

The Importance of Being Monogamous: Marriage and Nation Building in Western Canada to 1915

by Sarah Carter

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Sarah Carter's most recent book, *The Importance of Being Monogamous: Marriage and Nation Building in Western Canada to 1915*,¹ is, if memory serves, the first historical academic text that I have read since graduating with a B.A. in History in 1995. The opportunity to read and review this book was a welcome treat not only because of a personal, rarely-indulged interest in colonial history, but more because of this book's relevance to my current research on polygamous marriages in Canada. *The Importance of Being Monogamous* is of crucial importance to all legal academics, practitioners and students interested in exploring critically law's understanding of and approach to "unorthodox" marriages.

The thrust of Carter's argument is that what most Canadians perceive as "typical" or "traditional" marriage is by no means the result of a natural social evolution. Rather, it is a consequence of calculated state objectives rooted in cultural supremacist, classist and sexist ideals. Carter's primary focus is on Canadian land settlement policies in the late nineteenth and early twentieth centuries. She demonstrates how these policies constructed an ideal of marriage that was used as a vehicle for the domestication of Western Canada by white Christian families. This nuptial model was one characterized, unsurprisingly, as monogamous, heterosexual, intra-racial, male-dominated and self-sufficient. Land policies were designed to marginalize and exclude communities who did not adhere to this spousal ideal. In Canada, those most affected were the fundamentalist Mormons, newly emigrated in the 1880s from the United States, and Aboriginal peoples. These two groups form the focus of Carter's analysis.

1. Sarah Carter, *The Importance of Being Monogamous: Marriage and Nation Building in Western Canada to 1915* (Edmonton: University of Alberta Press, 2008).

Both Mormons and Aboriginal peoples were the targets of legislative and policy-based attempts to eradicate polygamy on the plains. Canada's current prohibition against polygamy in section 293 of the *Criminal Code*² was initially prompted by the fear that Mormons continued to marry polygamously after emigrating from the United States, where this practice had been recently banned. But the real scrutiny over marital habits, according to Carter, was reserved for Aboriginal families. Politicians and missionaries struggled with what they perceived as the fluid, indulgent and cavalier nature of customary marriage, and in particular, with the Aboriginal acceptance of—in white persons' terms—"polygamy" and "divorce." Thus, while polygamy's criminalization was spurred by a concern over the western Mormon presence, the first and only successful prosecution for this offence occurred in 1899, against a member of the Kainai nation.³

Carter's analysis of settlement policies also illustrates how land, sexuality, gender and power were inextricable in the timeframe that she considers. What mattered was the peaceful and prosperous settlement of the West, and any distractions from this were to be muted or eliminated. A major preoccupation became how to ensure that white men on the frontier would "settle down" while not being "lured" by Aboriginal women. Numerous initiatives were thus devised and integrated into land settlement schemes to curb bachelorism and promote marriage between white couples. Most notably, the *Dominion Lands Act*⁴ and the homestead system were established to encourage marriage while eliminating women's chances at economic mobility. Land was thus distributed only to men, and only to those who married according to the formal rules of the state. Carter's characterization of land policy as "a powerful tool for imposing the nuclear family model"⁵ is thus persuasive.

But these policies were not the perfect tool for bringing the Christian imagination of marriage to bear throughout the West. The most important contribution of this book, to my mind, is its revelation of the resistance and resilience of Aboriginal peoples and Mormons in the face of state and religious institutions that tried desperately to overhaul their way of family life. Despite the risk of impoverishment, ostracization, and even incarceration, both communities continued to

2. R.S.C. 1985, c. C-46.

3. *The Queen v. Bear's Shin Bone* (1899), 4 Terr. L.R. 173, 3 C.C.C. 329, 1899 C.L.B. 61 (N.W.T.S.C. (S. Alta. Jud. Dist.)). Note however that successful prosecutions have been pursued on the related charge of bigamy at s. 290 of the *Criminal Code*, although these have been infrequent. In one other case, a conviction for polygamy at trial was quashed on appeal. See *R. v. Tolhurst* (1937), 38 C.C.C. 319, 1937 CarswellOnt 35 (Ont. Sup. Ct.).

4. S.C. 1872 (35 Vict.), c. 23.

5. *Supra* note 1 at 75.

practice plural marriage. Aboriginal peoples even used the rules and policies created by church and state leaders to their own benefit. Most notably, community members took to marrying their young people earlier, since “marriage”—even customarily established—rendered one ineligible for enrolment in industrial and residential schools. This also avoided the possibility that an Indian agent or school principal would arrange Aboriginal students’ marriages. This point is critical and can be extended across a number of other contexts. It supports the theory that formal rules will “take hold” in a society only when these resonate with the norms and values of that society’s constituents.⁶ Yet as the current legal approach to polygamy shows, this message still seems lost on our government officials.

The strength of Carter’s analysis rests not only on its depth and originality, but also on the quality of the evidence on which she relies. Her authorities are comprised of a broad scope of primary and secondary sources. Her integration of existing scholarship reveals her textured appreciation of—and influence over—the literature on the history of the Canadian West. Moreover, her use of newspaper chronicles, letters, parliamentary debates and internal government memoranda offer the reader a first-hand view into the thoughts and perspectives of the day. It is unfortunate, though, that most of these thoughts and perspectives derive from the writings of white government officials. Although Carter refers to Aboriginal writings in a few spots, these are not Carter’s predominant sources. I am not a historiographer and thus cannot say for sure, but I would venture that the quality of Carter’s primary sources is attributable to the state of the historical record. That is, it seems plain that public archives and other available sites of historical knowledge will house more writings of public officials than of religious and cultural minorities, particularly of those whose history rests on an oral tradition.

Connected to the foregoing point is the muted voice of women in Carter’s analysis. It is true that gender issues are central to her thesis. In particular, Carter’s work is about demonstrating how Canadian officials used white and Aboriginal women in different but equally disturbing ways to pursue the goal of populating the West with single-family farm units stewarded by monogamous men. But while Carter’s work is *about* women, it does not integrate as diverse an exploration of their experiences as I had wished. The book portrays women by writing about two particular constituencies: Aboriginal women and, to a more limited extent, Mormon women. Within these groups, though, it is difficult to discern the diversity in experiences that must have existed. Did all Aboriginal women feel used or abandoned by

6. This theory, framed as critical legal pluralism, posits that formal law coexists with social and cultural norms, and may succumb to the latter where the two are in conflict. See Martha-Marie Kleinbans & Roderick A. Macdonald, “What Is *Critical Legal Pluralism?*” (1997) 12:2 C.J.L.S. 25.

their white husbands, particularly those who later took white “formal” wives? Did these women—and did Mormon women—universally accept and enjoy life as polygamous wives? If not, how did they manage or cope with this? And what were the experiences of white women who moved to the frontier? We are told very little about this cohort of women who would have held a spectrum of views on marriage, and possibly also on polygamy.

Having said this, Carter’s analysis holds much value at the moment given its resonance with the current public discourse and debate on polygamy. There is much to learn from what this book reveals in regard to the very circumscribed reach of formal law in determining what family relationships should look like. For example, the protection of women and children were posited as being at the centre of Canada’s rejection and criminalization of polygamy in the late 1800s. Yet, the prohibition of this practice ultimately promised more harm than good for the wives and children of these unions. Carter thus writes: “A central rationale for eradicating polygamy was that women were to be saved from unhappy lives, yet if the initiatives were successful, the ‘semi-widows’ or ‘supernumerary wives’ and children were to be abandoned.”⁷ Similarly, Carter refers to the preoccupation of “child” marriage as central to efforts to abolish polygamy. Yet, no evidence of this was brought forward by state authorities to substantiate such allegations. The aggressive enforcement of monogamous marriage thus “had the capacity to disrupt, but not utterly transform” domestic life as it was known on the plains.⁸

Current interest in enforcing the ban on polygamy suggests that history now risks repeating itself. In January 2009, two residents of Canada’s only openly polygamous community, Bountiful, British Columbia, were arrested for practicing polygamy in violation of section 293 of the *Criminal Code*.⁹ Bountiful is home to about 1,000 followers of the fundamentalist Mormon faith, also known as the fundamentalist Church of Jesus Christ of Latter Day Saints (FLDS). Politicians at both the provincial and federal levels justified the arrests of the two male leaders of this community on the basis of a need to “save” the exploited women of this community who, along with their children, are “trapped” in oppressive domestic relationships.¹⁰

The difficulty, though, is that there is very little proof that the women of this community need or want the state’s deliverance. Most of what the Canadian public knows about plural marriage—globally and in Bountiful, specifically—emanates from stories cast by the media, government officials, popular non-fiction

7. *Supra* note 1 at 210.

8. *Ibid.* at 277.

9. Robert Matas & Wendy Stueck, “Polygamy charges in Bountiful” *The Globe and Mail* (7 January 2009), online: *The Globe and Mail* <<http://www.theglobeandmail.com>>.

10. Angela Campbell, “In the name of the mothers . . .” *The Globe and Mail* (10 January 2009) A17.

literature, and scholars who have relied primarily on secondary accounts of life as a polygamous wife. These narratives typically portray women as exploited and damaged.¹¹ Most of these works, however, do not engage directly with women in polygamy by seeking to gather their experiential knowledge. Furthermore, none of these works imagines that plural wives might in fact use the customary and formal rules affecting polygamy to further their own interests, needs and relationships.

Elsewhere, I have argued that hearing the perspectives of women in polygamous relationships is crucial to understanding the dynamics of power and authority in their communities. Women's narratives are also necessary to appreciate genderized practices ostensibly rooted in culture or religion. While, within the dominant Canadian stream, such practices might seem "oppressive," evaluating them from the perspective of the women involved might cause us to see things in a different way.¹²

In the case of Bountiful, interviews conducted with some of the community's women suggest that it would be wrong to perceive of them as a homogenous or oppressed group. Their stories are rich, diverse and textured. For example, while some women continue to marry polygamously, others insist on remaining their husband's sole spouse. Some acknowledge that, historically, church leaders matched spouses, although many couples now "court" in the prenuptial period, and have a say in whether, when and who they will marry. Many insist that young people reach *at least* the age of majority before becoming a spouse. And several women in plural marriages acknowledge that while they may struggle with sharing a husband's time, affection and resources, bonds between "sister wives" are typically marked by support and solidarity; they refer to each other as "best friends" and "life partners," collaborating on most childrearing and domestic tasks.¹³

11. For academic accounts see Department of Justice Canada: Family, Children and Youth Section, *Polygyny and Canada's Obligations under International Human Rights Law* by Rebecca J. Cook & Lisa M. Kelly (Ottawa: Department of Justice Canada, 2006), online: <<http://www.justice.gc.ca/eng/dept-min/pub/poly/poly.pdf>>; Marla Peters, *Pearls Before Swine: Secrecy in a Mormon Polygynous Colony* (M.A. Thesis, University of Alberta, Department of Sociology, 1994) [unpublished]; Nicolas Bala et al., "An International Review of Polygamy: Legal and Policy Implications for Canada" in *Polygamy in Canada: Legal and Social Implications for Women and Children—A Collection of Policy Research Reports* (Ottawa: Status of Women Canada, 2005) 1-57; The Alberta Civil Liberties Research Centre, "Separate and Unequal: The Women and Children of Polygamy" in *Polygamy in Canada: Legal and Social Implications for Women and Children—A Collection of Policy Research Reports* (Ottawa: Status of Women Canada, 2005) 1-71.

For similar insights in popular accounts of polygamy, see Daphne Bramham, *The Secret Lives of Saints: Child Brides and Lost Boys in Canada's Polygamous Mormon Sect* (Toronto: Random House, 2008); Committee on Polygamous Issues, *Life in Bountiful: A report on the lifestyle of a polygamous community* (British Columbia: Ministry of Women's Equality, 1993); Debbie Palmer & Dave Perrin, *Keep Sweet: Children of Polygamy* (Lister, B.C.: Dave's Press, 2004); Jon Krakauer, *Under the Banner of Heaven: A Story of Violent Faith* (New York: Anchor Books, 2004); Carolyn Jessop, *Escape* (New York: Broadway Books, 2007). For media reports on the topic, see Richard C. C. Peck, "Report of the Special Prosecutor for Allegations of Misconduct Associated with Bountiful, BC: Summary of Conclusions" Ministry of Attorney General, Criminal Justice Branch (1 August 2007), online: <<http://www.llbc.leg.bc.ca/public/PubDocs/bcdocs/418439/index.htm>>; Stephanie Levitz, "Prosecutor tells BC: find out once and for all if anti-polygamy law stands" *Canadian Press* (1 August 2007) (ProQuest).

12. Angela Campbell, "Wives Tales: Reflecting on Research in Bountiful" (2008) 23:1-2 C.J.L.S. 121.

13. Angela Campbell, "Bountiful Voices" (2009) 47 Osgoode Hall L.J. 183.

If this indicates that polygamy is not unequivocally harmful for women, what explains the persistent criminalization of this practice? The discernable mischief of polygamy remains elusive.¹⁴ It has been argued that plural marriage is a “Gordian knot” from which other evils—namely, child marriage, child abuse, sexual assault and domestic violence—flow.¹⁵ But these ills are criminal offences unto themselves, and all subject to prosecution without invoking section 293 of the *Criminal Code*. Nevertheless, they are not the grounds on which charges in Bountiful have been brought. There are two plausible reasons for this. The first is that searches by law enforcement authorities for evidence of child abuse, sexual assault and sexual exploitation in Bountiful have been unfruitful. Alternatively, a focus on *polygamy* communicates a specific vision of socially and legally acceptable conjugal practices. This vision would move beyond criminal law to bear an influence in realms such as family, tax, immigration and child welfare policy.

Canada’s position on polygamy thus remains substantially unmoved from its spot during the period considered by Carter. Not only is the ban on polygamy still in place after almost 120 years, its justifications also remain largely the same. But these justifications, which pay lip service to the protection of women and children, are unsubstantiated by available evidence. Indeed, just as Carter noted with respect to enforcing the ban on polygamy at the turn of the twentieth century, current prosecutions risk devastating consequences—rather than salvation—for women and children.

Furthermore, charges recently brought in Bountiful perpetuate the intolerance that spurred the polygamy ban from the outset. In his enunciations on polygamy, John A. Macdonald stated:

Her Majesty has a good many British subjects who are Mohammedans, and if they came here we would be obliged to receive them; but whether they are Mohammedans or Mormons, when they come here they must obey the laws of Canada.¹⁶

Comparatively, our current Conservative government indicated that the polygamy charges against Bountiful residents would not be dropped, given that “the practice represents a ‘clear challenge’ to Canadian values. . . .”¹⁷ But this appeal to distinctly national family values is misplaced. As Carter’s text exposes, the marital form the Harper government refers to (monogamous, heterosexual, rooted in Judeo-Christian theology) did not pervade Canadian history; instead, it was enforced as integral to

14. Susan G. Drummond, “Polygamy’s Inscrutable Criminal Mischief” (2009) 47 Osgoode Hall L.J. 317.

15. Peck, *supra* note 11.

16. *House of Commons Debates*, (10 April 1890) at 3180 (Sir John A. MacDonald) cited in *supra* note 1 at 44.

17. Andrew Mayeda, “Ottawa girds for polygamy challenge: ‘Canadian values’ to be focus of case, documents say” *National Post* (25 March 2009) A1.

early settlement policies bound in assimilationist and sexist ideologies. As on the colonial frontier, polygamy is again being used to label and impugn a minority group held out as an anathema to Canadian “family values.” In bringing this trajectory between past and present to light, *The Importance of Being Monogamous* will be of clear relevance to pending judicial evaluations of the effectiveness and legality of section 293 of the *Criminal Code*.¹⁸

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18. This assessment will now occur in the context of a judicial reference as to the constitutionality of section 293(1) of the *Criminal Code*, rather than a criminal trial. Specifically, a judge of the B.C. Supreme Court quashed the polygamy charges that had been initiated in January 2009, holding that the Attorney General of British Columbia lacked jurisdiction to issue these charges given anterior procedural steps. See *Blackmore v. British Columbia (Attorney General)*, 2009 BCSC 1299, [2009] B.C.J. No. 1890, 247 C.C.C. (3d) 544. The province's Attorney General has thus decided to refer the legality of criminalizing polygamy to the B.C. Supreme Court. Christine Hunter, “B.C. Abandons Polygamy Charges” *The Globe and Mail* (23 October 2009), online: <<http://www.theglobeandmail.com>>.

