

## CHAPTER 8



# MORMONISM: HARM, HUMAN RIGHTS, AND THE CRIMINALIZATION OF FUNDAMENTALIST MORMON POLYGAMY\*

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With the Utah conviction (eventually overturned) of fundamentalist Mormon<sup>1</sup> leader Warren Jeffs on two counts of rape as an accomplice,<sup>2</sup> and quashed indictments in British Columbia against two fundamentalist leaders (James Oler and Winston Blackmore) for allegedly practicing polygamy,<sup>3</sup> heated legal and social debates are occurring over what societies' responses should be to polygamy<sup>4</sup> in general and its fundamentalist Mormon version in particular. Child welfare is the most sensitive concern around polygamy issues, and this concern was at the center of the decision by officials in Texas's Department of Family and Protective Services to coordinate with law enforcement in raiding the fundamentalist Mormons' Yearning for Zion Ranch near Eldorado on April 3, 2008.<sup>5</sup> A raft of other controversial issues exist, however, around the practice, related to sexual, physical, medical, educational, and emotional abuse as well as financial malfeasance. Moreover, polygamy is a felony in both the United States and Canada, practiced (according to various accounts) by anywhere between 21,000 to 100,000 fundamentalist Mormon polygamists in the two countries (with additional practitioners in Mexico).<sup>6</sup>

I agree with the position that polygamy should remain a criminal, prosecutable offense in both countries, partly because of the widespread impact that the practice frequently has upon the human rights of children and the health and welfare of many people who live under its control. Specifically, I discuss the potential of harm to the health and welfare of girls and young women; the high occurrence of incest; the issue of infant deaths and genetic deformities; and the human rights issues related to the frequent fundamentalist Mormon practice of arranged marriages. In addition, polygamy typically displaces young men in polygamous communities, and often these communities rely upon welfare fraud and state support in order to operate. The state, in turn, has vested legal interests in maintaining monogamous marriages as legal entities, and the authoritarian, theocratic operation of polygamous communities threatens the rights of citizens within pluralistic, democratic states like the United States and Canada.

Although I realize that the particulars of polygamous practice vary to some degree between the groups themselves and the historical periods in which they have operated, these variations do not mitigate the detrimental impact that the practice has on many of the persons who live under its influence and on the North American societies in which it operates. Consequently, while others and I applaud efforts by Arizona and Utah officials to prosecute serious financial and sexual abuses associated with the practice (and sometimes along with them, bigamy and polygamy itself),<sup>7</sup> these prosecutions unevenly address other, serious, human rights violations that routinely occur in polygamous settings.

In the United States, all polygamists have lost their cases in court when attempting to defend their practice by arguing that the Supreme Court's *Reynolds v. United States* decision in 1878/1879<sup>8</sup> should be overturned. This decision affirmed the conviction of the prominent Mormon George Reynolds<sup>9</sup> for his polygamous practice, and after 130 years, it remains a good law that courts still cite.<sup>10</sup> While critics are correct to say that Chief Justice Morrison Waite did not identify the harms caused by polygamy,<sup>11</sup> abundant evidence now exists about significant personal and social damage caused by the practice. One can be a critic, however, of the Reynolds decision on any number of grounds but still conclude (as did attorney and author Elijah L. Milne), that "today there are many legitimate reasons for upholding the substance of federal and state anti-polygamy laws."<sup>12</sup> Many of these reasons involve harms that constitute serious human rights violations.

## 1. GIRLS, YOUNG WOMEN, AND PREGNANCY-RELATED PROBLEMS

While numerous and serious medical conditions can impact pregnant women and their fetuses and babies, the risk of these conditions increases due to mothers' young ages. Since many of the fundamentalist groups have histories of young brides (an issue to which I will return shortly), pregnancies among teenaged girls is common. These pregnancies are risky, however, since young women "are more likely than older women to suffer from severe anemia, pregnancy-induced hypertension, and delivery complications. . . ." <sup>13</sup> More seriously, "pregnant girls less than 15 years of age have a 60 percent higher maternal mortality rate than older mothers." <sup>14</sup> Without, however, any studies conducted on youth pregnancies among fundamentalist Mormon polygamists, we simply do not know if, or how, teens may have suffered from pregnancies.

We do know, however, that in the Fundamentalist Church of Latter Day Saints (FLDS) Texas ranch, "two girls were 12 when married; three were 13; two were 14; and five girls were fifteen when married. Seven of these [twelve] girls have had one or more children after marriage." <sup>15</sup> We also know that, in 1992, fifteen-year-old Kingston clan member, Andrea Johnson, was almost five months pregnant when she developed preeclampsia—a highly treatable but potentially deadly condition involving high blood pressure, swelling, possible seizures, organ damage (particularly to the brain, kidneys, and liver), visual problems, respiratory distress, etc. <sup>16</sup> Her young age was a risk factor, as was a family history (two of her sisters had developed it while pregnant). <sup>17</sup> Doctors performed a Caesarean section in an attempt to save the mother and fetus, but she died and her son has cerebral palsy—almost certainly caused by his premature birth. <sup>18</sup> (Her preeclampsia had developed into eclampsia [which can involve hypertension and related damage, multi-organ failure, and seizures], which killed her.) As a general statement about human rights violations of children that certainly fits this tragedy, "child marriage often ends in avoidable maternal death." <sup>19</sup>

A sister speculated that no one took Johnson to the hospital earlier because she had been married to her half-brother (incest is commonplace within this polygamous group), and the group did not want authorities to learn of it. <sup>20</sup> Controversially, however, after the mother died giving birth to the boy, the state let him stay with his father, who (six years later) was married to his own niece (which, as incest, was a third degree felony). An official from the Department of Child and Family Services said that "the child is well cared for, even though the

family has not complied with state laws requiring that the boy be in school or that he be granted a home-school exemption.”<sup>21</sup> An attorney, however, whose actions had brought about much-needed reform to the state’s child-protective services, charged, “[A] child living in an incestuous household is tantamount to child abuse.”<sup>22</sup> It remains to be seen whether Utah Attorney General Mark Shurtleff is correct when he expressed his belief that “the practice of so-called ‘child-bride’ marriages within polygamous societies has been halted” in his state.<sup>23</sup>

## 2. INCEST

Incest (defined here as “sexual union with a near relative”<sup>24</sup>) is a widespread problem in these groups, which dates back to the earliest days of Mormonism.<sup>25</sup> The likelihood of incest increases with family size, social isolation, and rural location<sup>26</sup>—all of which are factors that describe most contemporary polygamous communities. In the contemporary period, reports of incest are widespread, and come from several polygamous groups.<sup>27</sup>

For example, a member of the Kingstons belt-beat his daughter (Mary Ann Kingston) for fleeing an arranged marriage to his brother (his daughter’s uncle), and in 1999 a Utah court convicted that father of third-degree felony child abuse for his actions.<sup>28</sup> A jury found the uncle “guilty of one count of incest and one of unlawful sexual contact with a minor,” and he received up to a ten-year sentence.<sup>29</sup> Three years later (in 2002), independent polygamist Thomas Arthur Green was convicted of “rape of a child” for having “spiritually married” his stepdaughter Linda Kunz when she was thirteen, and then having a child with her “four months after her fourteenth birthday”—a conviction upheld by the Supreme Court of Utah.<sup>30</sup> Writing about her own convoluted family relationships, Canadian Debbie Palmer (who grew up in Bountiful, British Columbia) explained:

Several of my stepsons were assigned to marry my sisters, so I also became a sister-in-law to my own stepchildren. After my mother’s father was assigned to marry one of my second husband’s daughters as a second wife, I became my own great-grandmother. The step-daughter became my step-grandmother and I her step-mother, so when I gave birth to two sons with her father, my own sons became my great-uncles and I was their great-great-grandmother.<sup>31</sup>

Given these complex, incestuous entanglements, no wonder genetic disorders are a growing problem.

### 3. INFANT DEATHS, GENETIC DISORDERS, AND GRAVEYARDS

More troubling is the fact that the FLDS has its own graveyards. According to former-member-turned-critic, Flora Jessop:

[Anti-polygamy critic] Linda Walker and I went out to the two cemeteries in the twin towns [of Hildale and Colorado City]—one was called Babyland, because it was just for babies. In those two graveyards we found 324 marked graves for children under eighteen years of age. Fifty-eight babies were buried in unmarked graves.<sup>32</sup>

A similar graveyard exists within the Allreds, or the Apostolic United Brethren. Based upon field work that began in 1989 and extended over half-a-decade, Janet Bennion reported:

Over the years, I have heard of at least seven children who died during childbirth. Two additional cases of infant death were from internal deformities during the first year of life. Deaths such as these are rarely spoken of public[ly], and often, in the cases of death at childbirth, the infants are quickly buried in the Harker graveyard without ceremony. No official records of births or deaths are kept.<sup>33</sup>

As in other polygamist groups, in the Apostolic United Brethren “[c]o-wives are commonly related to each other by blood (sister, cousin, niece, aunt, etc.) prior to their marriage to the same man.”<sup>34</sup> Because of the intermarriage within (and occasionally among) these groups, it is highly likely that many of these infant deaths are from genetically related illnesses.<sup>35</sup> Among the most debilitating and fatal is fumarase deficiency, which pervades the FLDS community, probably the Kingstons and the Allreds and possibly Thomas Green’s polygamous family.

The effects of this deficiency are tragic—seizures, water replacing large areas of brain matter, mental retardation, severe mobility problems (including the inability to sit), severe speech impediments, frequently early deaths, etc.<sup>36</sup> “By the late 1990s . . . , fumarase deficiency was occurring in the greatest concentration in the world among the fundamentalist Mormon polygamists of northern Arizona and southern Utah. Of even greater concern was the fact that the recessive gene that triggers the disease was rapidly spreading to thousands of individuals living in the community because of decades of inbreeding.”<sup>37</sup> As of early February 2006, there were twenty diagnosed cases in the FLDS community,<sup>38</sup> but “experts say the number of children afflicted in the FLDS community is expected to steadily increase as a

result of decades of inbreeding between two of the polygamous sect's founding families—the Barlows and the Jessops.”<sup>39</sup>

Similar, and equally tragic, birth defects appear within the Kingston clan. “Among the polygamous Kingstons, a number of children have been born with birth defects, among them one born with two vaginas and two uteruses but not vaginal or bowel openings. Outwardly, she appeared to have no sex organs.”<sup>40</sup> Other birth defects that likely contain a genetic component include preeclampsia, children born without fingernails, dwarfism, microcephaly, blindness, spina bifida, Down syndrome, kidney disease, and abnormal leg and arm joints.<sup>41</sup> One of Thomas Green's wives came from Colorado City, and a child of theirs suffers from a brain disorder named lissencephaly.<sup>42</sup> In sum, the incestuous practices of at least two FLDS communities are killing children, and condemning others to severely damaged and grossly debilitating lives.<sup>43</sup>

#### 4. ARRANGED MARRIAGES

A frequent theme in girls' and women's marriage accounts is that leaders of their respective groups have arranged them, often with little or no input from one or both parties or their parents themselves.<sup>44</sup> Leaders reward men's loyalty by assigning them brides, especially young brides.<sup>45</sup> The religious motivation for having three wives is that, after death, this number supposedly will allow men to pass to the highest level of heaven and become gods themselves. Children, therefore, reputedly are souls beginning their godly journeys.<sup>46</sup> Some nonfundamentalist women do convert into the practice,<sup>47</sup> but a large number of brides presumably come from within each respective group (or sometimes from a related group). A small sample study from an anonymous polygamous group indicated that “husbands and first wives are young and relatively close in age when they marry,” but “the gap between husbands' and wives' ages increases, with new wives in their 20s, on average, and the husband's age extending from the 20s to 30s to 40s and beyond.”<sup>48</sup>

Two consequences result from the demand for young brides as the men age. First, because the men are aware of competitors who also are attempting to get young brides, they target younger and younger girls in order to “celestially marry” them before someone else does. Second, the older men must eliminate the competition for those young brides—the unmarried boys and young men who are roughly the same ages as the targeted females.<sup>49</sup> Both of these consequences raise serious issues involving human rights abuses.

Arranged marriages for women of any age involve human rights violations, according to the 1979 *Convention on the Elimination of All*

*Forms of Discrimination Against Women.* Article 16 of that convention calls for women to have the same rights as men to enter into marriage and “freely to choose a spouse and to enter into marriage only with their free and full consent.”<sup>50</sup> Specifically involving underage girls, the same article in Convention pronounces, “The betrothal and the marriage of a child shall have no legal effect and all necessary action, including legislation, shall be taken to specify a minimum age for marriage as to make the regulation of marriages in an official registry compulsory. . . .”<sup>51</sup>

## 5. DISPLACED YOUNG MEN—“THE LOST BOYS”

Regarding the second consequence of polygamy—the pressure to eliminate male competition for young brides (sometimes called the surplus males issue)—the FLDS group has expelled hundreds of teens and young men from its communities, while others simply left. Estimates range from 400 to a thousand young men fled or suffered expulsion during a five-to-six-year period in the first years of this century.<sup>52</sup> Sometimes families even dropped off their banished sons in southern Utah and Arizona towns, forcing them to fend for themselves, despite the fact that they likely had not finished high school, had limited skills (perhaps concentrated in the construction trades), little money, and extremely limited experience with the outside world. Alternatively, for the males whom FLDS leaders did not want to lose or who could provide needed labor for member-owned businesses, these leaders sent untold numbers of boys and young men to a “reform retreat” comprising manual labor and church teachings in Colorado City.<sup>53</sup> Leaders sent other young men to the FLDS community in British Columbia, where Winston Blackmore put them to work in his or other polygamists’ logging-related businesses.<sup>54</sup> They worked for lower than minimum wages in harsh working conditions that often were dangerous and resulted in injuries.<sup>55</sup> Similarly, the working conditions in Colorado City/Hildale were equally dangerous, involving the illegal use of minors and minors using power tools.<sup>56</sup> “In one case, four underage boys employed by a Colorado City company suffered broken hips, knees, and head injuries after falling off a church roof while working in Utah.”<sup>57</sup> One autobiographer reported, “I would later see kids come back from Canada either broken or cowed, the spark gone from them—or so rebellious that they left the church at once.”<sup>58</sup>

Less information exists about working conditions within Kingston clan businesses, but what little there is suggests that significant labor issues involving pay and safety exist for the young men (and for that matter, the young girls and the adults) who work for some

of these companies. In an extensive 1998 investigation of the history and business dealings of this group, *Salt Lake Tribune* reporter Greg Burton wrote about its financial empire:

Profits were extracted from young laborers and the sacrifice of the many Kingston wives living in squalor with scores of children, say ex-members and former state investigators.

“The children are rather sheltered and kept out of the mainstream of society and at a young age enlisted to work for a Kingston company,” said a Utah welfare fraud investigator. “They got their needs met, food and clothing and things were given to them, but often times the food . . . was produce and meat out of their stores that could not be sold. Expired food was the mainstay of how they were living.”<sup>59</sup>

Some thirteen years earlier, an article in the *Wall Street Journal* indicated:

Many [members] work at clan enterprises for a fraction of the wages that similar work elsewhere would pay. A staple of their diets is wheat sprouts, which they call “grass.” But groups of clan members also go around to supermarket dumpsters to collect discarded produce.<sup>60</sup>

Finally, a 1998 editorial in the *Salt Lake Tribune* mentioned that many “children, especially girls . . . are made to work long days in family business, often paid in scrip to be redeemed only in family-owned enterprises.”<sup>61</sup> Safety information exists about one of the companies, a garbage disposal company that a Kingston family member owned called A-1 Disposal, and between 1993 and 1998, “A-1 Disposal has been cited for 245 state and federal safety violations and paid \$15,000 in fines to the Utah Department of Transportation.”<sup>62</sup> Every indication, therefore, is that many young men and women work in Kingston clan businesses from their teenage years onward, often in dangerous conditions for very low wages and poor benefits (which may include substandard food).

Beyond any local or federal laws that these groups may be breaking regarding their teen and adult workers, basic issues of human rights are at stake. The United Nations’ *International Covenant on Economic, Social and Cultural Rights*, which entered into force in 1976, recognizes:

the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular: (a) remuneration which provides all workers, as a minimum, with (i) Fair wages . . . ; [including] (ii) A decent living for themselves and their families . . . ; (b) Safe and



healthy working conditions . . . ; [and] (d) Rest, leisure, and reasonable limitation of working hours. . . .<sup>63</sup>

Without having documentation on the working conditions for teens and adults in other groups, we at least can conclude that labor exploitation is a common factor in two of the large polygamous organizations, likely affecting the lives of thousands of its members. Moreover, the substandard wages and inadequate investments in safety that characterize these polygamous companies undercut secular competitors whose job-bids necessarily reflect adherence to secular laws.<sup>64</sup> The numerous problems surrounding the lost boys are direct results of communities' attempts to maintain polygamy as a fundamental practice.

## 6. WELFARE FRAUD AND DEPENDENCE ON THE STATE

Claims of poverty cannot explain fully the widespread pattern of fraud and state financial dependence and exploitation that pervades many of these polygamous groups, especially because some exposed cases involve groups that were quite financially well-off. What may explain these cases is an attitude toward outsiders that first developed in early Mormonism and seems to have carried over within the contemporary polygamous sects.<sup>65</sup> Early ex-Mormon critic, Fanny Stenhouse, reported that the Mormon leaders of her era believed that the Latter-day Saints were the people of God to whom He had given "all the wealth and substance of the earth, and therefore it was no sin for them to help themselves—they were but taking their own. To over-reach or defraud their enemies was facetiously called by the Mormons 'milking the Gentiles.'"<sup>66</sup> Contemporary polygamists call similar actions "bleeding the Beast."<sup>67</sup>

In what now seems to have been an example of bleeding the Beast, Utah welfare workers in the early-to-mid-1980s uncovered a massive fraud case involving the Kingstons. They discovered that "at least four wives and 29 children of Mr. [John Ortell] Kingston collected hundreds of thousands of dollars in public assistance over ten years, even though Mr. Kingston was easily capable of supporting them." He was "a multimillionaire who controls a \$70 million polygamy-based business empire reaching into five states."<sup>68</sup> In "the biggest single recovery of child support ever made in the U.S.," Kingston repaid the Utah government \$250,000, and also "agreed to repay welfare benefits given in behalf of children of at least three other clan women."<sup>69</sup> While John Ortell Kingston avoided prison by his repayments, two others in his group were not so lucky. Joseph Fred Kingston pled guilty to criminal nonsupport, and one of his plural wives,

Lynette D. Taylor, pled guilty to theft by deception. Both received year-long prison sentences, but she obtained early release in order to care for her two severely handicapped children.<sup>70</sup>

Another fraud case involved Thomas Green, who in August 2001 (the year before his child rape conviction) a Utah judge convicted of four counts of bigamy and one count of criminal nonsupport.<sup>71</sup> Because of the latter conviction, the court ordered him “to pay \$78,868 in restitution to the state for welfare payments for his minor children, 25 of whom still live with him.”<sup>72</sup> Green had been avoiding his financial obligations to his children, letting welfare cover their costs.

Through the late 1990s:

The southern Utah town of Hildale, for instance, has one of the highest welfare participation rates in the west. Residents there, and in the next-door town of Colorado City, Ariz[ona], have enjoyed government subsidies for years.

Taxpayers have paid for an airport, roads, fire protection and sewers, improving property in towns where virtually all private land is owned by the polygamous church. Taxpayers also rehabilitated church-owned homes—in which residents must pass a faith test or face eviction.<sup>73</sup>

A decade later in Canada, expelled FLDS polygamist, Winston Blackmore, is in an income tax and welfare fight with the government.

Blackmore believes that—because the polygamy charges against him will lead to a Canadian Supreme Court challenge—the government should pay his legal bills (which the British Columbia Supreme Court refused to do in April 2010).<sup>74</sup> A concurrent battle, however, in a tax court reveals that he does not

foot all—or even most—of the huge bills for caring for his many [i.e., twenty-two] wives and [119] children.

All unemployed wives with children are instructed to seek the child-tax benefit, or even welfare, based on a single, low-income mother’s rate or on the relatively tiny income Mr. Blackmore declares.

Money earned by wives with well-paid jobs as midwives or teachers isn’t counted as part of the total family income, leaving other wives free to reap financial benefits, such as paying sister-wives to look after their kids.<sup>75</sup>

Meanwhile:

Blackmore is appealing his tax assessments, which claims he made close to \$2-million over five years, but he reported income of less than 1/10 of that: Only \$116,000.

That left Mr. Blackmore's wives free to claim thousands of dollars in child-tax credits, since his 'family' income was supposedly as low as \$25,000 in some years.<sup>76</sup>

Already the government was demanding that one wife pay back \$24,000, and that another wife repay an unspecified amount.<sup>77</sup> From Blackmore himself and three brothers, the Canada Revenue Agency is demanding "more than \$2 million in unpaid taxes, tax credits as well as unpaid penalties and fines."<sup>78</sup>

These examples, from four polygamous groups in two countries, reveal an attitude of entitlement amidst personal irresponsibility among many polygamists concerning the financing of their practice. Their attitude seems to be that God ordained their polygamous practice, so the disbelieving Gentiles should pay for it. Since something akin to this attitude has existed among polygamist Mormons for over a century-and-a-half, it seems endemic to the practice itself.

## 7. MARRIAGES, SEXUALITY, AND THE STATE

Thus far I have argued that polygamy inherently violates a number of human rights and laws, but now I will argue that its continued criminalization does not violate human rights issues as exist within same-sex marriage issues. In essence, polygamous practice is not analogous legally to same-sex practices. I begin this argument by returning to the *Reynolds* decision.

While Chief Justice Waite referred to marriage as a contract, his mention of "social relations and social obligations with which government is necessarily required to deal" provides the basis for seeing marriage as a legal status. The state confers that legal status as a relationship between two people as a unit and the rest of the community.<sup>79</sup> In the *Potter* case, the United States Court of Appeals listed a number of rights and obligations that the status of marriage conveys, ranging from inheritance, child support and protection, premarital counseling, etc.<sup>80</sup> One could add privileges such as decision-making concerning the termination of medical treatment, legal exemptions from court testimony against a spouse,<sup>81</sup> the protection of confidential communications between spouses,<sup>82</sup> income tax exemptions, rights to sue on behalf of one's spouse,<sup>83</sup> pension and medical benefits, etc. Marriage, therefore, is not merely a contract; it is a social and legal status that gives the parties special legal rights and obligations. While the exact privileges will vary between Canada and the United States, the basic principles remain similar.

Legalization of polygamy would demand a complete reworking of existing marital-related legislation, causing insurmountable degrees of imbalance and unfairness to multiple spouses and possibly their children in relation to non-polygamous citizens. On issues involving such topics as pensions and inheritance, legal adjustments for polygamists likely would disadvantage polygamists themselves, as payments would get divided (and hence dissipated) among numerous recipients. Moreover, the current tax-filing problems that Winston Blackmore and his wives are having in Canada highlights the kinds of problems that occur around financial obligations within polygamous marriages.

Such massive reworking of marital-related laws, however, need not occur when states or countries legalize same-sex marriages. In essence, the same arrangements that exist in law for heterosexual marriage partners simply extend to homosexual partners. Legal actions involving one issue have no bearing upon the other. As concluded by legal scholar Maura I. Strassberg:

The practice of same-sex marriage would not lead to despotism or undermine democracy, as the *Reynolds* Court feared polygamy would, nor would it undermine the way in which heterosexual marriage functions to teach, in a deep and concrete way, the lesson that the apparent sacrifices of individuality, required by the community, ultimately reestablish and strengthen individuality.<sup>84</sup>

Problems endemic to many Mormon fundamentalist polygamist communities—such as genetic abnormalities and medical risks caused by young (and possibly old) females' pregnancies—simply have no bearing on analyses of same-sex marriages. At its core, polygamy is not problematic because of the multiple sexual partners to which men gain access; it is problematic because of the foundational status of monogamous marriage to aspects of civil and family law, in addition to serious human rights abuses that appear in so many polygamous groups. Similarly, polyamory (simplistically defined as more than one partner) and homosexuality should not concern the law as long as the relationships involve consenting adults, in the absence of children, doing no obvious or demonstrable harm to themselves or others.<sup>85</sup> Polyamorous marriages, however (of which polygamy would be one type) inevitably encounter barriers when trying to imagine how the state could accommodate them.

As a form of marriage, polygamy suffers the opprobrium of international human rights condemnation. While the 1979 *Convention*

*on the Elimination of all Forms of Discrimination Against Women*<sup>86</sup> failed to specifically identify polygamy as a violation of women's rights, the 1994 "General Recommendations Made by the Committee on the Elimination of Discrimination Against Women" was clear and blunt:

Polygamous marriage contravenes a woman's right to equality with men, and can have such serious emotional and financial consequences for her and her dependents that such marriages ought to be discouraged and prohibited. The Committee notes with concern that some States parties, whose constitutions guarantee equal rights, permit polygamous marriage in accordance with personal or customary law. This violates the constitutional rights of women, and breaches article 5 (a) of the Convention.<sup>87</sup>

Article 5 to which this passage refers directs:

States Parties shall take all appropriate measures: (a) To modify the social and cultural patterns of conduct of men and women with a view to achieving the elimination of prejudices which are based on the idea of the inferiority or the superiority of either of the sexes or on the stereotyped roles for men and women.<sup>88</sup>

Having reviewed these and other international conventions and laws, Canadian human rights expert, Rebecca J. Cook, and J. D. candidate, Lisa M. Kelly, reached the following conclusions about women and children:

Polygyny isolates their rights as articulated in international human rights law. Specifically, polygyny undermines the rights of women and children in relation to family life, security, and citizenship. While the discrete human rights contained within these realms are by definition universal, it is nevertheless clear that just as the harms of polygynous unions may differ according to their context, so also may the rights violations. Significantly, however, the right to equality within marriage and the family is violated *per se* by polygyny, regardless of the cultural or religious context in which it is practiced.<sup>89</sup>

In line with these conclusions, another Canadian law professor observed, "There is a growing worldwide trend towards prohibiting polygamy, even in societies where it has long, religiously based traditions, reflecting the greater recognition of equality, especially gender equality."<sup>90</sup>

## 8. POLYGAMY AS A THREAT TO THE DEMOCRATIC STATE

While showing so many forms of harm emanating out of polygamy, I have neglected to discuss what, historically, was the most important one: its threat to the democratic state. Scholars and jurists have criticized Chief Justice Waite's failure to provide clear examples of harm to the state, but one supporter of the *Reynolds* decision provided perhaps the most succinct defense of it and related early decisions:

19th century Mormon polygamous marriages operated to devalue and repress the individuality of all family members, promoted the significance of kinship ties in a way which prevented notions of abstract equality and common state citizenship, institutionalized the expanded family as the greater political structure, and socialized its adherents to accept personal, hierarchical rule as a model for the existence of governmental power. This then provided both an explanation and an enduring justification for 19th century legislative actions designed to prevent polygamous marriage from becoming a legitimate alternative within American society and 19th [century] judicial decisions upholding these acts.<sup>91</sup>

As is often the case, commentators in future generations see with clarity what few people had seen at the time of crucial events. Turning our gaze, however, to our own era, we have sufficient evidence to address the issue of polygamous harm and threat to democratic society without having to wait for those in the future to point them out.

One of the more creative contributions to the “polygamy/democracy harm” debate appeared in the form of an evolutionary biology perspective formulated by Canadian political scientist Tom Flanagan:

Polygamous societies tend toward extreme authoritarianism and arbitrary government, with Draconian punishments to protect harems and control slaves and soldiers. Driven by millenniums of evolutionary pressure, young men will take extreme chances to find sexual gratification, so there have to be extreme punishments to control their libidinous passions. There is also a tendency toward permanent warfare, because plundering neighbouring peoples is the only way of satisfying the polygamous social system's limitless craving for women, slaves, and soldiers.

Polygamous, authoritarian systems may achieve imperial conquest and cultural efflorescence, but they do not favour the growth of democracy.<sup>92</sup>

While Flanagan was basing his comments on a broad sweep of historic societies, with just slight adjustments his observations hold true for

the polygamous Mormon colonies in the West. Nevertheless, I do not adopt an evolutionary biological approach about the issue, nor do I take a philosophical one, as did Maura Strassberg, with her attempt to use Hegelian concepts to identify polygamy's antidemocratic threat.<sup>93</sup> Instead, I synthesize recent historical material—documents, media accounts, autobiographies, academic articles, etc.—into a multifaceted analysis of fundamentalist Mormonism's challenges to free and open societies.

Such an analysis surely must begin with the twin towns (but single FLDS community) of Hildale and Colorado City. More-or-less left to its own for decades after the Short Creek raid in 1953, the community could have developed itself in step with the evolving—and increasingly pluralistic and egalitarian—democracy around it. Instead, the community created a theocracy—one that had the governmental and civic positions that other towns had, but all controlled by polygamous men (never women) who answered to an unaccountable person whom they thought to be the Prophet. Everyone in a position of civic power—the town council, the mayor, the town clerk—were polygamists, elected by ballot, but only with one candidate per office according to the wishes of leading spiritual figure of the period.<sup>94</sup> Over time, polygamists filled other prominent positions—the school board, the local doctor, a judge, and the police force.<sup>95</sup> In fact, the Colorado City Law Enforcement Agency that civic leaders created during the 1960s, “had no recognized civil authority whatsoever and was only established so the Polygamist leaders could better control their young members.”<sup>96</sup> Specifically the “paramount duty” of Peace Officer Sam Barlow “was to make sure that the boys would not associate with the girls. At his discretion, he would run the undesirable boys out of town. . . .”<sup>97</sup> Polygamous leaders wanted the young girls available to themselves as additional plural brides. The abuse of power that these polygamists demonstrated—and the manipulation of young citizens' lives for the personal and religious ends of religious leaders—violates fundamental assumptions about the rule of law, the importance of the vote, free association, and the right of people to make fundamental domestic and personal decisions for themselves.

We know far less about the operating structures of other polygamous groups, but all of them seem to have authoritarian, supposedly divinely blessed men at the center of power. So, when the leader of the True and Living Church in Manti, Utah, James Harmston, wrote an angry letter to his youngest bride (forty-three years his junior) about her refusal to sleep with him, he signed it, “Your Husband, King and Priest,” and then circulated it to five more of his eighteen

spouses.<sup>98</sup> He saw his wives as his vassals or subjects, certainly not as equal partners in public and private spheres as life-partners.

Few people realize what role a polygamist doctor played in maintaining the polygamists' authoritarian reign over the community, especially over its young girls. The FLDS physician for both Hildale and Yearning for Zion was Dr. Lloyd H. Barlow, who began his practice sometime after 1999.<sup>99</sup> He would have known a great deal about sexual abuses in the FLDS community, since he was delivering babies and doing examinations. One notes with discomfort, therefore, that Texas authorities have charged him with "three misdemeanor counts of failure to report child abuse,"<sup>100</sup> although even if he had reported incidents to a law enforcement officer who had the mentality and skills-level of someone like Sam Roundy, the report would have gone nowhere. (Roundy was the officer who admitted not having forwarded up to two dozen child abuse reports to Child and Family Services.)<sup>101</sup> Unexplored in any academic or legal analysis, however, is how he (or possibly another doctor) may have been using mental health facilities and even a psychiatric hospital as ideological prisons for female polygamous dissidents and potential defectors.

Passing references hint that serious abuse of mental health facilities might be occurring. First, when Vancouver reporter and author, Daphne Bramham, summarized Carolyn Jessop's harrowing escape from Colorado City, Arizona, she indicated:

Had she been caught, . . . Carolyn believes that the doctor, another priesthood man, would have diagnosed her as mentally ill and either drugged her—Carolyn estimates at least a third of the women in the community are on Prozac—or consigned her to a mental institution in Flagstaff, Arizona, where several other "rebellious" women from the community had been locked away.<sup>102</sup>

Similarly, Flora Jessop mentioned a cousin (Laurene) who had been an inmate in a Flagstaff, Arizona institution four times, and then after someone made an allegation against her, the police "just handcuffed Laurene and had her committed to a mental institution—standard procedure in the FLDS for disobedient wives."<sup>103</sup>

Are women who suffer trauma from, and harbor doubts about, the polygamous lifestyle and/or its leaders forced into a local mental health institution against their wills? Certainly we know about the use of psychiatric facilities to silence dissent from other contexts—the Soviet Union in the 1950s and Communist China, beginning in the late 1950s and occurring periodically until today. Both of these



societies were authoritarian, whose leaders viewed dissent as political threats by maladjusted people, and they used bogus diagnoses of mental disorders to justify incarceration in psychiatric institutions.<sup>104</sup> Leaders of these regimes always assumed that the individuals themselves were dysfunctional, not the social environments in which they developed their criticisms. Like the Soviet Union and Communist China, many fundamentalist Mormon communities are closed, authoritarian enclaves, unable to handle criticism and dissent. Polygamists' abuse of mental health facilities, therefore, would fit a larger, disturbing pattern of professional abuse and ethical violations in the context of a politicized psychiatry.

In some instances, therefore, polygamists may be willing to use and distort modern medicine (in this case, psychiatry) in order to maintain adherence to the practice and to the leaders who control it. On another issue—genetic diseases caused by inbreeding and incest—polygamists remain indifferent to information that challenges their beliefs and actions. Concerned about the number of genetic disorders within polygamous communities, doctors visited two different groups, hoping to educate them about why their babies suffered so many birth defects. Both visits were failures, due to the indifference of the polygamists themselves. In 1998, two geneticists from the National Institutes of Health traveled to Utah, hoping to hold a seminar for the Kingstons “about the dangers of incest and birth defects, and, presumably gain permission to study the clan.” Only two members showed up, and neither of them was in a position of prominence or importance in the group. As one former member subsequently reported about the failed meeting, “I tried to get people to come, but nobody would listen.”<sup>105</sup>

In November 2004, a doctor who was concerned over the extensiveness of fumarase deficiency among members of the FLDS community held a town hall meeting that more than 100 members attended. Dr. Theodore Tarby explained in his presentation:

that the only way to stop fumarase deficiency in the community is to abort fetuses that test positive for the disease and for the community to stop intermarriages between Barlows and Jessops, Barlows and Barlows and Jessops and Jessops.

Tarby says members of the community made it clear that neither choice was acceptable. Tarby recounts a conversation he had with a member of the Barlow clan in which he tried to explain why so much fumarase deficiency was occurring among Mormon polygamists.

“I said, ‘You’re married to somebody you’re related to. That leads to problems.’”

The man's response was, "Up here, we are all related," Tarby says. They just don't worry about the effects of intermarriage.<sup>106</sup>

Even when medical experts provide (or attempt to provide) medical advice that most people would see as obvious about the dangers of incest and inbreeding, members of two polygamist groups (whose total membership probably exceeds 10,000 people) ignore it. Adherence to ideologically driven marriage behaviors that their respective leaders either arrange or approve, continues to condemn infants in this generation and for generations to come to unbelievably painful, handicapped lives.

These polygamists refuse to take simple yet sound medical advice, but they are very willing to take money from the state to care for these and other children whose handicaps are the result of members' reckless and irresponsible practices. The FLDS community "was receiving more than \$12 million a year in state assistance in Arizona to pay for health-insurance premiums." This money was in addition to the "tens of millions of dollars" it had received for its town government, its school, and its police.<sup>107</sup> Specifically for persons with fumarase deficiency and their families, the Arizona Department of Health Services and the Department of Economic Security provided them with services for more than fifteen years.<sup>108</sup> Unwilling to take officials' advice, the polygamists are very willing to take the state's money targeted to addressing a problem that its members' own behaviors cause.

Beyond the funds that polygamists obtain legally from the state, several prominent figures were not above taking additional funds illegally. Tom Green had to pay back the state tens of thousands of dollars; John Ortell Kingston returned hundreds of thousands. It remains to be seen how the financial battle involving Winston Blackmore and the government in British Columbia will conclude, but at this moment the Canada Revenue Agency says that he, his brothers, and various wives owe millions of dollars in reassessed taxes and related penalties. In addition to cheating various governments out of huge sums, many companies owned by polygamists underpay their workers and require them to work in unsafe conditions—actions that also may have tax advantages for the companies themselves, but which certainly damage other local (but honest) competitors.

One recent court decision involving yet another polygamist group concerned an effort to defraud someone who was attempting to buy land. In 2003, the (now deceased) leader of the Apostolic United Brethren, Owen Allred, was one of many conspirators who tried to

swindle a property-buyer out of \$1.5 million, and a court ordered him to pay back a portion of the money (\$30,000) to the victim (as part of a \$1.5 million decision in the victim's favor). The Apostolic United Brethren itself had to repay \$250,000—an amount that may grow, depending upon a district court's review of the case.<sup>109</sup> Fraud, therefore, seems to be widespread among the various fundamentalist Mormon communities, and it is not necessarily limited to actions against various governments.

In addition to examples of polygamous groups taking advantage of governmental funds illegally, one dramatic instance exists of a polygamist family using a legal ruling by a court to further the illegal practice of its members' group. In 1991, the Utah Supreme Court ruled that an adoption agency could not automatically bar a couple from adoption consideration because they lived polygamously.<sup>110</sup> After the ruling, Vaughn Fischer, his legal wife, Sharane, and his two additional wives were successful in adopting four children of the deceased polygamist, Brenda Thornton. (A fifth one had reached an age at which adoption was unnecessary.) Among the four children was an eleven-year-old named Janelle. Some years later while she accompanied Vaughn Fischer on a trip to Bountiful, British Columbia, ostensibly to attend a wedding, Prophet Warren Jeffs performed a second quick ceremony, marrying her to the Bountiful leader at the time, Winston Blackmore.<sup>111</sup> Now she is among the nineteen women (under the name, Janelle Lona Fischer) whom the Crown names as having been polygamously married to him.<sup>112</sup>

In sum, Utah's emphasis on adoption cases in the best interests of the child does not consider polygamy to be a disqualifying behavior. As a result of that consideration, a polygamous couple was able to adopt a young girl and then (several years later) transport (some would say, traffic) her across state and international borders in order to enter into a criminal act in Canada. It is difficult for many people to see, therefore, why practicing polygamy fails to disqualify Utah couples from the state's permission to adopt, given the assumption that an adopting family would rear children with polygamous values.

For all of these reasons and more,<sup>113</sup> the criminalization of polygamy must remain in effect in the United States and Canada,<sup>114</sup> and authorities should pursue it as a criminal offence more often and more vigorously. Arguments for its decriminalization or even legalization simply neglect to consider the widespread and abiding harm that is endemic to it. As with much behavior that generally is harmful, some people will not experience or perceive its negative consequences and even will endorse it and defend it. It is, however, inherently sexist, clannish,

antiegaltarian, theocratically authoritarian, and no society that is aware of its human rights obligations can allow it. Legalization in order to better regulate it also would not work, partly because polygamists lie to protect their practice and remain deeply hostile to outsiders. Polygamists will take outsiders' assets, but not their advice, at least regarding the genetic consequences of incest and inbreeding. Their past behavior suggests that they would resist adhering to most if not any attempts at regulation, even if polygamy were to be legalized. Avoiding the direct prosecution of polygamy unless it is coupled with other offences has led to the conviction of some criminals, but the strategy almost certainly misses numerous instances of serious crimes because of the groups' insularity and protectiveness of leaders. Moreover, the growing issue of birth defects is serious and heartbreaking, and these defects will multiply as long as the groups maintain primarily endogenous (and largely incestuous) marriage patterns.

Dissenting comments made in a Canadian Supreme Court decision also apply to general sentiments in its southern neighbor. "According to contemporary Canadian social morality, acts such as child pornography, incest, polygamy and bestiality are unacceptable regardless of whether or not they cause social harm. The community considers these acts harmful in themselves."<sup>115</sup> In the case of polygamy, however, we also can identify some of the harm that it actually does to society, and we understand why it is a threat to countries attempting to ensure the human rights of their citizens.

## NOTES

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- 1. A basic definition of "Fundamentalist Mormon" appears in "The Primer" about polygamy, jointly published by the Attorneys General Offices of Arizona and Utah. "The term refers to people who believe they are following the original principles and doctrines, including plural marriage, taught by early [Latter-day Saint] Church leaders. The LDS Church opposes the use of this term and excommunicates members who practice plural marriage. Fundamentalists reject the authority claims of contemporary LDS leadership and consider the LDS Church to be in a state of apostasy" (Mark Shurtleff and Terry Goddard, *The Primer: Helping Victims of Domestic Violence and Child Abuse in Polygamous Communities*, Joint Publication of the Utah Attorney General's Office and the Arizona Attorney General's Office

[2006], 9; download available at: [http://www.attorneygeneral.utah.gov/polygamy/The\\_Primer.pdf](http://www.attorneygeneral.utah.gov/polygamy/The_Primer.pdf)).

2. Stephen Singular, *When Men Become Gods: Mormon Polygamist Warren Jeffs, His Cult of Fear, and the Women Who Fought Back* (New York: St. Martin's Press, 2008), 262–81; Elisa Wall with Lisa Pulitzer, *Stolen Innocence: My Story of Growing Up in a Polygamous Sect, Becoming a Teenage Bride, and Breaking Free of Warren Jeffs* (New York: HarperCollins, 2008), 376–419; Aaron Falk and Dennis Romboy, “Warren Jeffs’ Rape Conviction Overturned, New Trial Ordered,” *Deseret News* (July 28, 2010).
3. The January 6, 2009 indictment against James Marion Oler charged him with having “practiced a form of polygamy, or practiced a kind of conjugal union” with two women (Canada: Province of British Columbia, Indictment of James Marion Oler, Court File Number 27166). The indictment of Winston Kaye Blackmore was for having “practiced a form of polygamy, or practiced a kind of conjugal union” with nineteen women (Canada: Province of British Columbia, Indictment of Winston Kay Blackmore, Court File Number 27165).

Canada’s *Criminal Code*, R.S.C. 1985, c. C-46, Section 293 states:

1. 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.

For a brief discussion of the law, see M. H. Ogilvie, *Religious Institutions and the Law in Canada*, 2nd ed. (Toronto: Irwin Law, 2003), 373–74.

Nine months after a prosecutor (who was the third successive one appointed by the British Columbia Attorney General about this issue) laid the polygamy charges, the province’s Supreme Court quashed the appointment of that prosecutor and those charges. The basis for these decisions was that the first special prosecutor whom the Attorney General had appointed had recommended against laying specific charges, instead recommending that the province “reference” a case (i.e., present a query about the constitutionality of a law) to the Court of Appeal, inquiring whether polygamy charges were constitutional. According to British Columbia law, the decision of the first special prosecutor was final, and the Attorney General could not appoint subsequent prosecutors (with the hope of securing a different recommendation [*Blackmore v. British Columbia (Attorney General)*, 2009 BCSC 1299]). On October 22, 2009, the British Columbia Attorney General announced that he in fact was preparing to present to the province’s Supreme Court

“two questions. The first will ask the court to determine if Section 293 is consistent with the [Canadian] Charter of Rights and Freedoms. The second will seek clarity on the Criminal Code provisions of Section 293” (British Columbia Ministry of Attorney General, “Province to Seek Supreme Court Opinion on Polygamy,” October 22, 2009). Specifically, the second question will seek to clarify the legality of polygamous marriages with minors (Daphne Bramham, “At Last, the B.C. Government Makes the Right Move on Polygamy,” *Vancouver Sun* [October 23, 2009]). Unlike a reference to the B.C. Court of Appeals, a reference to the Supreme Court allows witnesses to give evidence.

4. Most sources clarify that, technically, polygamy means marriage involving a spouse of either sex having two or more partners, while the fundamentalist Mormons practice is polygyny, which is one man with more than one wife (but not polyandry [one woman with more than one husband]). Nevertheless, use of the “polygamy” term is universal (along with “celestial marriage,” “plural marriage,” or “spiritual union”) regarding the marriage practice within fundamentalist Mormon groups. An extended discussion of polygyny, polyandry, group marriage, and polygamy appears in Miriam Koktvedgaard Zeitzen, *Polygamy: A Cross-Cultural Analysis* (New York: Berg, 2008), 9–33.
5. Texas Department of Family and Protective Services, “Eldorado Investigation” (December 22, 2008).
6. Overall numbers vary from 21,000 (D. Michael Quinn, “Plural Marriage and Mormon Fundamentalism,” in *Fundamentalisms and Society: Reclaiming the Sciences, the Family, and Education*, ed. Martin E. Marty and R. Scott Appleby [Chicago: University of Chicago Press, 1993], 242, see 280n17); 30,000 (Andrea Moore-Emmett, *God’s Brothel* [San Francisco: Pince-Nez Press 2004], 26); 40,000 (Humphrey Hawksley, “Quest to Legalize Polygamy in Utah,” *BBC News* (March 21, 2009), downloaded from: [http://news.bbc.co.uk/go/pr/-/2/hi/programmes/from\\_our\\_own\\_correspondent/7953270.stm](http://news.bbc.co.uk/go/pr/-/2/hi/programmes/from_our_own_correspondent/7953270.stm) on May 4, 2009); and a figure given by a polygamist opposition group, Tapestry Against Polygamy, as being closer to 100,000 (cited in Moore-Emmett, *God’s Brothel*, 26). Similarly, sometimes widely varying figures exist regarding the numbers of people in each of the numerous polygamous groups. Anne Wilde, who directs the pro-polygamy group, Principle Voices, indicates that surveys her organization conducted with polygamous leaders yielded the following figures: the Fundamentalist Latter-day Saints under Warren Jeffs has 10,000 followers; the Apostolic United Brethren (the Allreds) has 7,500 members; the Kingstons have 1500 members; and 3000 affiliate with groups of a few hundred or less. Perhaps 15,000 are “independents” are not part of any large group, and often primarily involve one family whose members center around one man. Some of these independents remain quietly within mainstream Mormonism, unbeknownst to Mormon officials (Carrie Moore and Elaine Jarvik, “Plural

- Lives: the Diversity of Fundamentalism,” *Deseret News* [September 9, 2006]). A researcher, however, who studied the Allreds in 1989 and into the 1990s estimated their numbers to be around 10,000 (Janet Bennion, *Women of Principle: Female Networking in Contemporary Mormon Polygyny* [New York: Oxford, 1998], 160n7). For brief histories of the FLDS and the Apostolic United Brethren, see Irwin Altman and Joseph Ginat, *Polygamous Families in Contemporary Society* (Cambridge: Cambridge University Press, 1996), 48–56.
7. What was an unwritten practice for decades among Utah officials around the avoidance of polygamy prosecutions became written policy by 2005, when Utah’s Office of the Attorney General stated on its Web site, “Polygamy is illegal in Utah and forbidden by the Arizona constitution. However, law enforcement agencies in both states have decided to focus on crimes within polygamous communities that involve child abuse, domestic violence and fraud” (State of Utah Office of the Attorney General, “Polygamy,” downloaded from: <http://attorneygeneral.utah.gov/polygamy.html/> on June 13, 2006). See Marisa D. Black, “Beyond Child Bride Polygamy: Unique Familial Constructions, and the Law,” *Journal of Law and Family Studies* 8 (2006): 497–508.
  8. *Reynolds v. United States*, 98 U.S. 145 (1878). Note that some scholars give the year as 1879, because the court reconsidered its 1878 decision in 1879 and adjusted the sentence that plaintiff George Reynolds had to serve. The body of the decision, however, remained unchanged.
  9. See Bruce A. Van Orden, *Prisoner for Conscience’s Sake: The Life of George Reynolds* (Salt Lake City: Deseret Book Company, 1992).
  10. Marci Hamilton, *God vs. the Gavel: Religion and the Rule of Law* (Cambridge: Cambridge University Press, 2005), 66–68, 207–8, 211–12.
  11. Carol Weisbrod and Pamela Sheingorn, “*Reynolds v. United States*: Nineteenth-Century Forms of Marriage and the Status of Women,” *Connecticut Law Review* 10 (1978): 833. See also James M. Donovan, “Rock-Salting the Slippery Slope: Why Same-Sex Marriage is Not a Commitment to Polygamous Marriage,” *Northern Kentucky Law Review* 29/3 (2002): 586–87; and Keith E. Sealing, “Polygamists Out of the Closet: Statutory and State Constitutional Prohibitions Against Polygamy Are Unconstitutional Under the Free Exercise Clause,” *Georgia State University Law Review* 17 (2000–2001): 714–15. Although dated regarding legal opinions, C. Peter Magrath, “Chief Justice Waite and the ‘Twin Relic’: *Reynolds v. United States*,” *Vanderbilt Law Review* (1964–1965): 507–43, about Chief Justice Waite and the *Reynolds* decision, remains one of the best discussions of the case. Other very useful discussions of the historical and cultural context of the *Reynolds* decision include Robert G. Dyer, “The Evolution of Social and Judicial Attitudes Towards Polygamy,” *Utah Bar Journal* 5 (1977): 35–39; Martha M. Ertman, “The Story of *Reynolds v. United States*: Federal ‘Hell Hounds’ Punishing Mormon Treason,” in *Family Law*

*Stories*, ed. Carol Sanger (New York: Foundation Press, 2008), 52–75, especially for her discussion of George Reynolds; Jay Alan Sekulow, *Witnessing Their Faith: Religious Influence on Supreme Court Justices and Their Opinions* (Toronto: Rowman & Littlefield, 2006), 87–121; and Bruce R. Trimble, *Chief Justice Waite, Defender of the Public Interest* (New York: Russell & Russell, 1970) for his book-length biography of the presiding Chief Justice. Also noteworthy for its clarity, detail, and historical sensibility is Sarah Barringer Gordon, *The Mormon Question: Polygamy and Constitutional Conflict in Nineteenth-Century America* (Chapel Hill: University of North Carolina Press, 2002), 109–45.

Among the most comprehensive discussions of nineteenth-century legislation and cases involving polygamy are Orma Linford, “The Mormons and the Law: The Polygamy Cases. Part I,” *Utah Law Review* 9 (1964–1965): 308–70; and “The Mormons and the Law: The Polygamy Cases. Part II,” *Utah Law Review* 9 (1964–1965): 543–91 (but note an occasional Mormon bias).

12. Elijah L. Milne, “Blaine Amendments and Polygamy Laws: The Constitutionality of Anti-Polygamy Laws Targeting Religion,” *Western New England Law Review* 28 (2006): 287, see 271.
13. Michele Diane Wilson, “Adolescent Pregnancy and Contraception,” in *Oski’s Pediatrics: Principles and Practice*, ed. Julia A. McMillan, Catherine D. DeAngelis, Ralph D. Feigin, and Joseph B. Warshaw (Baltimore: Lippincott Williams & Wilkins, 1999), 543.
14. James H. Johnson and Andrew S. Bradlyn, “Assessing Stressful Life Events in Childhood and Adolescence,” in *Handbook of Child Health Assessment: Biopsychosocial Perspectives*, ed. Paul Karoly (Toronto: John Wiley, 1988), 321.
15. Texas Department of Family and Protective Services, 14.
16. F. Gary Cunningham, Norman F. Gant, Larry C. Gilstrap, John C. Hauth, Kenneth J. Leveno, and Katharine D. Wenstrom, “Hypertensive Disorders in Pregnancy,” *Williams Obstetrics*, 21st ed. (Toronto: McGraw Hill, 2001), 567–618; Mounira Habli and Baha M. Sibai, “Hypertensive Disorders of Pregnancy,” in *Danforth’s Obstetrics and Gynecology*, ed. Ronald S. Gibbs, Beth Y. Karlan, Arthur F. Haney, and Ingrid E. Nygaard, 10th ed. (Philadelphia: Lippincott William & Wilkins, 2008), 257–75; *Merck Manual of Diagnosis and Therapy*, “Preeclampsia and Eclampsia,” 18th ed. (Whitehouse Station, NJ: Merck Research Laboratories, 2006).
17. Ray Rivera and Greg Burton, “Did Teen Mom Die Harboring a Secret?” *Salt Lake Tribune* (August 23, 1998): 1.
18. Greg Burton and Ray Rivera, “Child Lives with Polygamous Clan After Controversial Death of Mom: Polygamous Clan Now Raising Disabled Child,” *Salt Lake Tribune* (August 30, 1998): A1.
19. Roger J. R. Levesque, *Sexual Abuse of Children: A Human Rights Perspective* (Bloomington, IN: Indiana University Press, 1999), 136.



20. Greg Burton, "When Incest Becomes a Religious Tenet: Practices Sets 1,000-Member Kingston Clan Apart From Other Utah Polygamous Groups," *Salt Lake Tribune* (April 25, 1999): A17.
21. Ray Rivera and Greg Burton, "Case of Young Mom's Death is Dying Quietly; Child: Boy Can Stay with Father in Another Incestuous Marriage; Girl's Son Can Stay with Incestuous Dad," *Salt Lake Tribune* (September 17, 1998): 1.
22. *Ibid.*, 2.
23. Ben Winslow, "Shurtleff: Child Bride Polygamous Marriages Appear to Have Stopped," *KSL-TV* (July 14, 2009).
24. Jonathan Turner and Alexandra Maryanski, *Incest: Origins of the Taboo* (London: Paradigm, 2005), 1.
25. Joseph Smith married at least one mother/daughter pair, and likely had a child with the daughter (Todd Compton, *In Sacred Loneliness: The Plural Wives of Joseph Smith* [Salt Lake City: Signature Books, 1997], 171–204). He also married at least two sets of sisters (*ibid.*, 288–305, 473–85). Likewise, Brigham Young also married sisters (Fanny Stenhouse, *'Tell It All: The Story of a Life's Experience in Mormonism* [Hartford, CT: A. D. Worthington, 1874], 277–78), and Ann-Eliza Young's 1876 critique of her former group claimed, "The marriage of mother and daughter to one man was so common an occurrence that it ceased to be regarded as anything out of the ordinary course of events" (*Wife No. 19, of The Story of Bondage, Being a Complete Exposé of Mormonism, and Revealing the Sorrows, Sacrifices, and Sufferings of Women in Polygamy* [Hartford, CT: Dustin, Gilman & Co., 1876], 320). Incestuous examples in early Mormonism were so dramatic that a researcher published an article in a medical journal on them in 1915 (Theodore Schroeder, "Incest in Mormonism," *American Journal of Urology and Sexology* 11 [1915]: 409–16). For mention of contemporary mother-daughter marriages in the Allreds, see Bennion, *Women of Principle*, 162n22.
26. Wade C. Myers and Steve J. Brasington, "A Father Marries His Daughters: A Case of Incestuous Polygamy," *Journal of Forensic Science* 47/5 (September 2002): 1.
27. See Flora Jessop and Paul T. Brown, *Church of Lies* (San Francisco: Jossey-Bass, 2009), 46, 56, 68; Carolyn Jessop with Laura Palmer, *Escape* (New York: Broadway Books, 2007), 313; Moore-Emmett, *God's Brothel*, 94–95; and Dorothy Allred Solomon, *Predators, Prey, and Other Kinfolk* (New York: W.W. Norton & Company, 2003), 243.
28. Ray Rivera, "When Incest Becomes a Religious Tenet: Inbreeding Key to Doctrine of Keeping Bloodline Pure," *Salt Lake Tribune* (April 25, 1999): A1, A16.
29. Ray Rivera, "Polygamist Gets Jail Time For Beating His Daughter," *Salt Lake Tribune* (June 30, 1999): A1, A7; Maura I. Strassberg,

- “The Crime of Polygamy,” *Temple Political & Civil Rights Law Review* 12 (2003): 367.
30. *Utah v. Green*, 108P.3d 710 (2005); see John Llewellyn, *Polygamy’s Rape of Rachael Strong* (Scottsdale, AZ: Agreka, 2006), 67–92.
  31. Debbie Palmer and Dave Perrin, *Keep Sweet* (Lister, BC: Dave’s Press, 2004), ix.
  32. Jessop and Brown, *Church of Lies*, 264 see 89.
  33. Bennion, *Women of Principle*, 164n14.
  34. Janet Bennion Cannon, “My Sister, My Wife: An Examination of Sororal Polygyny in a Contemporary Mormon Fundamentalist Sect,” *Syzygy: Journal of Alternative Religion and Culture* 1/4 (Fall 1992): 319.
  35. Worth mentioning is that an 1861 presentation contained information about “physical abnormalities” within Mormonism, which practiced polygamy at the time (Richard S. Van Wagoner, *Mormon Polygamy: A History*, 2nd ed. [Salt Lake City: Signature Books, 1989], 106, 113n3). One author interpreted this presentation as a nineteenth-century example of opponents’ “belief that polygamy created genetic abnormalities” (Sealing, “Polygamists Out of the Closet,” 744), but it predates Gregor Mendel’s groundbreaking publication about genetics by five years. Instead, the pejorative description of Mormons (which was opposite how they saw themselves) probably reflected belief at the time that “excessive seminal effusion” associated with polygamy weakened the body (B. Carmon Hardy and Dan Erickson, “‘Regeneration—Now and Evermore!’: Mormon Polygamy and the Physical Rehabilitation of Humankind,” *Journal of the History of Sexuality* 10/1 [January 2001]: 48–49).
  36. John Dougherty, “Forbidden Fruit: Inbreeding Among Polygamists Along the Arizona-Utah Border is Producing a Caste of Severely Retarded and Deformed Children,” *Phoenix New Times* (December 29, 2005), downloaded from <http://www.phoenixnewtimes.com/content/printVersion/178037> on June 16, 2009; Jessop and Brown, *Church of Lies*, 246; Cassandra L. Kniffin, “Fumarase Deficiency,” *Online Mendelian Inheritance in Man*, #606812 (Baltimore: Johns Hopkins University, May 20, 2008), available online.
  37. Dougherty, “Forbidden Fruit,” 2; see Brent W. Jeffs with Maia Szalavitz, *Lost Boy* (New York: Broadway Books, 2009), 18.
  38. John Hollenhorst, “Birth Defect Plaguing Children in FLDS Towns,” *KSL-TV* (February 9, 2006).
  39. Dougherty, “Forbidden Fruit,” 3; see Jessop and Brown, *Church of Lies*, 167, 246.
  40. Burton, “When Incest Becomes a Religious Tenet,” 5.
  41. *Ibid.*, 6–7.
  42. Greg Burton, “Family, or, Felony?” *Salt Lake Tribune* (June 11, 2000). “Classical lissencephaly (smooth brain) is a human brain malformation which consists of diffuse agyria and pachygyria, an abnormally thick 1–1.5 cm cortex, and associated changes such as

- hypogenesis of the corpus callosum and enlarged posterior portions of the lateral ventricles.” Its classical manifestations “consist of severe or profound mental retardation, feeding problems, and intractable epilepsy including frequent infantile spasms.” It has a genetic component (William B. Dobyns, “The Genetic Basis of Malformations of Neuronal Migration: Molecular Mechanisms and Clinical Correlation,” in *Abnormal Cortical Development and Epilepsy: From Basis to Clinical Science*, ed. Roberto Spreafico, Giuliano Avanzini, and Frederick Andermann [London: John Libbey & Company, 1999], 266, 267).
43. What appears to be a different type of genetic disorder—mental illness—afflicts members of another polygamous band, the LeBarons. The LeBaron factions emanate from the offspring of Alma Dayer LeBaron and Maud McDonald, and, “of the three girls, all would suffer delusions of either grandeur or paranoia. Of the seven LeBaron boys, six would claim to hear voices, five would have hallucinations they interpreted as divine revelation, and four would claim to be the Lord’s Prophet on earth” (Scott Anderson, *The 4 O’ Clock Murders: The True Story of a Mormon Family’s Vengeance* [Toronto: Doubleday, 1993], 50; see Ben Bradlee, Jr., and Dale Van Atta, *Prophet of Blood: The Untold Story of Ervil LeBaron and the Lambs of God* [New York: G. P. Putnam’s Sons, 1981], 45–61, 84]; Rena Chynoweth with Dean M. Shapiro, *The Blood Covenant* [Austin, TX: Diamond Books, 1990], 11, 13; Verlan M. LeBaron, *The LeBaron Story* [Lubbock, TX: Keele, 1981], 60–61, 66–67; Irene Spencer, *Shattered Dreams: My Life as a Polygamist Wife* [New York: Center Street, 2007], 43–44).
  44. See Altman and Ginat, *Polygamous Families*, 89; see also Jen Pereira, Kiran Khalid, and Emily Yacus, “Two Polygamist Sect Survivors Tell Their Stories,” *ABC News* (July 7, 2008), for a LeBaron girl twice forced into marriage at thirteen.
  45. Benjamin G. Bistline, *The Polygamists: A History of Colorado City, Arizona* (Scottsdale, AZ: Agreka, 2004), 56, 120, 212; Carole A. Western, *Inside the World of Warren Jeffs* (Albuquerque, NM: Wyndham House Publishing, 2007), 352–53; see Jessop with Palmer, *Escape*, 313; John Llewellyn, *Polygamy Under Attack: From Tom Green to Brian David Mitchell* (Scottsdale, AZ: Agreka Books, 2004), 108; Wall with Pulitzer, *Stolen Innocence*, 12.
  46. See Stephen A. Kent, “A Matter of Principle: Fundamentalist Mormon Polygamy, Children, and Human Rights Debates,” *Nova Religio* 10/1 (2006): 17. *Doctrine and Covenants* Section 132 purports to be a revelation that Smith received on July 12, 1843, although this date was well after he had begun the practice of plural marriage. An early section instructs, “19. And again, verily I say unto you, if a man marry a wife by my word, which is my law, and by the new and everlasting covenant . . . , and if ye abide in my covenant . . . , it shall

be done unto them . . . and shall be of full force when they are out of the world; and they shall pass by the angels, and the gods, which are set there, to their exaltation and glory in all things. . . . 20. Then shall they be gods, because they have no end. . . .” Presumably, a different wife helps her husband pass the angels and gods in the three heavens (identified in Section 131) and then enter into the realm of godliness itself (hence the need for at least three wives). In later sections, the reputed revelation specifically outlined polygamy: “61. And again, as pertaining to the law of the priesthood—if any man espouse a virgin, and desire to espouse another and the first give her consent, and if he espouse the second, and they are virgins, and have vowed to no other man, then he is justified; he cannot commit adultery for they are given unto him; for he cannot commit adultery with that that belongeth unto him and to no one else. 62. And if he have ten virgins given unto him by this law, he cannot commit adultery, for they belong to him, and they are given unto him; therefore is he justified.” One doctrinal reason, therefore, that polygamists desire young girls as plural brides is that these teens are likely to be virgins. The next passage is one that believers see as identifying children as soul-bearers who are beginning the process of moving toward divinity: “63. . . . for [the virgins] are given unto him to multiply and replenish the earth, according to my commandment . . . , and for their exaltation in the eternal worlds; that they may bear the souls of men . . .” (Church of Jesus Christ of Latter-day Saints, *The Doctrine and Covenants of the Church of Jesus Christ of Latter-day Saints* [Salt Lake City: Church of Jesus Christ of Latter-day Saints, 1981], 268ff).

47. For the process and numbers in the Allreds, see Bennion, *Women of Principle*, 5.
48. Altman and Ginat, *Polygamous Families*, 466.
49. Angie Wagner, “Ousted from Sect, ‘Lost Boys’ Start Anew,” *Chicago Tribune* (September 7, 2004): 10.
50. United Nations High Commissioner for Human Rights, *Convention on the Elimination of All Forms of Discrimination against Women*, adopted and opened for signature, ratification, and accession by General Assembly Resolution 34/180 of December 18, 1979, entry into force September 3, 1981, in accordance with Article 27(1), downloaded from: <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm> on June 23, 2009.
51. United Nations High Commissioner for Human Rights, *Convention*; see Rebecca J. Cook and Lisa M. Kelly, *Polygamy and Canada’s Obligations Under International Human Rights Law*, Family, Children and Youth Section Research Report (Ottawa: Department of Justice Canada: September 2006), 28–30; Kent, “A Matter of Principle”: 10–16; Levesque, *Sexual Abuse of Children*, 134–39.
52. Erik Eckholm, “Boys Cast Out by Polygamists Find Help,” *New York Times* (September 9, 2007), downloaded from: <http://www>.

- nytimes.com/2007/09/us/09polygamy.htm on September 10, 2007; Kimberly Sevcik, "The Lost Boys of Colorado City," *Salon.com* (July 6, 2006): 1, downloaded from: [http://www.salon.com/mwt/feature/2006/07/06/lost\\_boys/print.html](http://www.salon.com/mwt/feature/2006/07/06/lost_boys/print.html) on July 8, 2006; Wagner, "Ousted from Sect." Books by apostate men include David Beagley, *One Lost Boy: His Escape From Polygamy* (Springfield, UT: CFI, 2008); Jeffs with Szalavitz, *Lost Boy*; and Brian Mackert, *Illegitimate: How a Loving God Rescued a Son of Polygamy* (Colorado Springs, CO: David C. Cook, 2008).
53. Wall with Pulitzer, *Stolen Innocence*, 49.
  54. *Ibid.*, 81; see Daphne Bramham, *The Secret Lives of the Saints: Child Brides and Lost Boys in Canada's Polygamous Mormon Sect* (Toronto: Random House Canada, 2008), 250–71.
  55. Bramham, *Secret Lives of the Saints*, 259, 265–66.
  56. *Salt Lake Tribune*, "Building Firm Again Accused of Using Teen in Hazardous Jobs" (August 25, 2006).
  57. David Kelly and Gary Cohn, "Blind Eye to Culture of Abuse," *Los Angeles Times* (May 12, 2006): 6, downloaded from <http://www.latimes.com/news/nationworld/nation/la-na-sect12mayq2,1,7203549.story?page=3&track=res> on May 11, 2009.
  58. Jeffs with Szalavitz, *Lost Boy*, 87.
  59. Greg Burton, "Kingston Journey: Insiders to Outcasts," *Salt Lake Tribune* (August 16, 1998): A5.
  60. Ken Wells, "Sharing the Wealth: A Utah Polygamy Clan is Rich, but Women Draw Welfare Benefits—State Recovers Part of Aid from Patriarch, Who Runs a Business Empire—Lives of Extreme Frugality," *Wall Street Journal* (February 12, 1985).
  61. *Salt Lake Tribune*, "Editorial: 1998 Utahn of the Year" (December 27, 1998).
  62. Greg Burton, "N. Salt Lake to End Garbage Pact With Kingston Clan's Company," *Salt Lake Tribune* (December 3, 1998): C3.
  63. United Nations Office of the High Commissioner for Human Rights, *International Covenant on Economic, Social and Cultural Rights* (Entry Into Force January 3, 1976): Article 7.
  64. Bramham, *Secret Lives of the Saints*, 263–64.
  65. See Llewellyn, *Polygamy Under Attack*, 44–66.
  66. Stenhouse, 'Tell It All,' 300.
  67. Suzanne Fournier, "B.C. Polygamist Leader 'Sees No Sin' in Taking Tax," *National Post* [Canada] (June 16, 2009); Jessop and Brown, *Church of Lies*, 17, 229; Llewellyn, *Polygamy Under Attack*, 93–103.
  68. Wells, "Sharing the Wealth."
  69. *Ibid.*
  70. *Ibid.*
  71. See *Utah v. Green*, 99P.3d 820 (Utah 2004).
  72. James Nelson, "Utah Polygamist Gets Up to Five Years in Prison," *Reuters* (August 24, 2001).

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75. Fournier, "Polygamist Leader."
76. *Ibid.*
77. Robert Matas, "Untangling Blackmore's Unconventional Family," *Globe and Mail* (Canada) (June 10, 2009).
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82. *Ibid.*, 1404–17.
83. Bozzuti, "Constitutionality of Polygamy Prohibitions," 435n201.
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95. Dougherty, "Forbidden Fruit," 5.
96. Bistline, *Polygamists*, 141.
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103. Jessop and Brown, *Church of Lies*, 242, 247.
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106. Quoted in Dougherty, "Forbidden Fruit," 6–7.
107. *Ibid.*, 5; see Bramham, *Secret Lives of the Saints*, 152–53.
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109. Pamela Manson, "Canada Orders 3 Plural Wives to Exit Country, Leave Kids Behind," *Salt Lake Tribune* (May 10, 2009).
110. *Johanson et al. v. Fischer et al.*, 808 P.2d 1083 [Utah 1991]; see Ken Driggs, "Utah Supreme Court Decides Polygamist Adoption Case," *Sunstone Magazine* 83 (September 1991), downloaded from [http://www.childbrides.org/politics\\_sunstone\\_UT\\_Sureme\\_Court\\_decides\\_polyg\\_adoption\\_case.html](http://www.childbrides.org/politics_sunstone_UT_Sureme_Court_decides_polyg_adoption_case.html) on March 22, 2009.
111. Bramham, *Secret Lives of the Saints*, 209–18.
112. Canada: Province of British Columbia, Indictment of Winston Kay Blackmore.
113. Space prohibits a list of criminal (especially sexual abuse) convictions that have occurred among the groups, but they are legion and I already have mentioned some of them throughout the text. For examples of polygamist-related murders, see Anderson, *4 O' Clock Murders* and Chynoweth with Shapiro, *Blood Covenant* (concerning the Ervil LeBaron family and followers, which took place from 1972 to 1988). Note that, until her capture in May 2010, family member, Jacqueline Tarsa LeBaron, was on the Federal Bureau of Investigation's "Wanted" list for "conspiracy to commit murder for consideration; murder for consideration; conspiracy to tamper with a witness; tampering with a witness; use of a firearm during a crime of violence; conspiracy to obstruct religious beliefs; obstruction of religious beliefs; RICO [Racketeer Influenced and Corrupt Organizations] conspiracy; [and] RICO" (Federal Bureau of Investigation,

“Featured Fugitive—Jacqueline Tarsa LeBaron,” downloaded from FBI Website on April 1, 2009; Bob Mims, “A Fugitive 17 Years: Last Suspects in Polygamous Sect Slayings in Custody,” *Salt Lake Tribune* (May 15, 2010). On the 1984 murders of Brenda Lafferty and her fifteen-month old child by Brenda’s two brothers-in-law (Daniel and Ron Lafferty) because of her resistance to their efforts to recruit her husband (their brother) into polygamy, see Jon Krakauer, *Under the Banner of Heaven: A Story of Violent Faith* (New York: Anchor Books, 2004). On polygamist shoot-outs with police (resulting in deaths), see David Fleisher and David M. Freedman, *Death of an American: The Killing of John Singer* (New York: Continuum, 1983); Ogden Kraut, “The Singer/Swapp Siege: Revelation or Retaliation?” *Sunstone* (November 1988): 10–17 (for John Singer and his son-in-law, Addam Swapp). For harboring a fugitive (Warren Jeffs) by a younger brother, Seth Steed Jeffs, see Don Mitchell, “Jeff’s Brother Pleads Guilty to Harboring Fugitive,” *Associated Press* (May 2, 2006). About Warren Jeffs’s nephew, Benjamin Jeffs Nielson, refusing to testify before a grand jury, see *Austin Chronicle*, “Naked City,” (August 4, 2006). About Canadian officials deporting three polygamist wives of Winston Blackmore back to the United States because of immigration violations, see Manson, “Canada Orders 3 Plural Wives to Exit Country.”

114. See Nicholas Bala, Katherine Duvall-Antonacopoulos, Leslie MacRae, and Joanne J. Paetsch, “An International Review of Polygamy: Legal and Policy Implications for Canada,” in *Polygamy in Canada: Legal and Social Implication for Women and Children. A Collection of Policy Research Reports*, ed. Status of Women Canada (Ottawa: Status of Women Canada, 2005), 40.
115. *R. v. Labaye*, 2005 SCC 80, (2005) 3 S.C.R. 728, at para. 109.