

# POLYGAMY'S RIGHTS AND WRONGS

PERSPECTIVES ON  
HARM, FAMILY, AND LAW

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# Introduction

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## Is Polygamy Inherently Harmful?

LORI G. BEAMAN

When Alaire and I spent some time together, she told me that she could not leave her community, that its members were the only people who had loved her, and that it was the place where she was accepted, the place where she was raising her children, the place where she felt security.

– ARTA JOHNSON, CHAPTER 4 IN THIS VOLUME

When polygamy makes the news or is the subject of public discussion, the themes of love, belonging, and community are rarely mentioned. And yet, they are often important to those whose family arrangements involve multiple intimate partners. Relationships, attachment to kin and place, pride in community, and values and beliefs also form a core part of stories about who *we* are. But these narratives are often overshadowed by others whose focus on the inherently harmful nature of polygamy displaces or shrinks more complex stories of the challenges and joys of living in polygamous relationships into sound bites of harm.

In October 2009, fifteen of us came together to reflect on the question of why the practice of polygamy is understood to be inherently harmful. We wanted to bring a range of perspectives and experiences to the conversation. Our group included historians, legal scholars, political scientists,

sociologists, anthropologists, and religious studies scholars. It also included participants who had family ties to the Church of Jesus Christ of Latter-day Saints (LDS) and to polygamous histories. Our workshop enabled us to think outside of disciplinary boundaries and, through paper presentations, discussions, and debates, to reflect on what, if anything, is innately wrong with polygamy.

During our conversations, it was the messy, lived experiences of family and community life that defied the easy categorization of polygamy as either harmful or unproblematic. Through the narratives of some workshop participants, which included personal family experiences as well as academic fieldwork, we were pressed to ask about the harms not only of polygamous family forms but also of the dominant model of monogamy that we find so staunchly defended in so many discussions about polygamy.

Our workshop took place in the shadow of legal proceedings, both previous and imminent. After years of attention to Bountiful, and review of key files by senior Crown counsel, charges were finally approved against two polygamous men in January 2009, only to be quashed in October 2009 by the BC Supreme Court due to questions about how the special prosecutors were appointed. In response, the Attorney General of British Columbia initiated a procedure that would refer the constitutionality of s. 293 of the *Criminal Code* to that same court, to be heard by the Chief Justice.<sup>1</sup> The decision in *Reference re: Section 293 of the Criminal Code of Canada* was rendered by the British Columbia Supreme Court on 23 November 2011, after the final versions of the chapters in this volume were completed.<sup>2</sup> Gillian Calder discusses it in the Conclusion, but for the purposes of framing this volume, I would like to make two preliminary observations. As in our discussions, the shape of family forms was central to the Court's decision, particularly the importance of monogamy to Canada's self-image as a nation. Second, although the Court decision has been rendered, the "issue" of polygamy has by no means been resolved. Polygamy forms a core part of Canada's history and its present; for better or for worse, it cannot simply be legislated away.

Polygamy has become an important marker that distinguishes the uncivilized *them* from the civilized *us*. It has been opposed by an odd coalition of interests, including conservative Christians, feminists, and state representatives. Although much-publicized anecdotes about the horrors of polygamy do exist, few social scientific data about polygamous marriage in North America definitively point to harm. In fact, research has yielded rather boring results: little differentiates polygamous families from their

non-polygamous counterparts. To be sure, abuses do occur in polygamous families, as they do in other sorts of families, but our workshop wondered why the focus on harm was so disproportionate. What is it about polygamy that engenders such a collaborative effort against it? What prompts such negative reactions? How has polygamy come to be imbued with such symbolic power?

Negative statements about polygamy are often taken as self-evident and uncontested. In other words, no justification or explanation is offered beyond mention of its inherent badness or wrongness. In this chapter, I consider four of the most frequent objections that surface in public discussions of polygamy and will draw out some of our contributors' ideas regarding these themes. My hope is that readers will explore the volume not only with these themes in mind but also through engaging with each chapter on its own terms.

The four core objections that circulate and work to justify the criminalization and condemnation of polygamy are as follows:

- Polygamy represents and reifies a patriarchal family form.
- It is harmful to women and children.
- Women do not freely choose it.
- It threatens Canadian values and Canada as a nation.

In varying ways, the authors in this volume shed light on these objections. Each one does so from a unique standpoint, which allows for a more comprehensive examination of the challenges posed by polygamy. Further, many have made significant contributions to the broader debates that are raised by the presence of polygamy in society. Drawing on both their work and my own, I will explore these core objections in turn, pressing for a more complex understanding of polygamy that defies easy categorization, as do all intimate relationships. One other theme bears mentioning. It seemed to us that the core objections often served a particular end. The desire to distinguish polygamists, or *them*, from monogamists, or *us*, is strong, and thus the four objections are often used in the service of creating and maintaining that boundary. In part, *Polygamy's Rights and Wrongs* seeks to demonstrate that this distinction is often not as clear-cut as it might seem. Further, the primary analytical focus of this volume kept circling back to family and its myriad forms. In the end, we could not deny that family is the key organizing concept in the polygamy debates. Indeed, the defence of monogamy plays an essential role in upholding the criminalization of polygamy.

### **Polygamy Reifies Patriarchy/Patriarchal Family Forms**

One criticism of polygamy is that it is, or reifies, a patriarchal family form. In the context of this criticism, how is the polygamous family imagined? And, how is patriarchy imagined? When one of our contributors, Arta Johnson, visited a polygamous colony, her domestic arts were inventoried by its paterfamilias. Was this the sort of behaviour that represents patriarchy? (He pronounced her a suitable candidate for admission to the community.) Was the “giving away” of the bride by her mother and father in the Big Wedding described by Angela Campbell patriarchal? What precisely do we find objectionable in polygamous families? What do we imagine happens in them? How do we imagine it as differing from the daily life of our own families?

The patriarchy criticism relies on an underlying assumption that the ideal, alternative model of monogamy is not patriarchal, or even that some family form can successfully bar patriarchy from the home. Yet, much evidence suggests otherwise. A brief review of women’s position in marriage reveals important discrepancies. Women still undertake more household labour and childcare than men.<sup>3</sup> And divorce leaves them much more financially impoverished than men, a fact that reflects their economic disadvantage in marriage.<sup>4</sup> Women still make up the majority of post-natal caregivers.<sup>5</sup> Research suggests that women who have children face financial and career disadvantages.<sup>6</sup> The form a family takes, whether polygamous or monogamous, may be of little consequence in the face of patriarchy, which continues to support the advantaging of men at the expense of women.

This disparagement of polygamy – that it is patriarchal – highlights the need to critically examine the concept of family more broadly. In the Conclusion to *Polygamy’s Rights and Wrongs* Calder reflects on this issue, discussing the ideas in this volume, the judgment in *Reference re: Section 293 of the Criminal Code of Canada*, and her own previous work, which analyzed the idealized family model portrayed in the documentary film *March of the Penguins*.<sup>7</sup> She simultaneously unpacks and complicates the discursive production of the family, reminding us that “married or common-law couples with children aged twenty-four and under living at home represent only 44 percent of all families in Canada.” The normative, it seems, is not so common. And the “wrong” of polygamy, which implies a more overt normative position than a measuring of its harms, is perhaps not so straightforward.<sup>8</sup> Calder argues that despite the presence of multiple and alternative family models in society, “the model of the heterosexual nuclear family as normal continues to hold a powerful sway.”<sup>9</sup> Her analysis demonstrates how

popular culture – film, in this case – contributes to and shapes our ideas about normativity. Calder juxtaposes the romantic “life-long love story” with the scientific facts of penguin mating behaviour (contrary to popular belief, they do not mate for life) to critically unravel the production of the normal family narrative in both penguin and human society. This kind of questioning challenges us to examine the rhetorical production and social construction of family. What are the myths that we believe? What are the narratives that we tell, even in the face of our own contradictory experience?

Research with polygamous families, including that of Angela Campbell in Chapter 1 of this volume, offers a glimpse of family life that reveals as much about similarity as it does about difference. Among Campbell’s interviewees, women often formed the core units and controlled the household budgets, with husbands contributing financially and reproductively. In one instance, two sister wives married each other. To be sure, not all sister wives accord so well – some dislike each other intensely. But the research that has mapped the lives of polygamous families gives numerous examples of women forming the core intimate unit that would seem to parallel the radical separatist vision of non-patriarchal life. One vision of radical separatist feminism was of an ideal non-patriarchal world where women lived apart from men, with men’s role being primarily to facilitate reproduction. Women would thus form a central community in which men had no authority. Although polygamous family life does not play out in quite this way, as it is documented by Campbell, the similarity is worth noting.

An important function of the idea of patriarchy is that it is often positioned next to equality of women and men as a reminder of the distinction between the two groups. This distinction between *us* and *them*, and the work that it does to generate and preserve boundaries, is explored by Arta Johnson in Chapter 4. Her discussion of her visit to a polygamous community may offer some insight into the issue of why a more measured response to polygamy, monogamy, and the nature of family is so strongly opposed. As she notes, there is great resistance, even within LDS communities, to imagining the fundamentalists as *us*:

I knew that what was bothering me here had to do with a closed system of education and with a lack of access to books, but I also knew that what I was objecting to was not exclusive to polygamy, for it happens in many other homes and schools ... I am still bothered by the voice of one of the younger wives, who said, “Now when you go back, you will have lots to laugh about

with your friends.” I have thought a lot about what I saw on that trip, but I have never really found anything to laugh about. I have no desire to trivialize or mock another woman’s life. (92, this volume)

Arta Johnson’s chapter is a raw, honest exploration of the myriad strategies we use to put distance between ourselves and those we label as other. Her stark reminder that we are them and they are us leaves many of us uncomfortable, wanting to take refuge in soothing approaches that name others as patriarchal, brainwashed, and dangerous to our values and nation.

The consequences of othering are serious: the need to imagine *them* as decidedly different from *us* has impeded conversation and action that would protect women. What if we were able to follow Johnson’s example and engage in critical dialogue that calls both ourselves and *them* into question or that entirely banishes the boundary between us? That conversation might examine the incidence of violence in all types of relationships. It would explore the occurrence of extra-marital relationships, and it would ask such questions as why living in a multipartnered marriage is legally and socially unacceptable, whereas engaging in multiple relationships (of which the parties involved may or may not be aware) is tacitly accepted in our society. It would examine the operation of patriarchy and its implications for all women. It would open dialogue about why religious motivation makes a difference in our acceptance and about the extent to which women are disadvantaged by either form of multiple relations. Such a conversation would discuss children’s socialization and would acknowledge the ideological socialization of all childraising, whether it is religious or consumerist-consumption oriented (or both). Ultimately, by keeping the focus on *them*, we are able to distract ourselves from hard questions about *us*.

### **Polygamy Is Harmful to Women and Children**

Of the four core objections, the claim that polygamy is harmful to women and children carries the most weight. Stories of underage brides, young women being married off without their consent, and lost boys permeate these discussions. Social scientific research challenges this characterization of polygamy.<sup>10</sup> None of our authors deny the harm described by some women who live or have lived in polygamous relationships. Rather, the objection is to the use of specific and singular incidents to characterize general patterns that link specifically to polygamy. Most disturbing is that, rather than insisting on high-quality extensive research that examines the harms of various family forms, those who strenuously object to polygamy, including

some feminists, Christian groups, and courts, are willing to accept anecdotal evidence, sporadically collected, of the most negative stories of polygamous life. Often, research from social contexts that bear little similarity to Canada or the United States is relied upon with minimal critical examination of context, research questions, and research methods. This is particularly puzzling given what we know about violence in non-polygamous relationships: it is extensive and pervasive.<sup>11</sup> Families and intimate relationships are often dangerous places. The so-called traditional family does not offer a magical recipe for human thriving, and so harm cannot be seen as the exclusive terrain of polygamy.

In the end, the differences between polygamous and non-polygamous relationships may be few. Angela Campbell's research, drawing on fieldwork with the Fundamentalist Church of Jesus Christ of Latter-day Saints (FLDS) in Bountiful, British Columbia, offers an inside look at polygamous family life. Her data were revealing in their ordinariness – children angling to go to Dairy Queen, sister wives just back from a vacation in California, and, yes, tensions around negotiating roles and responsibilities and personality clashes. In her chapter, Campbell considers the Big Wedding, an event she witnessed during her fieldwork. What is striking about her discussion is not necessarily the difference between the Bountiful marriages and those “outside,” but the similarities – in the performance of the ritual, the defiance of parental wishes by some women, and in the predominance of monogamy in intimate relationships. Campbell's research also shows the diversity within the community – some women dress in the more conservative “traditional” manner, with long hair and long dresses, whereas others opt for jeans and T-shirts. Some work in the paid labour force; others do not. Some have post-secondary education; others do not. In short, there is wide variability among women and families that challenges stereotypical notions of polygamous women as cloistered, uneducated breeding machines who have no decision-making power.

I worry that the discourse of harm has stifled well-informed debate about polygamy specifically and family forms more broadly. Harm has become an impenetrable cloak around polygamy that is supported by public discourse, including the media and the state. Sometimes, harm, which implies some assessment of empirical evidence, is completely dispensed with, and bald statements about the wrongness of polygamy prevail. Especially curious is the state's deployment of the language of “protection” of women. State protection for women has historically taken the shape of saving them from themselves, assuming their consent, and doubting their agency. When

women have asked for state protection, they have often done so through protracted battles. The continuing lack of pay equity, state day care, and adequate domestic legal aid are but a few examples of the issues in which the state has failed to intervene despite consistent requests from women. In such a context, the key questions become why the state chooses to intervene in particular circumstances and whose interests are being served by that intervention. How does the state replicate patriarchy in its refusal to listen to women's voices, and what is the nature of the harm suffered by women as a result of the state's approach?

In Chapter 9, Martha Bradley-Evans's research findings in the United States bring together this question of harm and state action by considering two state raids on FLDS groups, in 1953 and more recently in Texas during 2008. She argues that FLDS communities need to be understood in all their complexity, including individual commitment to "living sweet," which extends to an ethos far more elaborate than living in polygamous relationships. Their modest dress, for example, is simply a reflection of their commitment to bodily modesty. All societies grapple with standards of dress, yet the FLDS version of modesty is subject to scrutiny and sometimes to ridicule. The theme of harm is at the forefront of Bradley-Evans's analysis, both from the perspective of the state and from those whose lives were disrupted, to put it mildly, by their removal and detention in order to, according to the state, protect them. She highlights the unintended consequences of state action, which was precipitated by allegations of harm that were largely unfounded. In her analysis, the harm suffered by women and children was predominantly imposed by the state rather than by their commitment to polygamy.

The research of Bradley-Evans's and Campbell points to similarities rather than to differences between polygamous and monogamous relationships, again signalling the tenuousness of a clean divide between *us* and *them*. What may surprise many people is that the women and children who are "rescued" through state intervention are neither grateful nor willing to recant their beliefs once they are "free." Singling out the particular harms of polygamy without simultaneously considering the harms of other sorts of relationships, of state intervention, or of negative stereotypes leads to a lopsided portrayal of the ways in which relationships both sustain and injure women. An analogy might be to research the nature of monogamous relationships by asking the women in a battered women's shelter about their experiences of marriage. Chances are good that the resulting evidence will

convincingly demonstrate the harmfulness of monogamy. Neither position – that either monogamy or polygamy are wholly harmful or wholly nurturing – reflects the lived experiences of women and children. Certain harms may be unique to one form or the other, but within the current framework, dialogue about this possibility is extremely difficult.

Acknowledging the complexity of intimate relationships and various family forms, and their potential to both nurture and cause damage, could enable a different kind of conversation. This could open space for inquiries about the types and frequency of harms and the development of strategies to minimize or overcome them. Further, exploring the ways in which various types of relationships nurture human beings could potentially address the limitations of particular family forms. During our workshop conversations, for example, a number of women joked that having a sister wife would be a welcome relief when childcare challenges presented themselves.

Finally, we consider the work that naming polygamous relationships as harmful does for the state. Benjamin L. Berger argues that a fundamental tension exists between substantive criminal law and religious freedom and equality. The latter is, as he puts it, “the quintessential reflection of the modern liberal demand that the state remain withdrawn from the domain of moral judgments and claims about the good life.”<sup>12</sup> However, contends Berger, the substantive criminal law is precisely a domain of moral judgment, one in which “society can judge certain actions to be so morally repugnant as to warrant state actions with fearsome consequences for the individual.”<sup>13</sup> In Chapter 3 of this volume, Berger suggests that the challenge presented by polygamy goes much deeper than religious difference. In fact, he states that polygamy poses a fundamental challenge to the liberal rules of law because of the “ought” implied by its criminalization. Polygamy, then, calls into question the metaphysical status of the family. Berger’s analysis underscores the deep anxiety associated with discussions about polygamy and perhaps offers insight into why assessments of harm, as problematic as they are, are sometimes simply replaced by declarations that polygamy is wrong.

Berger’s insights reveal that part of what constitutes a successful case for moral repugnance (the wrong) in the polygamy debates is a strong sense of harm toward women and children. Historically in law, both women and children have been imagined as incapable of taking care of themselves and thus in need of a decision-maker who can act on their behalf and in their best interests. If, rather than simply being assumed, harm is examined and

explored with careful social scientific research, there is a risk that ultimately *they* will be indistinguishable from *us*. This recurring achievement of difference is constituted through the positioning of us and them.

### **Women's Agency**

If polygamy is inherently harmful, the logical conclusion is that women would never freely choose it. They must be coerced, or have false consciousness, or be unable to exercise agency due to their socialization. In other words, they do not know any better. Therefore, as this line of thinking goes, it is incumbent upon the state and civil society organizations, including feminist groups, to save them from themselves.

The issue of women's agency in the context of religious groups is a long-standing one. In fact, agency in any minority religious group has often come under suspicion but especially for women. In its crudest manifestation, this misgiving presents as the fear of brainwashing. Brainwashing usually takes two forms, either socialization (the believer does not know any better because she has never been exposed to other ideas) or conversion (a decision made under duress or undue pressure). Despite a large and convincing body of social scientific literature that discounts the credibility of brainwashing as a theory, its power persists.<sup>14</sup> The failure or inability to choose has unique contours when religious women are involved, and certainly the conversation regarding women in polygynous relationships is embedded in assessments of their agency.

The feminist community has often been especially critical and dismissive of religion, highlighting its destructiveness and discounting religious women's voices. This is particularly true in the case of conservative religious women, who are believed to have false consciousness that blinds them to more progressive ways of being and thinking.<sup>15</sup> Choice and agency repeatedly arise in this context, with doubt cast on such women's capacity to make rational decisions. Yet, research suggests that they do exercise agency and that their choices are rational and meaningful to them. Again, to return to Angela Campbell's chapter, in her project with the women of Bountiful, it was they who approached her, they who insisted on having voice, and they who refused to be exploited and taken advantage of by those who would render superficial judgments of their faith and lives.

In Chapter 5, Rebecca Johnson addresses this complex issue of choice, consent, and agency. By explicitly mapping our thought processes, she confronts the stereotypes about religious women, and about polygamous women in particular, that so many of us hold:

Even though s. 293 of the *Criminal Code* emphasizes that the crime lies in *agreement* to enter into a conjugal union (which means it requires you to show that the parties, in agreeing, in fact *did* consent to the union), it seems that there is a simultaneous presumption that polygamy simply *cannot* be the product of meaningful agreement. There is a powerful social narrative that presumes this consent to have been coerced or to be the product of false consciousness: we suspect that a first wife (no matter what she tells us) does not truly have the power to oppose the addition of a second wife or that a second wife (no matter what she says) has in some sense been coerced (by family, by community, by indoctrinated beliefs) to enter the relationship. (110-11, this volume)

Johnson is no stranger to debates about women's choice and agency and, indeed, has made major theoretical contributions to this field. In her book *Taxing Choices*, she challenges the idea of the autonomous liberal woman (or man, for that matter).<sup>16</sup> As she points out, people make decisions in the context of relationships, a position that flies in the face of dominant liberal conceptualization of the autonomous individual who chooses freely and without encumbrance. Johnson remarks that

the rhetoric of choice provides a simple model for locating power and fixing responsibility for consequences. If a given situation is the result of a person's own choosing, it would be inappropriate to intervene: the person suffering made choices – made their own bed, so to speak. If, on the other hand, the situation is the result of force or coercion, intervention may well be called for: where power obviously lies in the hands of a second party, the first person cannot be said to have meaningfully chosen.<sup>17</sup>

The result is that women are imagined as either choosing or being forced.<sup>18</sup> This binary is challenged by a number of contributors to this volume, either directly or through their introduction of the complicated reality of the multiple relationships that inform women's lives.

A consequence of the failure to appreciate religious women's agency is that their spiritual beliefs are often treated as disposable or as displaceable by logic. In Chapter 4, Arta Johnson recalls asking for her husband's promise never to take another wife. Her plea was not just about the here and now – for Arta, his second marriage meant that, in both this life and the next, she would have to contend with another wife and with the idea that he had chosen someone else. It is difficult for many of us to imagine that

the intimate relations of this world could have consequences in another world or dimension. Yet, for members of religious communities, theology is more than an abstract discussion. Martha Bradley-Evans's also highlights the failure of those outside of the religious communities she studied to take seriously the beliefs and practices of adherents. For example, girls who were held in custody were not given access to clothing that met their standards of modesty. Such a failure is grounded in profound disrespect. It sends the clear message – you are autonomous but only if you believe what I believe. It also impedes the possibility for dialogue and the protection of those who may need it.

How might women's religious beliefs and practices be respected in the context of the public institutions that interpret their lives? In Chapter 2, Avigail Eisenberg argues that in assessing matters of religious freedom, within which polygamy at least partially falls, we must adopt a fair, open, and public process. She calls this the identity approach, in which claims are assessed in context and with consideration of the importance of the identities to those making the claim (the jeopardy condition). The practices must be seen as valid for those who subscribe to them (the validation condition), and safeguards must be put in place to reduce potential harm to those who engage in the practices in question. Such an assessment, she suggests, must be carried out with institutional humility, which includes recognition that those who wield institutional power are commonly part of the majority. Whether one follows the precise route prescribed by Eisenberg, at the very least, she is opening the door for a much more robust examination of religious practices and therefore a rejection of assumptions about them. Her proposal rests on the acknowledgment that religion is important to identity and the necessity of taking this seriously. This entails respecting the beliefs and practices of conservative religious women. One important consequence of such an approach is diminishing the us-versus-them divide. Religious women in this framework become fellow citizens whose position deserves, at the least, serious consideration. Are public decision-makers, who are representatives of the state, prepared and equipped to engage in the humility proposed by Eisenberg?

### **Values, the Nation-State, and the Threat of Polygamy**

The polygamy issue has certainly attracted both state and public discussion of values and the nature of the Canadian nation. For example, in March 2009, Minister of Justice Rob Nicholson stated that polygamy was clearly in opposition to Canadian values. More specifically, the values that unite

Canadians were identified as “belief in human dignity, equality between men and women and the rule of law.” He noted that “Canadians of all backgrounds” share these basic values and that polygamy represented a clear challenge to them.<sup>19</sup> This statement was reportedly aimed at gaining political support for the government’s position. As Rebecca Johnson points out in Chapter 5, a similar deployment of values was made by Attorney General Wally Oppal, who said, “There are certain acts that I think Canadians find to be abhorrent and that is people who come here from other cultures with multiple wives.”<sup>20</sup> Johnson asks, “I wonder if the worry is that the yoking in of a third person creates a monstrous form of conjugality, one that risks giving birth to a morally deformed family” (112, this volume). This morally deformed family is in turn imagined as undermining the entire structure of Canada as we know it.

Statements such as those by Oppal function to construct not only polygamists but also polygamy as “other.” This in turn serves to map Canada in a particular manner, excluding pieces of our history and current practice that do not fit within the imagined nation.<sup>21</sup> Yet, gender equality, for example, is far from an achieved reality in Canada, and the terrain of Canadian values is far more complex and diverse than the statements above would admit. Further, multiple intimate relationships have always existed in this geographic space, among the First Nations, among traders who maintained families on both sides of the ocean, among immigrants of diverse origins, and among what surely must be the millions of people who, during the past 145 years of the colonial declaration of the birth of the nation, have engaged in short- and long-term sexually intimate relationships with more than one person at a time.<sup>22</sup> They are *us* and we are *them*, and all are inextricably woven into the fabric of the nation we call Canada. Nonetheless, narratives of who we are as a nation frequently exclude this part of the family from our collective memories. Polygamy, polyamory, serial monogamy, and adultery are all part of the national fabric, yet we are, as Rebecca Johnson notes, preoccupied with a particular version of the normal family, which is the only one permitted in our collective photo album.

The interweaving of specific versions of family with nation building is not unique to Canada. In Chapters 7, 6, and 8, Margaret Denike explores aspects of this entanglement in the United States, Jennifer Selby in relation to France, and Frances Morphy vis-à-vis Australia. Their discussions inform our understanding of how polygamy is understood and the normative family imagined in Canada. In all cases, the state is actively engaged in shaping the rhetoric of family, tying it to the project of nation building.

Margaret Denike traces the complex links between the consolidation of the racial formations of the Anglo-American nation, anti-polygamy discourses, and the “exclusion of African, Asian, and Middle Eastern immigrants from the national polity generally and from citizenship in particular” (143, this volume). The stories that were told about polygamy, initially in the United States and then in Canada, created a matrix of white Christianity that formed the basis of the *we* and the *other* that is replicated in the references to Canadian values that have infiltrated public discussions of late. Perhaps most intriguing is that the stories Denike recounts from 1850 to 1890 map neatly onto the narratives that have circulated in the recent polygamy discussions, whose themes include violence against women and the need to protect them, the importance of monogamy and the need to defend it, and the threat of the immigrant other, who must be defended against. Incredibly, the protection of monogamy arises in *Reference re: Section 293 of the Criminal Code of Canada*, which Gillian Calder examines in her Conclusion.<sup>23</sup>

In Chapter 8, Frances Morphy focuses on state regulation of Aboriginal people in Australia. Her use of classical anthropological genealogical diagrams to illustrate the mapping of family offers a unique contribution to this volume. She demonstrates the ways in which state categories are embedded with ideologies of normalcy that present as neutral policies or innocuous demographic or population measures. Such categories organize, sustain, and define normalcy and function to reduce complex kinship relations to numerical representations that have the capacity to reorganize the ways in which people live. Moreover, through its census categories, the state is able to erase polygamy and other non-normative family forms; if they are not measured as an official category, they disappear. As Morphy puts it, the census performs two functions:

First, it is a powerful tool employed by the state to make its subjects legible to itself so that it can act upon them. Second, it functions as an institution of the border zone, in which the state gives visibility, meaning, and value to certain types of family forms and household structures through the categories that it deploys to organize the collection of census data and then to code those data as “output.” (172, this volume)

Thus, Australia, like Canada, reshapes the narrative of the nation to create an image that fits with current policy objectives as well as with the construction of common values. Morphy’s discussion is also powerful because, through anthropological ethnography, it reintroduces particular types of

family forms not as “polygamous relationships” but as carefully worked out kinship arrangements that cannot be forced into our easy category of “polygamy.” Her chapter points to the necessity of seeing the world from the perspective of those whose lives challenge normative assumptions about family. Only by stepping into their normal can we begin to ask critical questions about our own.

“For the good of the nation” also figures in the French discourse about polygamy. In Chapter 6, Jennifer Selby’s study of Muslims in the Paris suburbs reveals the ways in which polygamy enters into contemporary French discourse of governance, nation maintenance, values, and the erosion of the traditional family. The protection of French secularism, or *laïcité*, is identified as lying at the heart of the nation-building project. The location of polygamy as a specifically religious practice brings it, and Muslims, into direct conflict with so-called French values. In the French context, polygamy is blamed for the disintegration of parental authority (although fathers are especially targeted) and for youth rioting. Polygamy and Islam, rather than poverty, a lack of access to employment, and racism, are held out as explanations for social unrest.

Selby mentions that polygamy is a minor practice in France; even the highest estimate states that less than 1 percent of the population engages in it. Why, then, has it sparked such a disproportionate negative state and public reaction? Although the entry point for debate in Canada has been the FLDS community at Bountiful, fear of the Muslim other has played a role as well, supporting the argument that the near-hysteria about polygamy is in part generated by a fear of the Muslim other.<sup>24</sup> As is highlighted by the chapters of Selby, Denike, and Morphy, polygamy paranoia is linked to a racialized other who threatens ideas of nation and who *we* are.

## Conclusion

The chapters in this volume invite a closer consideration of polygamy, its historical place, and its presence in contemporary society. They also encourage a taking stock of the ways in which we imagine family and intimacy and how their various forms encourage human thriving or facilitate harm. To open ourselves to critical inquiry, both of our own and of other ways of living, requires not only institutional humility but also what William Connolly calls agonistic respect.<sup>25</sup> Connolly advocates that this requires the suspension of one’s unwavering belief in one’s own position and allows for doubt, thus opening space for conversation and shared, rather an oppositional, experience.

One obstacle to the taking stock that we hope for is the problem of majoritarian thinking. Connolly's advice suggests that we meet this challenge by reflecting on our own assumptions about what is normal, desirable, and right, that we avoid the quick assessment of polygamy as wrong, and that we ask difficult questions. This is not easy work, as is demonstrated by the contributions to this volume. Nonetheless, our authors have stepped outside of conventional thinking and stereotypes to grapple with the complicated facts presented by polygamy.

Canadian polygamists struggle against majoritarian thinking on two fronts – in their choice of a family form that flows against the “normal” and in their commitment to a religion that lies outside the mainstream. The dangers of majoritarian thinking in relation to religious freedom were articulated in the early post-*Charter* case of *R. v Big M Drug Mart Ltd.*<sup>26</sup> In it, Justice Dickson emphasized the need for an expansive understanding of the religious freedom protection: “What may appear good and true to a majoritarian religious group, or to the state acting at their behest, may not, for religious reasons, be imposed upon citizens who take a contrary view. The *Canadian Charter of Rights and Freedoms* safeguards religious minorities from the threat of ‘the tyranny of the majority.’”<sup>27</sup>

Dickson J.'s broad interpretation is echoed by Binnie J. in his dissent in *A.C. v Manitoba (Director of Child and Family Services)*, a Supreme Court of Canada decision dealing with the religious freedom of A.C., a fourteen-year-old Jehovah's Witness girl who refused to accept a blood transfusion for her Crohn's disease: “The *Charter* is not just about the freedom to make what most members of society would regard as the wise and correct choice. If that were the case, the *Charter* would be superfluous.”<sup>28</sup> Binnie J.'s clear recognition that even unpopular or unwise decisions are potentially entitled to protection under the *Charter's* religious freedom clause is an important step away from assumptions about those who do not fit into normative frameworks. His comment is boldly honest in that an admission that a particular practice differs from one's experience raises one's own preconceived notions as subject to critical analysis. Of A.C., he notes, “[s]he claims the right to make a choice that most of us would think is a serious mistake, namely to refuse a potentially lifesaving blood transfusion.”<sup>29</sup> Yet, despite the decision that most of us would make, Binnie J. acknowledges the importance of moving past the reasoning that would mire us in what “everyone might think” to an assessment that is based in equality and a careful assessment of the practice in question.

Instead of emphasizing differences between us and them, we might consider the similarities in lives. These can be the persistent presence of violence against women and the abuse of children in our society, or they might be the ways in which the mundane activities of daily life – meal preparation, financial management, driving children to appointments – are widely shared. Rebecca Johnson’s discussion of family life with an extended group of cousins, aunts, and uncles pushes past the expected normalcy of the photo-perfect couple, their two children, and their dog. She invites us into another sort of family that reflects her experience and resembles the other who is so demonized in discussions of polygamy. As Johnson puts it, “[t]he thing is, if you came to visit us in the summer, you would have had a hard time deciding which children belonged to which mothers or which adults were responsible for which children. You might even have suspected you were in Bountiful” (100, this volume).

Achieving a fair and careful assessment of polygamous relationships and the ways in which they might harm or sustain women and children is challenging. Imaginations have run rampant as fears are fuelled by the media, leaving us with images of thirteen-year-olds being spirited away, of poverty, and of abuse. The research by Angela Campbell stands in sharp contrast to these depictions and, like the juxtaposition of penguin myth with penguin reality in Gillian Calder’s work, prompts a deeper questioning about our assessment of polygamy, monogamy, and other family forms. As Rebecca Johnson suggests, surely there is room for a more complicated story of family life.

We hope that this collection will serve to complicate, rather than to simplify, the way that polygamy is imagined. But we also hope that the book will not be reduced simply to a work “about polygamy.” Rather, it raises important questions about family form, the functions of family, the role of the state in maintaining a certain family type as normal, and the ways in which particular metaphysical assumptions underlie criminal law. The goal is not to persuade the reader about the “right” or “wrong” of polygamy, but to introduce multiple narratives that reveal the many challenges posed by this complex issue.

#### Notes

- 1 *Criminal Code*, R.S.C. 1985, c. C-46, s. 293(1) reads, “Every one who (a) practises or enters into or in any manner agrees or consents to practise or enter into (i) any form of polygamy, or (ii) any kind of conjugal union with more than one person

at the same time, whether or not it is by law recognized as a binding form of marriage, or (b) celebrates, assists or is a party to a rite, ceremony, contract or consent that purports to sanction a relationship mentioned in subparagraph (a)(i) or (ii), is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.”

- 2 *Reference re: Section 293 of the Criminal Code of Canada*, 2011 BCSC 1588 [Reference]; Gillian Calder, “Penguins and Polyamory: Using Law and Film to Explore the Essence of Marriage in Canadian Family Law” (2009) 21 C.J.W.L. 55.
- 3 On average, Canadian women perform 13.8 hours a week of domestic labour, whereas men average 8.3 hours per week, even in dual-earner couples. Anne Milan, Leslie-Anne Keown, and Covadonga Robles Urquijo, “Families, Living Arrangements and Unpaid Work” in *Women in Canada: A Gender-Based Statistical Report*, Catalogue No. 89-503-X (Ottawa: Statistics Canada, 2011) at 21, online: Statistics Canada <<http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11546-eng.pdf>>. Women in dual-earning couples devote an average of 49.8 hours per week to unpaid childcare, whereas their male counterparts spend 27.2 hours. *Ibid.* at 20.
- 4 Although both men and women tend to experience some decrease in income after divorce, women’s median income falls almost 30 percent in the year their marriage ends, whereas men’s median income diminishes by 6 percent. Even four years later, women’s income remains below its pre-divorce level, at 80 percent of their income before marriage dissolution. Tahany M. Gadalla, “Impact of Marital Dissolution on Men’s and Women’s Incomes: A Longitudinal Study” (2009) 50:1 *Journal of Divorce and Remarriage* 55 at 60.
- 5 A Statistics Canada study revealed that 88 percent of women took a leave of absence from work after a birth or adoption, compared to 45 percent of men. Pascale Beaupré and Elisabeth Cloutier, *Navigating Family Transitions: Evidence from the General Social Survey* (Ottawa: Statistics Canada, 2007) at 11, online: Statistics Canada <<http://www.statcan.gc.ca/pub/89-625-x/89-625-x2007002-eng.pdf>>.
- 6 See Shelley Phipps, Peter Burton, and Lynn Lethbridge, “In and Out of the Labour Market: Long-Term Income Consequences of Child-Related Interruptions to Women’s Paid Work” (2001) 34:2 *Canadian Journal of Economics* 411; and Xuelin Zhang, “Earnings of Women with and without Children” (March 2009) 10:3 *Perspectives on Labour and Income* 1, Catalogue No. 75-001-X, online: Statistics Canada <<http://www.statcan.gc.ca/pub/75-001-x/2009103/pdf/10823-eng.pdf>>.
- 7 *Reference, supra* note 2; Calder, *supra* note 2.
- 8 Calder, *ibid.* at 80.
- 9 *Ibid.* at 59.
- 10 See Irwin Altman and Joseph Ginat, *Polygamous Families in Contemporary Society* (New York: Cambridge University Press, 1996); Martha Bradley, *Kidnapped from That Land: The Government Raids on the Short Creek Polygamists* (Salt Lake City, UT: University of Utah Press, 1993); Angela Campbell, “Wives’ Tales: Reflecting on Research in Bountiful” (2008) 23:1-2 C.J.L.S. 121; and Angela Campbell, “Bountiful Voices” (2009) 47 *Osgoode Hall L.J.* 183.
- 11 A 1993 Statistics Canada survey on violence against women reported that 51 percent of all Canadian women had experienced at least one incident of sexual or

- physical violence; for 60 percent of these women, there was more one than occurrence. Statistics Canada, "Violence against Women Survey" *The Daily* (18 November 1993) 1 at 1. A more recent survey on family violence found that of the 19 million Canadians who had a current or former spouse in 2009, 6 percent reported being physically or sexually victimized by that person during the preceding five years, whereas 17 percent reported experiencing emotional or financial abuse. Further, only 22 percent of victims report spousal violence. Shannon Brennan, "Self-Reported Spousal Violence" in *Family Violence in Canada: A Statistical Profile* (Ottawa: Statistics Canada, 2011) 8 at 8 and 15.
- 12 Benjamin L. Berger, "Moral Judgment, Criminal Law, and the Constitutional Protection of Religion" (2008) 40 Sup. Ct. L. Rev. (2d) 513 at 515.
  - 13 *Ibid.*
  - 14 See Eileen Barker, *The Making of a Moonie: Choice or Brainwashing?* (Oxford: Blackwell, 1984); David G. Bromley and James T. Richardson, *The Brainwashing/Deprogramming Controversy: Sociological, Psychological, Legal and Historical Perspectives* (New York: Edwin Mellen Press, 1983); and Benjamin Zablocki and Thomas Robbins, *Misunderstanding Cults: Searching for Objectivity in a Controversial Field* (Toronto: University of Toronto Press, 2001).
  - 15 See Conseil du statut de la femme et al., *Affirmer la laïcité, un pas de plus vers l'égalité réelle entre les femmes et les hommes* (Quebec City: Conseil du statut de la femme, Direction des communications, 2011), online: <<http://collections.banq.qc.ca/>>; and Mary Daly, "The Spiritual Revolution: Women's Liberation as Theological Re-Education" (1972) 12:4 Andover Newton Quarterly 163.
  - 16 Rebecca Johnson, *Taxing Choices* (Vancouver: UBC Press, 2002).
  - 17 *Ibid.* at 125.
  - 18 *Ibid.* at 126.
  - 19 Rob Nicholson, cited in Andrew Mayeda, "Polygamy 'Clear Challenge' to Canadian Values: Federal Document" *Canwest News Service* (24 March 2009).
  - 20 Wally Oppal, cited in Marten Youssef, "Polygamous Muslims Carefully Watching B.C. Case" *CTV News* (21 February 2011).
  - 21 See Benedict Anderson, *Imagined Communities* (1983; reprint, London: Verso, 1991), for a discussion of the ways in which nations are imagined and the consequences of such imaginaries.
  - 22 Sarah Carter, *The Importance of Being Monogamous: Marriage and Nation Building in Western Canada to 1915* (Edmonton: University of Alberta Press, 2008), documents the connection between nation building and the enactment of the *Criminal Code* provisions on polygamy in the late nineteenth century. Carter focuses on polygamy among First Nations specifically, but she makes links to the regulation of LDS immigrants and other groups who practised polygamy. The rhetoric of saving women and children was also pervasive during this phase of the governance of polygamy. So too was that of the dangerous woman, more often than not in relation to the Aboriginal women of the Blood Reserve (which was across the road from Cardston, Alberta, the first LDS settlement), revealing the colonial and racist undertones of governance strategies. Monogamy was imposed on both groups for the sake of the prosperity and stability of the nation.

- 23 *Reference, supra* note 2.
- 24 Youssef, *supra* note 20; Randy Boswell, “More Than Half of Canadians Mistrust Muslims, Poll Says” *Islamophobia Today* (6 May 2013), online: Islamophobia Today <<http://www.islamophobiatoday.com/>>.
- 25 William E. Connolly, *Neuropolitics: Thinking, Culture, Speed* (Minneapolis: University of Minnesota Press, 2002).
- 26 *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11; *R. v Big M Drug Mart Ltd*, [1985] 1 S.C.R. 295 [*Big M*].
- 27 *Big M, ibid.*, para. 96.
- 28 *A.C. v Manitoba (Director of Child and Family Services)*, 2009 SCC 30 at 163.
- 29 *Ibid.*, para. 162.

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