrament for the baptized (Can. 1055, 1). The covenant of marriage, by its nature, necessitates that it involves one man and one woman, both free to marry, who consciously and willingly agree to enter into a valid marriage contract. Additionally, they must properly fulfill the terms of the contract. These foundational principles of marriage are inherent in the natural order and are discernible through human reason. Mackin draws attention to the need of a description and prescription of marriage not just from one model of culture but which embraces all cultures, a definition for marriage acceptable everywhere and in all ages. As he notes:

It seems obvious that the Catholic Church's definition of marriage cannot be a single descriptive definition, one that looks on marriage in all of history, in all its cultures and finds univocity in them. Marriage has been understandable univocally from culture to culture only in its most generic trait, in that it has been in all of them a more or less stable heterosexual relationship. (Mackin, 1982, p. 349)

### **Peculiar Nigerian Communal Influence and Cultural Values**

Issues of communal influence and cultural values are indispensable for the present discussion about the development of a jurisprudence that could be typically Nigerian. They could be underscored as follows.

#### **Communal Influence**

Consent makes marriage (cf. Can. 1057 §1). In the expression of the marriage consent between the man and the woman in the Nigerian context, the family, nuclear and extended, plays crucial roles in the introductory formalities. Such formalities as investigations and inquiries about the persons and their families before the celebration; avoidance of diriment impediments, introductory ceremonies, communal settlements are very significant steps which must take place.

Christian couples in a marriage (the man and the woman), must also be free from diriment impediments arising from divine, positive, and natural law as well as those imposed by civil or customary laws, which are not against divine law.

The diriment impediments of divine law are (1) impotence, absolute or relative (Can. 1084), (2) existing marriage bond (Can. 1085), and (3) consanguinity in the direct line and probably in the second degree of the collateral line (Can. 1091). Such impediments would make customary marriages invalid by divine, positive, and natural law.<sup>5</sup> Note that in Nigeria the impediment of consanguinity extends to distant relations of up to fourth cousins and beyond depending on the place and practices of the people of that area or culture. In some cultures, it is absolutely forbidden to marry any relation, however distant.

The observing of customs and traditions are a means of expressing consent to marriage. If such are neglected then it is quite possible for the parties concerned to believe they were never married. Customs, which are in accordance with Christian values, can be integrated into the rite of the celebration of marriage, according to

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<sup>4</sup> See *Catechism of the Catholic Church*, London: Geoffrey Chapman, 1995, nn. 1602-1605.

<sup>5</sup> Cf. Canons 1091, 1078 §3, 1084, 1085 §1.

Canon 1120, which states that by its very nature, the marriage covenant requires the union of one man and one woman, both eligible for marriage, who knowingly and willingly commit to a valid marital agreement. Furthermore, they must faithfully uphold the obligations of the contract. These core principles of marriage are rooted in the natural order and can be understood through human reason (Taylor & Bekker, 1986).

Natural law does not require any special form for celebrating customary marriages but usually there are some features which give public voice to the exchange of consent of the partners. In Nigeria there are some very elaborate steps to be taken by the parties and their families before the actual exchange of consent takes place in the presence of senior family members. Generally speaking much solemnity surrounds traditional marriage ceremonies.

Arranged marriage: A marriage is considered to have been arranged when the match originates with someone other than the future spouses. Even when marriages are arranged, there are wide differences across cultures regarding the extent to which the prospective bride and groom themselves have a say concerning the person they will marry (Broude, 1994, p. 192).

Betrothal, engagement or introduction: A man and a woman are betrothed when a commitment to marry is made on their behalf. The two people themselves may take the initiative in promising to marry one another, or the commitment may be made by third parties, as happens in arranged marriages. In cultures where betrothals characterize the marriage arrangements of a culture, the betrothal itself may be said to emphasize the contractual aspect of the marriage, while the wedding itself focuses on the consummation of the marriage (Broude, 1994, p. 192).

In Nigeria the betrothal is called the introduction and it consists, literally, of two persons who are to marry introducing one another or being introduced by a family member or even by a third party to the senior members of their respective families. Introductory rites involve betrothal, engagement to intermarry with another, which culminates in the payment of the dowry. A more common custom in Nigeria and at large in Africa is that of bride price whereby the groom's family presents goods or money to the family of the prospective bride.

Bride price: In many non-Western cultures worldwide, it is customary for some form of monetary or goods transfer to take place between the families of the bride and groom. The most common type of transfer typically involves the groom's family providing a payment or offering to the bride's family. The payment of bride price confers rights upon the husband and the wife. Depending on the culture, the payment of bride price may confer on the husband and the wife the right to have sexual intercourse; the legal rights to any children born during the duration of the marriage; a husband is entitled to proper respect from his wife after paying bride price; divorce usually demands the return of the bride price if the wife is at fault; the bride price may be forfeited if the husband does not live up to his responsibilities; the bride price may compensate the husband if the woman has no child, etc. (Broude, 1994, p. 40).

These are positive values which are not contradictory to the Gospel values. When these customary formalities which do not go against divine and ecclesiastical law precede the sacramental marriage, they do not pose grave risks. There is the risk instead of misrepresentation of values when they follow the sacramental marriage.

### **Cultural Values**

The Nigerian context encompasses some values which are noble and which could be incorporated into the canonical jurisprudence and other cultural values which may be extraneous to the gospel values. The values of

fertility, respect for life, involvement of families in the settlement of conflicts, etc., are embedded in the typical Nigerian culture.

**Involvement of the family in the marriage:** As already discussed above, the process of contracting marriage between a man and a woman in the Nigerian culture significantly involves the family. The family plays a crucial role at the negotiation stage and during the marriage itself, whether customary or sacramental. The presence and involvement of the family in the couples' marriage has enormous positive influence on them.

**Fertility:** The Nigerian society is very open to procreation and preservation of life. Every family expects their young married people to procreate within record time. Hence, months after the marriage, the family is already filled with expectation of an heir from the marriage. In fact, the percentage of couples that file cases in the ecclesiastical tribunals in Nigeria on grounds of Can. 1097 §2 of the 1983 Code of Canon Law is on the high side. This is because that canon allows that error about the quality of a person when that quality is directly and principally intended by the spouse could render a marriage invalid. In this case, the man or the woman would claim to directly and principally intend to marry one who would procreate, and most often when this is not the case, the situation is brought to the tribunal for the Church to decide on the marriage (Aririguzo, 2012, p. 137; Ghirlanda, 2006, p. 106).

There are some other values which are found in the Nigerian culture, such values as endogamy, exogamy, polygamy, polyandry, *oru* and *osu*.

**Endogamy:** This refers to culturally imposed rules that require a member of the culture to marry within a particular social category. The category might be a lineage, clan, caste, class, village, tribe, and so on. This practice is found in some parts of Nigeria (Aririguzo, 2012, pp. 97-98).

**Exogamy:** This refers to cultural norms that require individuals to marry outside of a specific social category, often aimed at preventing marriages within the same group, such as family, clan, or kinship, in order to promote alliances between different social groups. Most commonly, however, rules of exogamy focus on kin groups, specifying that individuals bearing a kin-based relationship to each other of one kind or another are not allowed to intermarry. Exogamy has also been viewed as a strategy for fostering the survival of cultures (Aririguzo, 2012, p. 99).

**Polygamy:** It is marriage with more than one spouse at a time. Polygyny entails a marriage of a man with more than one wife at the same time. In such families the first wife (the senior wife) is typically accorded special status. **Polyandry:** The marriage of a woman to more than one man. This is extremely rare and is found in only four societies around the world, namely, the Toda of India, Tibetans, Marquesans of Oceania, and the Nayar of India. In such cultures usually one woman may marry two or more brothers. The reason for polyandry is usually economic. Obviously there will be problems with regard to paternity that the different cultures may have to face (Aririguzo, 2012, pp. 209-201).

***Ohu (Oru)* and *Osu*:** In some places predominantly inhabited by the Igbo people of Nigeria, there used to be a social norm that imposed marriage discrimination on certain families (Egonwu, 1986, p. 58). It was like a caste system. By virtue of their lineage some people were called *Ohu (Oru)* and *Osu* (Egonwu, 1986, p. 58). There was the belief that the *Osus* were those outcast persons dedicated to deities for some reasons. It was also believed that the *Orus* were those whose ancestors were captured during inter-tribal wars and brought to their respective villages as hostages. It is in marriage that the social problem facing the *Oru* and *Osus* remains unresolved. The free people refrain from marrying *Oru* or *Osus* from the same town where they were born and raised. They resort to marriage amongst themselves. Some of them marry foreigners and live abroad (Egonwu, 1986, pp. 58-59). Cases of this nature still exist today.

Realities such as those enumerated above which unfortunately contradict the gospel values are not universally accepted, and thus cannot be incorporated into local jurisprudence.

### **Evaluation**

The above is the background from which a local Nigerian tribunal could build its canonical jurisprudence, from an evangelised cultural context and influence from the community. Granted the positive contributions which could ensue when local tribunals develop their own jurisprudence, yet the risks could be evident.

Challenges set in when tribunals try to lean on a jurisprudence which is not in conformity with correct doctrine. Considering that most tribunals of the Universal Church address matters also governed by divine law—such as the indissolubility of marriage—local jurisprudence becomes legally unreasonable (cf. Can. 124) if it contradicts or seeks to operate independently of universal canonical law (Daniel, 2017, p. 299; Arrieta, 2012, p. 66; De Paolis, 2008, p. 136). Consequently, there is a focus on local jurisprudential trends that contravene the natural law principle that every human being is presumed capable of marriage. An example of this can be seen in the unjust expansion of the concept of a grave defect of discretion of judgment. Such tendencies undermine Canonical jurisprudence and must be replaced with accurate legal interpretations (Daniel, 2017, p. 299; Arrieta, 2012, p. 66; De Paolis, 2008, p. 136). In his address to the Roman Rota on January 28, 1978, Pope Paul VI emphasized the need to address the tendency to establish a jurisprudence that deviates from the correct doctrine set forth by the ecclesiastical Magisterium and reflected in canonical jurisprudence (Pope Paul VI, 1978, AAS; Daniel, 2017, p. 298).

Earlier in a 1975 sentence of the Roman Rota *coram* Raad, one reads:

The jurisprudence of lower tribunals is not rejected, especially where it concerns entirely new situations, but without prejudice to the right of the Tribunals of the Holy See to reform it, if the case warrants. Lower level judges imprudently and rashly act if they judge contrary to Rotal jurisprudence. Moreover, it is necessary that jurisprudence in matrimonial matters be uniform, which can only be verified except by the highest jurisdiction by the Apostolic Signatura and the Rota.<sup>6</sup> (Daniel, 2017, p. 298)

In the areas of interpreting and supplying norms of the law to practical situations Wrenn in comparative terms underlines Rotal auditors or judges to be “thorough, excellent theoreticians, and, especially considering their distance from the people involved, remarkably empathetic” (Wrenn, 1998, pp. 5-6). He nevertheless allots positive notes to local judges due to the advantage they have of being on ground with the persons whose cases are being handled. He relates:

Local judges ... though sometimes inferior as theoreticians, nevertheless have their own pragmatic strengths. Their understanding of the capacities of people, an understanding gained from broad, clinical experience, seems especially acute and real; and they have a high awareness and sensitivity to local conditions and their importance. (Wrenn, 1998, pp. 5-6)

Granted that there could be this compatibility between the rotal jurisprudence and the local jurisprudence, whereby local tribunals depend on the rotal jurisprudence as to their sources while the rotal jurisprudence accommodates the elements peculiar to various cultures and conditions so long as they adhere to the magisterial teachings, the situations in local tribunals in Nigeria are of some interest. Wrenn thus gives a concise summary of the challenge faced by the judges both at the rotal and local levels:

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<sup>6</sup> *Coram* Raad, *Marianapolitana, Nullitatis matrimonii*, April 14, 1975: *SRR Dec.* 77: 264, n. 23.

The challenge, at any rate, is the same for all the judges, both rotal and local. They must know their own culture and their own times. They must be able to perceive, and to weigh, and to create suitable, enlightened norms by which justice can be rendered. They must avoid the extremes of being insensitive on the one hand, and pandering on the other; of being too theoretical on the one hand, and too intuitive on the other. They must be neither too legalistic nor too romantic, neither too demanding nor too excusing. They must, above all, show forth the ability of the Church to treat people as individual persons of the community and not just as cases or stereotypes. Only in this way can jurisprudence continue to be the “ars boni et aequi” for each succeeding generation. (Wrenn, 1998, pp. 5-6)

As a result, Baura emphasizes that individual tribunals should seek consistency in how they evaluate evidence and make decisions, thereby honoring the rights of the faithful to receive objective and equitable treatment in their cases (Peña, 2010, p. 1401).

Giving proper and adequate response to these concerns would lead to the realization of a jurisprudence which could be identified as typically Nigerian, and yet respectful and open to the supervision of the Roman Rota. Thus, such local jurisprudence while presenting the values of a particular culture should equally represent the natural values and characteristics as openness to life, its procreation and preservation, and the family values, while protecting and upholding the rights of the individual persons. Essentially, it must ensure the unity and indissolubility of marriage according to the gospel values and Church’s teachings, and guarantee communion and harmony with the jurisprudence of the Roman Rota and its praxis.

### Conclusion

There is the possibility of a realisation of a canonical jurisprudence which could be characterised as typically Nigerian. This could come about when the values from the Nigerian culture which are in accord with the gospel values are identified, theorised, justified, universally accepted and are introduced for supervision and recognition by the Rotal canonical jurisprudence. Those values of openness to and preservation of life, promotion of procreation, the values which involve families to the extent that they assist the couple in achieving a better knowledge of themselves before they exchange consent, and to the limit that they help the couple to grow and persevere in the marriage according to the gospel teaching, etc., should be encouraged. These could be positive forms of inculturation and contextualisation which, when properly actualised, could possibly be recognised by the Rotal canonical jurisprudence, and could lead eventually to a typical and acceptable Nigerian local jurisprudence.

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