

Why marital law is a total failure

The nuclear family is universal today even in Muslim states, and is granted almost cult-like status by western legal scholars. Yet for all of monogamy's perceived advantages as a family structure, acceptance of same-sex marriage is also on the rise worldwide, and polygamous families face increasing legal prosecution for reasons that are neither fully rational, nor fully legitimate, but have in fact everything to do with unwarranted government control in areas where government has no popular mandate, or valid experience.

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In a discussion about marital law, one should mention both ancient laws and traditions, as well as modern ones.

The Law of Abraham authorizes *polygyny*, i.e. the plural form of marriage involving one man and multiple women. This is a more accurate term than *polygamy*, which can refer to any type of plural marriage. Throughout the Old Testament, eight types of family structures are described without any specific condemnation, and some family structures involved concubines and multiple wives (Robinson, 1997).

The Law of Sarah also authorizes polygyny. The reference to Sarah comes from the story of Abraham and Sarai (who was later renamed Sarah) in the Bible's book of Genesis. Not being able to conceive, Sarai told her husband Abraham to engage in sexual intercourse with her female slave Hagar. We do not know whether this was against Hagar's wishes, as slaves had no power. This law gives a man's first wife the right to consent to, or prohibit, her husband's wishes to marry additional wives. In its ancient practice, however, the Law of Sarah was really a type of Hobson's choice: if she consented, then her previously monogamous marriage would become polygamous; if she refused consent, then God (or her husband) would destroy her (*ibid*, 1997).

There are at least eight types of marriages mentioned in the Bible:

1. **The standard nuclear family.** This is your standard monogamous family, but customs were different in ancient times. Interfaith marriages were theoretically forbidden, and the children of such marriages were considered illegitimate. Marriages were arranged by family or friends, and not the result of gradually evolving relationships developed during a period of courtship. Brides who had been presented as virgins, but who could not be proven such, were stoned to death by the men of their village. Men faced no similar penalty.
2. **Polygynous marriage.** A man here would leave his family of origin and join with his first wife. Then, as finances allowed, he would marry as many additional women as he desired. The new wives would join the man and his other wives in an already established household. References to polyandrous marriages in the Bible, i.e. unions involving one woman and more than one man, do not seem to exist.
3. **Levirate Marriage.** This involved a woman who was widowed without having borne a son. She would be required to leave her home, marry her brother-in-law, live with him, and engage in sexual relations. Many of these relations clearly required a man and/or a

woman to submit to undesired sexual relations, and/or to have children that they also might not have desired.

4. **A man, a woman, and her property: a female slave.** As described in Genesis 16, Sarah and Abram were infertile. Sarah owned Hagar, a female slave who had been purchased in Egypt. Because Hagar was Sarah's property, she could dispose of her as she wished. Sarah gave Hagar to Abram as a type of wife, so that Abram would have an heir. This type of marriage is similar to the polygynous marriage. We do not know whether this was against Hagar's wishes, as slaves had no power, but the differences in power between the owners and the slaves warrant separate classification.
5. **A man, one or more wives, and some concubines.** A man could keep numerous concubines, in addition to one or more wives. These women held an even lower status than a wife did.
6. **A male soldier and a female prisoner of war.** Numbers 31:1-18 describes how the army of the ancient Israelites killed every adult Midianite male in battle. Moses then ordered the slaughter in cold blood of most of the captives as well. Only the lives of 32,000 women — all virgins — were spared. In this case, the women POWs had to submit to the soldiers against their will.
7. **A male rapist and his victim.** Deuteronomy 22:28-29 requires that a female virgin who is not engaged to be married, and who has been raped must marry her attacker, no matter what her feelings were towards the rapist. A man could become married by simply sexually attacking a woman that appealed to him, and paying his father-in-law 50 shekels of silver. There is one disadvantage of this approach, however: the rapist was not allowed to subsequently divorce his victim.
8. **A male and female slave.** Exodus 21:4 indicates that a slave owner could assign one of his female slaves to one of his male slaves as a wife. There is no indication that women were consulted during this type of transaction, so most likely rape was involved in most cases.
(Robinson, 2001a).

Polygynous marriages were part of God's plan according to the Old Testament. Jacob had twelve sons who became the patriarchs of the twelve Tribes of Israel with the help of two wives and two female slaves. Jesus never criticized polygynous marriages, levirate marriages, or any of the other marriage types listed above (*ibid*, 2001a).

Today in Christian countries, there are essentially four marriage types:

1. **Living together arrangements of heterosexual and homosexual couples.** These are common-law, informal co-habiting arrangements, which sometimes can be registered with the government. Most North American heterosexual couples today who eventually marry have spent an interval of time living together before marriage, and some never marry.
2. **Heterosexual marriages.** These are formal marriages registered with the government. Many are performed in a church, synagogue, mosque, or temple. In some cases a civil ceremony is performed.
3. **Polygynous marriages.** In North America, polygynous marriages were extensive among Mormons, but the practice was largely phased out during the 19th century. Today, polygyny appears to be confined to small Fundamentalist Mormon groups that have been excommunicated by the main Mormon Church, or the Church of Jesus Christ of Latter-

day Saints. The Attorney General of the Canadian province of British Columbia has decided not to prosecute Mormon splinter groups in that province for polygyny. The Canadian Charter of Rights and Freedoms guarantees religious freedom, and would probably nullify the province's Marriage Act in these cases. This gives such marriages a degree of legality at least in one Canadian province. Tens of thousands of polygynous couples live in Utah, Arizona, and other states where their illegal marriages are largely ignored by police.

4. **Homosexual, lesbian, or same-sex marriages and unions.** As of January 2008, same-sex couples can marry in Massachusetts, Belgium, Canada, the Netherlands, South Africa, and Spain. Residents of New York, Rhode Island, Aruba, Israel, and the Netherlands Antilles can get married elsewhere, return to their state or country, and have their marriages registered. European states such as Andorra, Czech Republic, Denmark, Finland, France, Germany, Iceland, Luxembourg, Norway, Portugal, Slovenia, Sweden, Switzerland, and the United Kingdom allow same-sex couples to enter into civil unions and domestic partnerships, and obtain most or all of the state marriage benefits. The same applies to US states such as California, Connecticut, District of Columbia, Hawaii, Maine, New Jersey, Washington, New Hampshire, and Oregon; Australian states such as Tasmania and Victoria; and New Zealand.
(Robinson, 2001b; Same-sex marriage, 2007)

Despite current bans, polygyny has been practiced in many cultures throughout history. It was accepted in Hebrew society, in classical China, and was accepted in many traditional African and Polynesian cultures. In India, polygyny has been practiced since ancient times, and is still allowed today among Muslims. Even in Greece polygyny was common prior to the Roman Empire and the Roman Catholic Church, and afterwards one wife, but multiple lovers was tolerated. Sub-Saharan Africa was never under the influence of Rome, and has had polygamy legalized for the majority of the past two millennia (Polygyny, 2007).

Polygyny was banned in the United States in 1890 because of laws passed concerning Mormon polygyny. It was allowed in the early Church of Jesus Christ of Latter-day Saints (LDS Church), but was ended in 1890 under government coercion prohibiting Utah from becoming a state as long as they allowed polygyny. Since 1904, members of the LDS Church may face excommunication for being polygynous, though several sects of fundamentalist Mormons still actively practice polygyny (*ibid*, 2007).

Most Muslim countries (except Albania, Tunisia, Turkey, Bosnia-Herzegovina, and former USSR republics) retain traditional Sharia, which interprets the teachings of the Quran to permit polygyny for up to four wives. In societies where polygynous marriage is banned, polygamous male behavior may still be observed in the establishment of mistresses, who are openly or secretly supported. In some cases the male may have a second family (or more) with a non-legally recognized wife, supporting her children and his (*ibid*, 2007).

Under Hindu Marriage Law, as understood by the constitution of India, polygamy is forbidden for Hindu, Jains, and Sikhs. However, Muslims in India are allowed to have multiple wives. Marriage laws in India are dependent upon the religion of the subject in question. In Buddhism, however, marriage is a secular issue (Polygamy, 2007).

Secular law in most western countries with large Jewish and Christian populations does not recognize polygamous marriages. However, few such countries have any laws against living a polygamous lifestyle: they simply refuse to give it any official recognition. Parts of the United States, however, criminalize even the polygamous lifestyle. These laws originated as anti-Mormon legislation, although they are rarely enforced (*ibid*, 2007).

In Canada, polygamy is a criminal offence but prosecutions are rare (*ibid*, 2007). The provinces of Ontario, Yukon, North West Territories, and Nunavut include polygamous parties who were married in foreign jurisdictions that permit polygamy in their definition of “spouse”, for the purpose of property equalization, but this would not apply to *de facto* polygynous unions formed in Canada, or unions formed in jurisdictions where polygamy is illegal (Cook & Kelly, 2006). In addition, in a number of court cases judges have upheld the right of Immigration Canada to deny entry to practicing polygamists (Bramham, 2007).

Polygamy in Bhutan is permitted, though not because of any apparent religious normative order. Although polygamy and polyandry are both permissible under Bhutan’s *Marriage Act, 1980*, polyandry is rarely practiced. This law requires that a spouse’s consent is obtained before engaging in a subsequent marriage (Campbell et al, 2005).

Most social and legal criticisms of polygamy in the West center on women and their rights. It is often stated by legal and other scholars that polygamy violates the principle of equality of women in marriage. Others cite that polygamy forces women into abject poverty, or stereotypes women into reproductive or service roles.

While some of these criticisms may appear to be legitimate on the surface, monogamy in reality does not guarantee the equality of rights of women anymore than polygamy does. Domestic violence and abuse, although universal to both sexes, is still predominantly directed towards women, and this regardless of whether they live in monogamous or polygamous relations. According to some reliable statistics, out of an estimated 635,000 incidents of domestic violence in 2001-2002 in England and Wales, 81 percent of the victims were women, and 19 percent were men. This clearly shows that women experience violations of their rights even in the UK, where polygamy is clearly banned. Yet it can also be said, matter-of-factly, that there are refuges (or shelters) in the UK for women who are victims of domestic violence, but somehow no refuges for men, even though a minority of them are also affected by domestic violence (Deas, 2005).

Women are also not necessarily wealthier in monogamous relations, and in the event of divorce, which is much more probable in monogamous relations than polygamous ones, it is women who become poorer, not men, although here the impact is a lot less than what was hyped by some star sociologists in the past. Since its publication in 1985, Lenore Weitzman’s *The Divorce Revolution* has had a critical role in shaping the national debates on divorce and its economic effects. The book’s claim that in the year after divorce, women’s standard of living decreased by a whopping 73 percent, while men enjoyed an increase of 43 percent, caught the attention of legislators and judges, and has altered public perceptions of men, women, and divorce. The book was regarded so much like holy writ that even President Clinton cited it in defense of his program to attack deadbeat dads. The only problem with the statistic, however, is that it turns out to be wrong. (Rapp, 1996).

In the meantime, faulty research, and the need for a villain in divorce cases, has fueled a jeering chorus of politicians, journalists, and sociologists that has transformed fatherhood into “an obvious and defenseless scapegoat for the ills of society.” (Sanford, 1998). It can be argued that while stereotyping women into merely reproductive or service roles is not productive in terms of human rights, stereotyping men into merely deadbeat dad and provider roles also causes damage. In fact, it has already caused damage, placed the economic burden of raising children squarely on the shoulders of men, and in societies where women are supposed to be equal before the law, but who still behave like victims anyway. This is occurring, by the way, after women gained access to higher education in even greater numbers than men did, and access to many of the same jobs, and corresponding salaries, which were once available only to men.

All of the perceived advantages of monogamy not only failed to make women as wealthy as men, and truly equal before the law; not only they clearly failed to enrich the sex lives of men, liberate or empower them; but in fact they only give government more control over our lives. That is the truth.

Marriage, real marriage, is not supposed to really be about the rights of women, or even the rights of men, but rather what is best for developing children and their welfare. It is the rights of children that should be primary focus of marital law, yet these are largely ignored in either monogamous or polygamous societies, and certainly children are no better off today with all the gains made so far by same-sex marriage partners.

We live in a narcissistic world where marriage is supposed to give women equality, where even same-sex couples are supposed to have marital rights. Yet nobody understands that marriage, and its rights, were not created for leveling the playing field between men and women — a field best leveled when women simply do not get married. Marriage was not created in order to ensure that same-sex partners enjoy the same benefits as partners of the opposite sex — who are very likely to have dependent children. No, marriage was supposed to mainly benefit children by providing them with material and emotional stability, yet children are the last beneficiaries of the marital institution.

As things stand today, marital law is such a failure, and has neglected children and their welfare to such a degree, that I believe that marriage, in any form, should be made illegal, so that women, men, and even homosexuals and lesbians will stop trying to benefit from something only children should really benefit from.

References

- Bramham, D. (2007, July 13). Bountiful case has wide ramifications for Canadian law. Vancouver Sun. Retrieved November 19, 2007, from http://pages.usherbrooke.ca/sodrus/pdf/pdf_dossiers/polygamie59.pdf.
- Campbell, A. et al. (2005, November). Polygamy in Canada: Legal and Social Implications for Women and Children. A Collection of Policy Research Reports. Retrieved November 19, 2007, from http://www.swc-cfc.gc.ca/pubs/pubspr/0662420683/200511_0662420683_e.pdf.
- Cook, R.J., & Kelly, L.M. (2006, September). Polygyny and Canada's Obligations under International Human Rights Law. Retrieved November 19, 2007, from <http://canada.justice.gc.ca/en/dept/pub/poly/chap6.html>.
- Deas, C.O. (2005, December). Why this site refers mainly to women. Domestic violence. BBC. Retrieved November 20, 2007, from http://www.bbc.co.uk/relationships/domestic_violence/whyhh_index.shtml.
- Polygamy. (2007, November 19). *Wikipedia, the free encyclopedia*. Retrieved November 19, 2007, from <http://en.wikipedia.org/wiki/Polygamy>.
- Polygyny. (2007, November 3). *Wikipedia, the free encyclopedia*. Retrieved November 19, 2007, from <http://en.wikipedia.org/wiki/Polygyny>.
- Rapp, C. (1996). *Lies, Damned Lies, and Lenore Weitzman*. Retrieved November 20, 2007, from <http://www.acbr.com/biglie.htm>.
- Robinson, B.A. (1997). Polygyny in the Mormon movement: The Law of Abraham & the Law of Sarah. Ontario Consultants on Religious Tolerance. Retrieved November 19, 2007, from http://www.religioustolerance.org/lds_poly3.htm.
- Robinson, B.A. (2001a). Marriages & families in the Bible. Bible passages describing eight family/marriage types. Ontario Consultants on Religious Tolerance. Retrieved November 19, 2007, from http://www.religioustolerance.org/mar_bibl0.htm.
- Robinson, B.A. (2001b). Marriages & family structures: opposite-sex and same-sex; ancient and modern times. Ontario Consultants on Religious Tolerance. Retrieved November 19, 2007, from http://www.religioustolerance.org/mar_bibl0.htm.
- Same-sex marriage. (2007, November 19). *Wikipedia, the free encyclopedia*. Retrieved November 19, 2007, from http://en.wikipedia.org/wiki/Same-sex_marriage.
- Sanford, L.B. (1998). *Divorced Dads: Shattering the Myths*. Tarcher/Putnam: New York.

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