

## **B. X. DE WET ESSAY**

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### **ISIXHOSA NOSTRA A COMPARISON OF ROMAN AND XHOSA LAW OF MARRIAGE**

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#### 1. *Introduction*

The broad aim of this essay is the juxtaposition of two ostensibly very different cultures. This juxtaposition is the context within which the narrower focus is aligned, namely that of the comparison of the Xhosa and Roman law concerning marriage.

The essay begins with an exposition of the relevant components of the two legal systems that are being placed in contrast. The first section is thus devoted to the Roman law of marriage, while the second comprises the Xhosa. Facilitation of exposition involved separating each body of law into parts under pertinent subheadings (development and character of the law; the couple; initial advances; engagement; the ceremony; consequences; termination).

Having described each in isolation, the two legal systems are then brought together in the third section; the comparison consists of several sections, highlighting points of both striking concurrence and serious discrepancy. At the end of this section, a tentative and preliminary conclusion has been drawn, which is fully explicated in a final, summary conclusion.

#### 2. *Roman law of marriage*

##### 2.1 The development and character of Roman law

The law is not static by nature, but in a constant state of adaptation: adaptation to changing social norms and moral values. What was law two hundred years ago could very well be a senseless custom in contemporary times. Society changes, continuously, and therefore the law that is adhered to by that society must change, out of necessity, for where there is not the adherence there is simply not the law.

The legal system of the ancient Romans developed through several phases. Due to the literacy of the Romans, this development is easily discernible, but it also necessitates a certain nicety of focus in this discourse: for the purposes of this examination of Roman law the emphasis has been placed, for the sake of relevance more than anything else, on the law as it stood during the time of the Principate.<sup>1</sup>

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1. The Principate is that period of Roman history, commencing with the reign of Emperor Augustus, during which an undivided Roman empire was ruled by a single emperor.

The primary state of the law of the ancient Romans was the customary or traditional *ius civile*.<sup>2</sup> This set of customs was passed on from one generation to the next, in the way of any tradition. In speculation one could say that it was inherited from the tribal era of the early Latins; it survived as the legal system of the Romans for three hundred years after the founding of Rome in 753BC.

The marked interest in expansion exhibited by the early Romans (and throughout most of the history of the nation, for that matter) placed an obligation upon their law to adapt to an empire that was steadily increasing in size. The obligation was met by the introduction of legislation: Roman reverence of the *ius civile* was too strong to allow for the outright *alteration* of the latter, but they were not opposed to gentle *modification* thereof, by means of legislation.

A further point worthy of mention is the separate legal dispensation for foreigners (i.e. inhabitants of conquered regions), the *ius gentium*, which existed apart from the *ius civile*, to which only Roman citizens (including those peoples who had been granted Roman citizenship) were subject. Due to its need to cater for a diverse range of cultures and customs, the *ius gentium* was far more general in nature. Over the course of time there was much borrowing between the two systems, and the distinction fell away in 242AD.<sup>3</sup>

Various bodies and offices were established to pass legislation. The most important of these was the Senate, which was, for most of the duration of the Principate, subject to the will (and whim) of the emperor.

At that time, much of Roman law was casuistic,<sup>4</sup> meaning that it consisted of a body of previously encountered legal situations or *actiones* (actions); a person only had recourse to the courts if their situation matched one of these *actiones*. But that was the law of procedure. Insofar as we are concerned with the law of marriage here, the latter was a part of the *ius civile*, and had not undergone significant change since tribal times.<sup>5</sup>

Roman law was extensively codified. The law is therefore accessible to posterity: one simply has to read it. It need not be mentioned that this is an advantage enjoyed by literate societies in the retention of their history for later generations.<sup>6</sup>

## 2.2 The couple

The sole requirement for the validity of a Roman marriage was the presence of *conubium* between the intending parties. *Conubium* can be described as the permission according to all other laws to contract the marriage.<sup>7</sup> By conducting an examination of the factors that excluded *conubium*, one may gain knowledge of what the requirements were in turn for *conubium* itself.

The fundamental principle was that *civis Romanus* has *conubium* with *civis Romana*,<sup>8</sup> to the exclusion of all others, except for certain peoples under Roman dominion who had been

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2. Du Plessis 1999:24.

3. Du Plessis 1999:28.

4. Du Plessis 1999:25; Thomas 1990:22.

5. Which is hardly surprising: the respect that Romans had for their traditional law was lasting.

6. As will become further apparent in the next section.

7. Corbett 1969:24; Thomas 1990:420.

8. Corbett 1969:24.

granted *conubium*.<sup>9</sup> Thus, it was possible for *cives Romani* to marry *peregrini* (foreigners), but only if the latter had been the subjects of said concession.<sup>10</sup>

There were several other reasons for an absence of *conubium* between a man and woman.<sup>11</sup> By the time of the early Principate, social class was no longer a bar to marriage. The law progressed from prohibiting “cross-caste” marriages entirely (mainly from 750BC to 450BC, which was the period during which the *plebes* or lower class were not recognised as citizens of Rome), to simply entailing a loss of status on the part of the member of the upper class who was party to such a marriage, to no prohibition or sanction at all. Obviously, as is the case in any society, the classes tended to keep to themselves, with wealth being the barrier, and such unions would have been frowned upon.

Slavery was an impediment to a legal marriage: no *civis Romanus* could legally marry a slave.<sup>12</sup> Also, freedmen and women could not marry persons born free.<sup>13</sup>

There were certain degrees of relationship which excluded *conubium*. These varied considerably over the course of Roman history,<sup>14</sup> but for the sake of brevity they can be described as virtually identical to what we have today, with the notable exception that the Romans did place a prohibition on the marriage of former in-laws.<sup>15</sup>

As concerns the man and woman themselves, they both had to be of marriageable age: the male at least fourteen years of age, and the female twelve, which made them *pubes* and *viripotens* respectively.<sup>16</sup>

Having established various impediments to *conubium*, the effect of its absence begs attention. In the absence of *conubium*, the marriage was not necessarily void. If the union violated a principle such as the prohibited degree of blood relationship, it was a punishable crime, but if it had merely been concluded in the absence of *conubium*, the sole consequence was the absence of the *in potestate* status of the children of that marriage, which means that the children took their status in law from their mother (very much like “bastards” in Victorian England). A marriage in which the parties lacked *conubium* was referred to as a *matrimonium iniustum*, as opposed, of course, to a *matrimonium iustum* in which the man and woman had *conubium*. The children of the latter were born *in potestate* and thus fell under the *patria potestas* of the father.

### 2.3 Initial advances

The initial advertisement of marital intent was often made by the father of the intended bride/groom, i.e. the *paterfamilias* under whose *patria potestas* the bride/groom fell.

One should not, however, nurture the impression that the *paterfamilias* necessarily *chose* partners for his children; the children would usually voice the intention of marriage, and

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9. *Ibid.*

10. *Conubium* was granted more and more widely in the empire in the course of time: Corbett (pp. 24-30) provides a detailed and exhaustive description of progress in this regard.

11. Let it be stated at this relatively early stage that Roman marriage was heterosexual and monogamous in nature.

12. In fact, slaves could not marry each other: the union was seen as a *de facto* one which was referred to as *contubernium* (Corbett 1969:30).

13. Thomas 1990:422.

14. Sometimes in order to accommodate the fancy of an emperor.

15. Thomas 1990:421-422.

16. Thomas 1990:421.

name the proposed partner, and the father would then act as an intermediary between his own child and the family of the other.<sup>17</sup>

Men who had acquired the *toga virilis* and were thus emancipated from their father's *potestas* were allowed to make advances of their own. Very often they would visit the father of the woman in person and present their case. To the woman, however, no such action was ever possible, since she remained permanently *in potestate* (in either her father's or, should she marry, her husband's).<sup>18</sup>

The father was able to exert a great influence over his daughter's choice of husband; it was expected of him to find a suitable man. This duty often involved the rejection of "unworthy" young men.<sup>19</sup> Suitability depended upon such factors as wealth and social connections, as well as the usual considerations, such as the strengthening of business relationships between two families or the consolidation of political alliances.

## 2.4 Engagement

Engagement or betrothal came into existence as the culmination of the preceding section. Once a suitable match had been detected and the parties had made a mutual promise of marriage, the couple was engaged. Breach of engagement carried a penalty which varied over the centuries.<sup>20</sup>

Children could be engaged by the *paterfamilias*; the age restriction in this regard was seven years for both boys and girls.<sup>21</sup> Once again, the *paterfamilias* had the final say in his daughter's affairs in this regard, while not such great influence in those of his son, who could refute his propositions, something that his daughter was not always in a position to do.<sup>22</sup>

## 2.5 The ceremony<sup>23</sup>

The wedding almost invariably took place in the house of the bride, because one of the central parts of the ceremony was the leading of the bride to the bridegroom's home, hence the expression *uxorem ducere*.<sup>24</sup>

The key to the ceremony was the expression of mutual consent to the marriage by the parties. This consent was confirmed by the joining of the right hands of the couple by a married woman (who was specifically not a widow) called a *pronuba*.

Once this ritual had taken place, the bride was taken from her mother (often with simulated force, to represent the rape of the Sabines), and borne to the bridegrooms house, although not by the groom himself. This procession was known as *deductio in domum maritii* (or, more simply, a *pompa*), and was accompanied by torches and other symbolic items such

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17. A well-known example being Cicero and his "Tulliola" (Treggiari 1993:127).

18. *Ibid.*: so, for example, we see Cicero arranging his daughter Tullia's third marriage, when she was thirty.

19. Treggiari 1993:126; Corbett 1969:4.

20. Corbett 1969:2.

21. Such betrothals were made particularly for the reasons cited in the last paragraph of the previous section.

22. The law on the capacity of daughters to reject their fathers' wishes is in dispute. Corbett 1969:2-7.

23. The account supplied here of the wedding ceremony is not supposed to be comprehensive in cultural aspect: it is merely a summary of the actions having *legal* significance. An exhaustive description of the full traditional itinerary of a Roman wedding could well run into several pages.

24. And even today, it is a Western tradition for the bridegroom to carry his bride over the threshold of the house that they are to reside in.

as coins, a spindle, and a distaff. The bridegroom went ahead of this procession, in order to receive his wife at their new home.

The marriage was not complete until consummation had taken place.<sup>25</sup>

## 2.6 Consequences

The single most important consequence of a valid marriage was that the bride passed into the *potestas* of her husband. This change in status had the implication that any issue of the marriage would be born *in potestate* and therefore derive legal status from the father.<sup>26</sup>

It was particularly in the upper classes that a bride came with a dowry (*dos*): this was a sum of money or collection of property that was presented by her family to the husband. It was not a compulsory element of the marriage, but it was important in that, firstly, it distinguished the marriage from a more casual liaison, and secondly, it had a certain regulatory influence on the behaviour of the husband towards his wife, since he had to return the dowry if she left him.

## 2.7 Termination

A Roman marriage was terminated in the same ways as contemporary Western unions are: by death or divorce. Romans also regarded incest (*incestus superveniens*)<sup>27</sup> as a reason for the termination of the marriage.

As stated previously, the *dos* had to be returned to the family of the wife on the termination of the marriage. Very often, upper class families would draw up contracts prior to the marriage in which the distribution of the dowry on the termination of the marriage was determined.

Where the wife had engaged in grossly immoral behaviour, the husband was entitled to retain a portion of the dowry, but, nevertheless, the fact that he had to give most of it back if his marriage fell apart obviously affected his treatment of his spouse. The money was supposed to be used for household expenses and for the support of the wife whom it accompanied.

## 3. *Xhosa law of marriage*

### 3.1 The development and character of Xhosa law<sup>28</sup>

The obvious is usually a good place to begin, and so, regarding the law of all the indigenous peoples of South Africa,<sup>29</sup> and, more specifically, the Xhosa, the obvious difference with the

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25. Treggiari 1993:168.

26. By means of the so-called "agnatic" bond with the father: Thomas 1990:21 and 428.

27. Thomas 1990:425.

28. When dealing with Xhosa law, one has to be general: the smaller tribes that fall under the name Xhosa may each have practised their version of "Xhosa" law, but at the same time each version would not have been so different from another as to make a generalised extraction impossible.

29. Where the term "indigenous peoples of South Africa" has been used it refers to those tribes resident in the area of what is presently South Africa midway through the seventeenth century.

law of the ancient Romans is that the African law was never codified by the people who practiced it.<sup>30</sup>

For this reason, it is impossible to trace the development of Xhosa law in the same way that was done for Roman law in Section 2. What is very clear is that Xhosa law, like Xhosa art and traditions, was passed down orally from one generation to the next.

Xhosa law is thus customary law: it is followed “as it always has been.” There are no books of statutes or collections of cases to consult in dealing with a matter: there is instead a body of traditions and rituals of behaviour that are followed so closely and without exception that they are regarded as law. Xhosa law is thus an illustration of the principle that there is no law without respect for the law: Xhosa law is that only because it enjoys adherence; it has never been “passed” and it is not “policed.” This point is further borne out by the death of the traditional law, particularly in the urban areas, due to people who simply no longer adhere to it.

There were also extensive attempts by the Apartheid government to modify the customary law of the tribes. The former had great difficulty in dealing with polygamy and bridewealth (*ikhazi* in Xhosa, or, as it is better known to some people in Zulu, *ilobolo*), and passed all kinds of contrived legislation to “regulate” these practices, when the simpler alternative was not to tamper with them at all. What I would like to state in this regard is that the Xhosa law of marriage that I have summarised here is that which was practiced before it suffered any European influence, i.e. the law as it was at least before midway through the seventeenth century.

### 3.2 The couple

In Xhosa tradition a man was eligible to marry after he had undergone the initiation process for men (*ungeniso*), the key feature of which was the rite of circumcision. This process usually took place between the ages of fifteen and twenty.

Women also became marriageable after their respective process of initiation, which generally took place at a younger age, perhaps twelve or thirteen.

Marriage was not allowed between relatives within the prohibited degree of consanguinity, which was almost invariably to the fourth degree. Also, marriage to a member of the same clan (*isiduko*) was not allowed.<sup>31</sup>

### 3.3 Initial advances

A proposal of marriage was usually made by the man, although proposals from the family of the woman were not uncommon.<sup>32 33</sup> The prospective parties never made the proposals

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30. This presents a particular problem of analysis, in that the people who *did* write the law down were usually Christian European missionaries who experienced severe abhorrence at certain customs of the Xhosa tribe, particularly the custom of polygamy (*isithembu*).

31. Every Xhosa person has a clan name, which is supposed to refer to a common ancestor of all persons with that particular clan name; therefore, marriage to a person of the same clan would be, to use the Western term, incestuous (Bekker 1989:123).

32. Traditional Xhosa marriage was polygynous, i.e. a husband could have several wives. The term “polygamous” simply means having several spouses.

33. Bekker 1989:97.

themselves: this was done by a family member, who would convey a message of intention to the other family.<sup>34</sup>

### 3.4 Engagement

The success of the proposal relied on the father of the woman (or, if he was dead or absent indefinitely, on another male relative, upon whom, according to the patrilinear social structure of the Xhosa, the responsibility of guardianship had fallen). If the father did not consent to the marriage, there was none.

Once the father of the woman had consented, the amount of *ikhazi* or bridewealth was set, and until that set amount (usually of livestock)<sup>35</sup> had been paid to the woman's family by the man's family, no marriage could take place. Once the amount had been set, however, the couple was formally engaged.<sup>36</sup>

A factor which could have a decisive bearing on the decision of the woman's father was the approval of the proposition by the father of the man, but only if it was to be the man's first marriage. The reason for this was simple: if the father of the man did not approve of the match, he would have nothing to do with it, thereby leaving a young man of no substantial possessions to raise the *ikhazi* (bridewealth) for the woman himself, something which he would not be expected to achieve; at least, the father of the woman would not rely on his achieving it. Therefore, in the case of a man's first marriage, if his father refused to countenance the match, i.e. refused to provide *ikhazi*, the marriage usually would not take place.

At this point it seems appropriate to provide some definition of *ikhazi* or bridewealth. *Ikhazi* was a payment to the family of the bride on acceptance of a proposal of marriage by her father.<sup>37</sup> Now, the purpose of this payment has often been misconstrued by inflexible analysis based solely on principles of Western morality and also on imperfect observance of the practice. The payment of *ikhazi* does not constitute the "sale" of a woman; it is not her "price".<sup>38</sup>

Stated broadly, *ikhazi* can be seen as a kind of compensation that is paid to the family of the wife for their loss of her reproductive capacity. A marriage that ended without issue therefore obliged the woman's father to return the entire *ikhazi* to the man's family, because the woman's reproductive capacity was still entirely intact.

At the same time, the payment of *ikhazi* was a way of guaranteeing the welfare of the woman for the rest of her life, especially in cases where she was left a widow. The fact of the matter is that the person to whom the *ikhazi* was paid, i.e. the woman's guardian, retained his role as her protector, and had to support her if she sought his counsel, for whatever reason

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34. Although an independent adult man with no family might well make the proposal himself, but always to the woman's guardian.

35. Upper class women usually would have an *ikhazi* consisting exclusively of cattle, while women of lower social standing could have such stock as goats and sheep in their *ikhazi*. The value of cattle to the Xhosa was, and is, very high; in current times, *ikhazi* is calculated using the price of cattle as a guide. For example, if a woman's *ikhazi* is deemed to be four head of cattle, and the price of cattle is estimated at R5 000 a head, her *ikhazi* will be set at R20 000.

36. Bekker 1989:97.

37. Bekker 1989:150, for a full history of the institution.

38. This particular misconception could be based on the fact that different women "command" different "prices". This is not true; *ikhazi* varied according to social class and wealth of family, in exactly the same way as a Roman dowry: the woman had nothing to do with its determination.

(for example, if there was a marital dispute). This need on the part of the woman for this lifelong “insurance” was due to the fact that a woman was, according to Xhosa law, a permanent “minor”, i.e. she always had to have a guardian.

### 3.5 The ceremony

Once payment of the *ikhazi* had been completed, the wedding could take place. The key event of the ceremony of marriage was the action of *ukuthwala*: the handing over of the bride to the bridegroom.<sup>39</sup> This action symbolised the passage of the woman from her own family into the family of the man, into which she was then assimilated.

However, this action could only take place once the groom and the bride’s father had consented to the marriage. Without the consent of either there could be no marriage. The consent of the bride probably was not required, although clarity does not exist on this point.<sup>40</sup>

The ceremony was almost invariably accompanied by great feasting. Consummation of the marriage was not necessary for it to be concluded; it was possible for a woman to be handed over to her husband’s family, and thus married, in his absence. The crucial action was the handing over.<sup>41</sup>

### 3.6 Consequences

Marriage lent a heightened social status to the couple; they were regarded as a new family unit in the community. For the wife, marriage meant a transition from the protection and care of her father to that of her husband.<sup>42</sup>

A Xhosa man could have more than one wife, and very often did.<sup>43</sup> Xhosa wives were ranked relative to one another in order of chronology of marriage;<sup>44</sup> the first wife was the main or grand wife, and headed the entity known as the “great house” (*indlu enkulu*). The second wife was the head of the “right-hand-house” (*indlu engasekunene*). The third wife was the head of the “left-hand-house” (*indlu engasekhohlo*). Subsequent wives were assigned alternatively to the great, right-hand and left-hand houses, and were known as the *amaqadi* (literally “rafters” or “supporting beams”) of those houses, decreasing rank as they increased in number. This ranking of wives had all the force of law; it could not be altered by the husband, who was the head of the entire household.<sup>45</sup>

The importance of a wife’s rank only became apparent in matters of succession: the first son of the highest ranking house inherited the father’s property, which was the entire household. All things being equal, this would have been the first son of the great wife. Thus a man with many wives was assured of having a son as a male heir.<sup>46</sup>

### 3.7 Termination

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39. Bekker 1989:108.

40. Bekker 1989:106; the problem is that European intervention made the bride’s consent compulsory, so it is virtually impossible to ascertain whether or not it was originally.

41. Bekker 1989:109.

42. The glaring similarity to Roman law will be elaborated upon in the next section.

43. There was no maximum number of wives; obviously, a limit was set by the ability of the man to pay *ikhazi*.

44. Bekker 1989:126.

45. Bekker 1989:128.

46. Where he did not have a son, a senior male relative would inherit his property, according to principles that are too intricate to explicate briefly.



The termination of a Xhosa marriage involved simply the return of the woman to her father or guardian.

The causes for termination were numerous and the consequences varied according to who was deemed to be at fault: the husband or the wife.<sup>47</sup> The basic principle that condenses from the large number of possible situations is that if the wife was at fault, her father or guardian was obliged to return the *ikhazi* (with a certain amount deducted from it for every child that the wife had borne in the marriage), but if the husband was at fault he forfeited the *ikhazi* that he had paid through his unacceptable behaviour.<sup>48</sup>

The three main instances of termination of a Xhosa marriage were the following: death, mutual agreement, or at the instance of either party. Reasons for the husband wanting to end the union included incestuous behaviour on the part of the wife, persistent adulterous liaisons by her, her own rejection of the marriage, or some physical defect of the wife, but only where this defect was concealed from the man before the marriage was concluded.<sup>49</sup>

Alternatively, the husband could end the marriage simply at his whim, in which case he forfeited the *ikhazi*.

The wife could also end the marriage, but she had to do this in conjunction with her father or guardian. Reasons for her wanting to do this included abandonment, ill-treatment, an accusation of witchcraft, impotence, and incest. Obviously, due to the polygynous nature of Xhosa marriage, a wife could not take offence at “adultery” committed by her husband.<sup>50</sup>

#### 4. *A comparison of Xhosa and Roman law of marriage*

##### 4.1 *Ikhazi and Dos*

There is a fundamental difference between the Roman institution of *dos* and the Xhosa institution of *ikhazi*: *ikhazi* was the most important aspect of a Xhosa marriage, while *dos* was not even a compulsory feature of a Roman marriage, although it was almost invariably present in the arrangement.<sup>51</sup> Then there is also the obvious difference of direction; in Rome, the money went with the woman to her husband, while in Xhosa custom the money went from the man to the father of the woman.

However, despite these differences, the effect of both institutions on the marriage would actually have been exactly the same: in either culture, a husband’s mistreatment of his wife could have cost him a large amount of property. As regards the wife, both the *dos* and the *ikhazi* were provided for her benefit, as a means of ensuring her welfare.

It seems, then, that the motivations behind either the Roman or the Xhosa institution were extremely similar, if not the same outright. Therefore, there exists under this heading a striking similarity between the two cultures.

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47. For an exhaustive list, see Bekker 1989:172-213.

48. And more will be said about this in the next section, because the parallel with the Roman institution of *dos* is, once again, glaringly obvious.

49. This last reason needs to be understood in light of the fact that a Xhosa marriage could be concluded in the absence of the man.

50. It should not be assumed that it was impossible for a Xhosa man to commit adultery, i.e. he was obviously not allowed to engage in a liaison with a married woman.

51. Thomas 1990:425.

#### 4.2 *Potestas* and *Ubugcini*

In the matter of guardianship over the wife another parallel between the two cultures is present.

In Xhosa tradition, a woman resided under the guardianship of a male. The society was patriarchal; marriage simply entailed her passage from the guardianship of her father to that of her husband. Roman law, on the other hand, implied precisely the same shift on the part of the woman.

One may observe, then, that the *potestas* of a Roman *paterfamilias* was exactly the same concept as the *ubugcini* (from the verb *-gcina*, to hold or keep) of the Xhosa head of the household.

#### 4.3 *Paterfamilias*

In fact, the concurrence described in the preceding section becomes even stronger when one observes that it stems directly from the authority of the male head of the household, in either culture.

While an exposition of the status of this head of the household in either culture would require a fairly lengthy account, what is obvious is the similarity between the Xhosa and Roman versions. It is submitted that the Roman *paterfamilias* and the Xhosa head of the household were identical in status. If, for any reason, this was not the case, it is submitted that they were at the least very strong cultural equivalents of one another.<sup>52</sup>

#### 4.4 Ceremony

As will be apparent from the descriptions of the wedding ceremonies above, Roman and Xhosa weddings were very similar in a single respect: they both involved the handing-over of the bride to the family of the husband.

This is not something that will seem logical to the contemporary mind: in both Roman and Xhosa weddings the bridegroom did not need to be present. In the case of the Xhosa, consummation was not even essential to the validity of the union. This may seem rather a tenuous manner of conducting a wedding when contrasted with the current Western version, but nevertheless it must be borne in mind that, because our current ceremony evolved from the Roman one, traces of the Roman ceremony remain to this day in our weddings: the father of the bride “hands her over” to the groom.

The fact that the groom could be married in his absence in both Xhosa and Roman tradition emphasises the nature of marriages in these cultures as unions between the respective families, and not merely between the individuals at the heart of the ceremony.

#### 4.5 Polygamy and Monogamy

Polygamy is something that is entirely alien to the Western Calvinist psyche, and it would have been equally as much to the Romans. On the other hand, a Xhosa person would not have understood why a man should be limited to a single wife.

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52. A father figure in this mould probably exists or existed in every patriarchal society anywhere in the world.

But the difference in cultures is simply that: a difference in cultural outlook. It is not necessary to dwell upon the issue. The author would like to submit that, seen from the outside, any culture is trying to do the same thing as any other culture, namely to survive, and that the central unit of any cultural society is, therefore, the family. Different cultural laws regarding the family are merely different facilitations of the satisfaction of the same basic need. This is the tentative conclusion promised in the introduction.

## 5. *Conclusion*

At the outset it was stated that the central intention of the author was to juxtapose two cultures which are, on the surface, extremely different. In order to effect this contrast, a cultural element that is present in both, namely the institution of marriage, was chosen as the basis for making the comparison.

On a very superficial level, then, this essay has shown that while, in certain aspects, Roman and Xhosa marriage were very different in appearance, they are, in fact, strikingly similar concerning vital characteristics.

However, on a much deeper level, this similarity extends to the purpose of the institution itself in society, and it is when we engage the matter on this level that a far greater, overarching concurrence between the two cultures is revealed: in both cultures, both the intention and the outcome of marriage were exactly the same: the formation of a new family unit.

This premise cannot be abandoned there, because it leads to a further conclusion: since marriage is or was present in any culture that exists presently or that has existed in the past, anywhere in the world, it does not seem to be too great a bound of assumption to suppose that all cultures are structured to support a single purpose, namely the survival of the community, thereby rendering all other cultural distinctions utterly superficial.

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