



Conseil du statut de la

*femme*

Opinion

Polygamy and the rights of women

2010

Québec 



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La traduction de l'avis du Conseil *La polygamie au regard du droit des femmes* (novembre 2010) a été réalisée pour le compte de la Cour suprême de la Colombie-Britannique dans le cadre d'une cause jugée en 2011 pour déterminer si l'interdiction de la polygamie par le gouvernement de cette province est cohérente avec les libertés garanties par la Charte canadienne des droits et libertés.

The Conseil du statut de la femme is a study and advisory council which was established in 1973. It gives its opinions on all of the topics related to respect of equality, rights and status of women in Quebec. The Conseil is made up of a female Chair and 10 female members from women's associations, universities, socio-economic groups as well as from trade unions.

This opinion was adopted at the 229<sup>th</sup> members meeting of the Conseil du statut de la femme on September 17, 2010.

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# TABLE OF CONTENTS

<b>PREAMBLE</b> .....	7
<b>INTRODUCTION</b> .....	11
<b>PART ONE – POLYGAMY AMONG MORMONS</b> .....	18
<b>CHAPTER I – HISTORICAL OVERVIEW</b> .....	19
1.1 The Ideological Basis of Mormonism .....	20
1.2 Repressive Measures .....	22
1.3 The Official Renouciation of Polygamy by the Mormon Church .....	24
1.4 The Raid of 1953, a Traumatic Event .....	25
1.5 Immigration and Globalization .....	26
<b>CHAPTER II – THE RELIGIOUS PARADIGM</b> .....	28
2.1. The Foundations of Polygamy among Mormons .....	28
2.2 The Politicization of Polygamy .....	29
<b>CHAPTER III – DISCOURSE AND ISSUES</b> .....	31
3.1 Discordant Voices .....	31
3.2 The Issues of the Canadian Judicial Proceeding .....	37
3.3 The Social Repercussions: The Testimony of Former Members .....	39
<b>CONCLUSION OF PART ONE</b> .....	55
<b>PART TWO – POLYGAMY IN ISLAM</b> .....	57
<b>CHAPTER IV – RELIGIOUS PARADIGM</b> .....	58
4.1 The Theological Foundations of Polygamy in Islam .....	58
4.2 The Theological Controversy .....	59
4.3 The Stakes and Strategies to Question the Practice of Polygamy .....	61
<b>CHAPTER V – THE DISCOURSE AND THE FACTS</b> .....	64
5.1 The Apologetic Arguments .....	64
5.2 Polygamy, a Changing Phenomenon .....	66
5.3 The Social Repercussions .....	71
5.4 Women’s Resistance and Examples of Reforms .....	74
5.5 The Social and Political Stakes .....	77
<b>CONCLUSION OF PART TWO</b> .....	78

<b>PART THREE – THE SOCIAL DEBATE IN THE WEST</b> .....	80
<b>CHAPTER VI – POLYGAMY IN THE CONTEXT OF IMMIGRATION: THE CASE OF FRANCE</b> .....	81
6.1 The State of Affairs and the Controversy .....	81
6.2 A Survey of French Law Concerning Polygamy .....	83
6.3 The Social Repercussions and Challenges Raised .....	84
6.4 The Perverse Effects of the French Law on Women .....	87
<b>CHAPTER VII – THE ARGUMENTS IN FAVOUR OF DECRIMINALIZATION</b> .....	90
7.1 The Principle of Respect for Individual Liberties .....	91
7.2 The Principle of Protection .....	92
7.3 The Principle of Equality of the Rights of Wives .....	93
7.4 The Principle of Non-Discrimination towards Polygamous Immigrants .....	93
7.5 A Legal Illusion .....	93
<b>CHAPTER VIII – THE ARGUMENTS IN FAVOUR OF MAINTAINING CRIMINALIZATION</b> .....	99
8.1 Canada’s International Obligations .....	99
8.2 Section 293 of the <i>Criminal Code</i> and the <i>Canadian Charter</i> .....	102
8.2.1. The Objective of Section 293 of the <i>Criminal Code</i> .....	103
8.2.2. The Limits of Freedom of Religion .....	104
<b>CONCLUSION AND RECOMMENDATIONS</b> .....	111
<b>LIST OF RECOMMENDATIONS OF THE CONSEIL DU STATUT DE LA FEMME</b> .....	117
<b>APPENDIX I – LEGAL STATUS OF POLYGAMY IN THE WORLD</b> .....	118
<b>APPENDIX II – EXCERPTS FROM THE CANADIAN <i>CRIMINAL CODE</i></b> .....	124
<b>BIBLIOGRAPHY</b> .....	127

## PREAMBLE

This research was conducted at the request of the Conseil du Statut de la Femme and it is aimed at analyzing the issues arising out of the legalization of polygamy in Canada, in order to clarify the position taken on this issue and its multiple repercussions.

The relevance of this research relates, among other things, to the legal proceeding initiated in early 2009 by the Government of British Columbia against two representatives of the Mormon Fundamentalist Church in Bountiful, who were accused of polygamy (a practice prohibited by section 293 of the *Criminal Code* of Canada). Considering that polygamy constitutes a fundamental principle of Mormonism, the accused invoked freedom of religion, protected by the *Charters*, to carry on this practice. On September 23, 2009, the Supreme Court of British Columbia dismissed the charges of polygamy against the two Mormon leaders, on procedural grounds, without deciding on the merits of the issue. Rather than appealing the ruling, on October 22, 2009, the government decided to apply to the Supreme Court of British Columbia for an opinion clarifying the constitutionality of the federal law prohibiting plural marriages.

At the time of the production of this report, the decision of the Court had not yet been released. If the ban on polygamy contravenes the *Canadian Charter of Rights and Freedoms*, then section 293 might be invalidated, which would result in the decriminalization of polygamy. Such a decision would have consequences for all Canadians, hence the importance of assessing the social repercussions of an eventual repeal of the section of the *Criminal Code* prohibiting polygamy in Canada.

### **Methodology**

This report is based, first, on a thorough but not exhaustive review of literature in various polygamy contexts. We have chosen to focus not only on the practice of polygamy in Mormon communities in North America, but also on that of Muslim and African societies, from which many immigrants originate. The sources consulted include empirical studies, articles, research reports and legal documents (see bibliography).

Secondly, although direct interviews were not within the scope of this research, our analysis is based on the numerous first-person accounts of Mormon women and men who have left their communities and related their experiences in books, documentary films or videos. A list of books and documentaries consulted is to be found in the bibliography at the end of this report. In this report, we have cited only brief excerpts of their accounts. We thought it important, however, to present a synthesis of these first-person accounts and studies consulted, in order to support our analysis of the situation, as well as our conclusions and recommendations.

## Content

To better understand the repercussions and issues of polygamy, it is essential to place this practice in the various contexts where it appears. There is no doubt that the social repercussions of polygamy vary according to the general surrounding context. The case of Mormons living in isolated communities in North America is certainly different from that of African or Muslim families, who live in societies where polygamy is traditionally permitted. The situation of these families changes when they find themselves in the context of immigration in the West, where polygamy is prohibited. Despite the various contexts, the human experience of women and children in polygamous families presents certain similarities, which we have attempted to identify based on first-person accounts and studies consulted within the scope of this research.

In this report, we first present, in the introduction, an overview of polygamy in the world, its extent and legal status in various countries. The report is then divided into three distinct parts.

The first part is dedicated to polygamy among fundamentalist Mormons, who are behind the current legal challenge to the Canadian law prohibiting polygamy. In the first chapter, we present an historical overview of Mormonism, which emerged in the United States in the 19<sup>th</sup> century. This overview seems essential to us to properly place the practice of polygamy in this particular context. We will see how this practice at first raised internal resistance before meeting general approbation, and then persecution of its followers by the authorities. This prompted a number of them to flee the United States and take refuge in Western Canada. The second chapter discusses the religious paradigm of polygamy, considered a "religious" obligation for the Mormons and the issues at stake, which will allow us to better understand the importance that the faithful placed in this practice, stubbornly refusing to abandon it, ready to defy the laws and the repression. In the third chapter, we analyze the conflicting discourses surrounding polygamy, supported by some women and denounced by others, as well as the issues in the Canadian Reference regarding section 293 of the *Criminal Code* and, finally, the social repercussions of polygamy and the related political issues.

The second part of this report is devoted to polygamy in Islam. As will be apparent, this is a very different context from that of Mormonism. Polygamy, which is officially accepted in most African and Muslim countries, is regarded as a tradition or a "right" recognized by Islam, but not as an obligation. It is especially important to understand this context because of the phenomenon of polygamy that Canada and other Western countries are facing today which relates more to African or Muslim immigration. In chapter four, we begin by examining the religious paradigm of polygamy in Islam and the theological controversy that this practice has raised for a century. We then examine, in chapter five, the discourse and the empirical evidence surrounding polygamy in African and Muslim countries. We will see how this practice is dramatically changing and expanding,

whereas it was declining less than fifty years ago. We will analyze the non-religious arguments put forward to justify polygamy, allegedly in the interests of women, as well as its social repercussions, specifically on women and children, and the political issues underlying this practice today. A better understanding of this complex reality and the factors that encourage or discourage the practice of polygamy is essential to be able to develop strategies appropriate to each context.

The third and final part of the report is devoted to the social debate that polygamy raises in the West. In chapter six, we examine polygamy in an immigration context, taking as an example the case of France, which faces various problems relating to polygamy among immigrants of African origin. This example is particularly relevant because of the growing number of immigrants, in Canada as in Quebec, from African or Muslim countries where polygamy is permitted. The question raised is whether to tolerate this practice in the name of cultural diversity and going so far as decriminalizing it, as some would wish, or maintain the ban on polygamy and, in such a case, determine the basis on which to support this policy. In chapter seven, we examine the arguments in favour of decriminalization and the consequences of such a policy, before outlining in chapter eight the justifications capable of supporting the prohibition of polygamy from a position centred on human rights. Finally, focussing on a global analysis of the repercussions and the stakes bound to this practice in the various contexts studied, we propose in chapter nine some courses of action to address the complex phenomenon of polygamy based on the principle of equality between the sexes and the protection of the rights of women and children in the long term.

We hope that this report will inspire policy makers in developing appropriate policies and strategies to meet the many challenges raised by the practice of polygamy, in the interests of women and children.



# INTRODUCTION

## **Polygamy Worldwide**

Today, most Western countries observe an increase in the number of polygamous marriages because of the presence of nationals from African or Muslim countries. Although the proportion of polygamous marriages among immigrant populations remains very low, the question nevertheless raises concerns and presents great challenges. Moreover, polygamy in the West is not solely related to immigration: Mormon polygamous communities established in the United States and Canada in the 19<sup>th</sup> century, and more recently in other countries, continue to defy the laws prohibiting polygamy, in accordance with religious principles. This is the reason why we cannot ignore polygamy or consider it a thing of the past.

The practice of polygamy in the West raises several questions that, until now, have remained unanswered. Do the laws prohibiting polygamy interfere with religious freedom? Should we enforce these laws or, as some suggest, tolerate this practice in the name of religious and cultural diversity? Should we decriminalize polygamy and redefine marriage currently conceived as a contract between two persons with equal rights and obligations? Is polygamy compatible with the principle of equality between the sexes? If polygamous unions were allowed, should that right not be recognized for women and men equally, regardless of religious affiliation, under the principle of the universality of rights?

As we can see, the answers are neither simple nor obvious. Whatever the position defended, it is undeniable that relations between men and women are at the centre of polygamy. It is difficult to deny that this practice stems from a patriarchal system, characterized by the domination of men and the oppression of women, and has a structuring effect on the whole of a society, contributing to reinforce inequality in social relations, which deny the rights of women and violates their dignity. The status of polygamy deserves therefore careful consideration and public debate, which must go beyond mere ideological rhetoric, so as to be considered according to the rights of women in the twenty-first century.

## **A Cautionary Note**

Before addressing the question of polygamy, caution is in order. Firstly, we must realize that the debate surrounding polygamy is "booby-trapped" in the West, as it is most often associated with immigration. This means that the subject-matter lends itself to demagogic manipulations that fuel the fears and hostility towards immigrants. The pitfall to avoid is twofold. On the one hand, we must refrain from demonizing all polygamists, thereby falling into a xenophobic logic. We must recognize that the monogamous marriage model is not universal and that polygamous societies

have existed in every culture, throughout history. On the other hand, we must avoid the pitfall of trivialization, which is to reduce polygamy to a simple matter of personal choice, which should be accepted in the name of cultural relativism<sup>1</sup>, while ignoring the resulting implications.

Secondly, we must avoid oversimplifying and consider the fact that today's practice of polygamy is not identical from that practised in the past. This is a complex multi-faceted phenomenon, encompassing very different realities. If we want to be able to address such a phenomenon, it is essential to better understand the different contexts in which polygamy is appearing, as well as the internal logic that makes men and women support this practice. This is a necessary condition in order to adopt a policy on polygamy that is appropriate and in the common interests of women in the long term.

### **Definition**

Before going any further, it is necessary to clarify the terminology used. The term *polygamy* refers to the marriage of a person with multiple spouses. Anthropologists distinguish between "polygyny", which indicates the union of a man with several women, and "polyandry", which indicates the union of a woman with several men. In fact, polyandry is rather rare. It seems to be found, on a small scale, in Nepal and Tibet. The term *polygamy* is therefore commonly used in the sense of "polygyny", to indicate the union of a man with several women. It is in the latter sense that the term "polygamy" will be used in this report.

### **Polygamy and Religion**

Polygamy is a very ancient practice which has its roots in different civilizations, from China to the aboriginal peoples of America to the Muslim world and other cultures in Africa and Asia. Although the practice is sometimes justified in accordance with religious principles, especially in Islam and Mormonism, it is an ancient custom, stemming from a patriarchal system, where men have authority over women and can have multiple wives, concubines or slaves. Various religions have tacitly approved polygamy before sometimes prohibiting it.

Today, polygamy is mainly associated with Islam, which allows its practice while imposing a limit of four wives. Less known, the Mormon religion, which claims to be a form of Christianity, advocates, in its fundamentalist branch, the practice of polygamy as a religious principle, without limiting the number of wives a man can take.

In Judaism, the Talmud allows polygamy, which authorises a man to have several wives, but does not recommend it. In the Old Testament, prophets and kings were all polygamists. This practice was banned in the first part of the 11<sup>th</sup> century, but it is still practised, on a very small scale, among the Jews of Israel, Yemen and in parts around the Mediterranean.

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<sup>1</sup> Cultural relativism is based on the argument that there is no universal morality. Individuals act according to a moral code that varies across cultures that are all of equal value, and therefore their actions can only be judged by the norms of their culture.

Until the beginning of Christianity, polygamy was widespread in Europe, at least among nobles and aristocrats. Certain historians (Macdonald, 1995) attribute the origins of legal monogamy to the Greeks, who institutionalized monogamy by limiting the right of every male to have only one wife, although he could continue to have slaves. It was a measure included in the reforms introduced in Athens (in the sixth century BC) to build democratic governance. The Roman emperors had subsequently developed the concept of monogamy by forbidding polygamy and legislating the legitimacy of birth and inheritance. Then, the monogamous system spread and established itself with the growing influence of the Church and Christian missionaries. According to certain authors, the evolution of this aspect of the Roman legal system is linked to the emergence of measures aimed at achieving a greater equality of rights between the sexes (Scheidel, 2009).

Beginning in the Middle Ages, the Catholic Church fought very hard against polygamy and promoted monogamy as the foundation of the family. In canon law, marriage is intended as a union between a man and one woman, based on mutual consent. The notion of consent is crucial to the Catholic Church, which considers marriage a sacred and indissoluble bond. With the reform of canon law in 1983, the Church officially renounced the concept of marriage to be the man's dominance over the woman, and it now recognizes that the spouses have equal rights and obligations in marriage. Historically, the prohibition of polygamy in the Western world is therefore associated with the influence of the Catholic Church while other religious cultures (Muslims, Animists and others) continue to allow this practice (Roche Dahan, 2009: 312-315).

### **The Extent of the Phenomenon**

Today, the practice of polygamy exists to varying degrees in most societies, including countries that prohibit it, but there are no reliable statistics on the number of polygamous marriages in the world. In countries where polygamy is permitted, the estimates for multiple unions vary from 2% to 20% of all marriages.

By the second half of the 20<sup>th</sup> century, in most African and Muslim countries, the practice of polygamy was in decline. This has been generally attributed to increased urbanization and economic constraints as well as education: women with higher education are less likely to accept a polygamous marriage. However, over the last two decades, there has been a resurgence in the practice of polygamy probably linked to the rise of a conservative and religious movement, which encourages it based on traditions or Islam.

Consequently, with increased immigration from African and Muslim countries, most Western European countries are increasingly faced with the practice of polygamy. The recognition of polygamous unions contracted abroad varies from country to country. For example, Denmark refuses to recognize multiple marriages. In the case of bigamy, it recognizes only the first wife, the second is considered a single mother if she has children. France and England prohibit polygamous marriages, but recognize these unions if they are contracted by immigrants in their countries of origin where polygamy is permitted. British courts have recognized that a polygamous marriage, contracted legally abroad,

confers the same rights and obligations on the spouses as a monogamous marriage (Campbell, 2005: 34). Recently, the British government adopted a controversial measure granting a supplement of £33.65 per month to the minimum family income for each additional wife, thereby implying a recognition of polygamy (Wynne-Jones, 2008). Conversely, Switzerland recently stripped a man (of Turkish origin) of his nationality who was married to a Swiss woman for 26 years and with whom he had a child, because, as it turned out, he had a second wife in Turkey, with whom he had two children. This decision was recently confirmed by the Federal Administrative Court, which noted that the naturalization through marriage presupposes a monogamous relationship (AFP, 2010). These few examples illustrate the wide disparities that exist between policies on polygamy in Europe.

In the United States, the practice of polygamy is primarily linked to Mormonism, which has a population of nearly six million followers throughout the country. It is unknown what the proportion of polygamous families among Mormons is, but, according to an American organization fighting against polygamy<sup>2</sup>, there may be approximately 50,000 families in the State of Utah alone and about 100,000 or more across the United States. Polygamy is also found among Muslim citizens, which represent about six million people. It is estimated that a minority of them, 50,000 to 100,000 practise polygamy today.

In Canada, the issue of polygamy arose in the media during the 1990s when allegations of sexual abuse were made against the leaders of Bountiful, by former members of this Mormon community. This is a small rural community consisting today of about 1,200 people, located in the south-eastern part of British Columbia. It is estimated that this number is doubling every decade, as a result of the high birth rate. However, Bountiful is not the only polygamous Mormon community in Canada (Bramham, 2008: 4). In 2005, the Mormon Church estimated the number of Mormons living in Canada, mostly in British Columbia and Alberta at 172,433. It is not known what proportion of them practice polygamy.

Moreover, Canada is facing an increase in visa applications submitted by polygamous men. For the time being, only one wife and the children born of these polygamous unions are permitted into the country. However, the media recently revealed that certain Muslim religious leaders are clandestinely celebrating polygamous marriages in Canada. Thus, an Imam in Ontario<sup>3</sup> admitted to celebrating about thirty polygamous marriages in Canada over the last five years. When asked about his illegal practice, the Imam invoked freedom of religion and noted that in Western Canada, the fundamentalist Mormon community practices polygamy openly without the government seeing fit to intervene. Believing that the prohibition of polygamy is not legitimate, the Imam considers that the law should be changed so as to formally recognize religious marriages performed in each community.

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2 Tapestry Against Polygamy is an American non-governmental organization which includes ex-polygamous wives and family members, offering support to those who wish to exit this lifestyle. Access to the agency website is at the following address: <http://bit.ly/1sXINLK>.

3 Imam Ali Hindi, of a mosque in Scarborough, Ontario, interviewed by the media during a television broadcast by Radio-Canada (*The Téléjournal/lePoint*) on June 26, 2006 and also published in an article in *The Star* on May 24, 2008 (both available on the Web).

It is estimated that polygamy is practised by a very small number of Canadian Muslims. According to Toronto Muslim community representatives, the percentage is less than 1% (Paquin and Marceau, 2006). Members of these communities, mostly concentrated in Toronto and Montreal originate from various countries in Africa and Asia and exhibit a vast cultural diversity. The total number of Muslims living in Canada is approximately 700,000 people, representing a little less than 2% of the Canadian population. This proportion is on the rise — it was less than 1% a decade ago — but remains low when compared to other immigrant countries such as France, where the Muslims represent around 9% of the population.

Although the number of polygamous marriages among Muslims is still low, the issue does raise concerns, especially among co-religionists, who largely disapprove of this practice. Many Muslim women are concerned about the current "laissez-faire" trend, fearing that their rights could be violated if their husbands are allowed to take other wives, and are wondering why Canada does not intervene to enforce its own laws. Recently, in Canada, the Campaign to Stop Polygamy supported by many Muslims, Mormons and others, was launched on the Web<sup>4</sup>.

We therefore understand that the decision of the Supreme Court of British Columbia, appointed to settle the validity of the Canadian law prohibiting polygamy, will have an impact that goes far beyond the small isolated Mormon community of Bountiful.

### **The Legal Status of Polygamy**

Polygamous marriage is legally permitted in some fifty countries (see Appendix I). Polygamy is still permitted in most African and Muslim countries, except in Turkey and Tunisia where it was banned in 1914 and 1956, respectively.

Polygamy in Africa is permitted either under customary law, as in Kenya, Mozambique and South Africa, or under Sharia law (Muslim religious laws). In Burkina Faso, for example, Muslims and non-Muslims have the right to contract polygamous marriages under customary law, while in Egypt only Muslims can practise polygamy, under Sharia law. In Benin, polygamy was banned by the new constitution in 2004, but polygamous marriages contracted before that date are still recognized by civil law.

In Asia, monogamy was legally adopted in the second half of the 20<sup>th</sup> century in some countries such as China (1953), India (1955), at least for the non-Muslim population, and Nepal (1963). Polygamy is permitted in countries with a significant Muslim population, like India, Bangladesh, Pakistan, Indonesia and Iran as well as in Arab countries, such as Iraq, Lebanon, Syria and Saudi Arabia.

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4 Information on this campaign can be found at the following URLs: <http://bit.ly/249IN5v> and <http://bit.ly/1U9eBBP>.

In the United States, polygamy has been prohibited for over a century (the *Morrill Act* of 1862). This prohibition is linked to a long-standing legal battle against the Mormon polygamists, who have tried to challenge the law without success.

In Canada, polygamy was expressly prohibited in the first *Criminal Code of Canada*, in 1892. This prohibition was specifically aimed at polygamous Mormons, but the current Canadian law is of a general application. This law prohibits polygamy (section 293) as well as bigamy (section 290), which designates the union of a person with two spouses, and imposes a prison sentence of five years for offenders (see excerpts from the *Criminal Code* in Appendix II).

To summarize, the status of polygamous marriages in the world corresponds to one of the four following models:

- polygamy is considered legal for all citizens, regardless of their religion, according to customary law (for example, in Burkina Faso);
- it is considered legal only for Muslims, according to Sharia law (for example, in Egypt and India);
- it is prohibited according to secular law, but multiple unions are recognized if they are contracted abroad (for example, in England) or if they predate the law (for example, in Benin);
- it is prohibited according to secular law and multiple marriages are not recognized (for example, in Denmark, the United States and Canada).

The recognition of multiple unions in Western countries, or their non-recognition, raises important ethical questions which will be discussed later (in part three of the report).

### **Polygamy: Subject of Controversy**

The status of polygamy does not only vary between countries but it is also the subject of controversy everywhere. In fact, in countries where polygamy is allowed, it is a point of confrontation between two visions of society. On the one hand, modernists and women's rights advocates want to prohibit or otherwise restrict polygamy while on the other hand, defenders of the tradition oppose any restriction on this practice based on culture or religion.

In African and Muslim countries where polygamy is legally allowed, women's rights groups have long struggled against this practice, considering that it is the source of many abuses and harms against women and children. Their challenge to polygamy encounters strong opposition from conservative religious leaders, reluctant to see the privilege accorded to men being relinquished. Using realistic strategies, some groups request the imposition of legal restrictions on polygamy as an alternative to a complete ban.

Under the pressure from women's groups, some Muslim countries, such as Morocco, Algeria and Egypt, have introduced, in recent years, a few timid reforms aimed at limiting the practice of polygamy to protect women. In Egypt, for example, certain restrictions were introduced in 1979 (then

amended in 1985), such as the husband's obligation to inform his first wife before contracting a second marriage and granting her the right to divorce, on the grounds of financial or moral damages caused by the marriage of her husband to another woman. These reforms are considered too modest by women's rights advocates and are not sufficient to curtail the practice of polygamy.

Paradoxically, in Western countries, in both Europe and North America, lobbying groups are calling for the legalization or decriminalization of polygamy, in the name of respect for cultural diversity. This request is supported by certain jurists and even feminists, who argue that it is best to decriminalize this practice to protect women and children in polygamous families. These conflicting positions are creating much confusion around the question.

The recognition or non-recognition of polygamous unions will certainly affect women, through immigration policies and women's access to social benefits, often associated to established family status. The issue raises therefore an important ethical question. To see this more clearly, we must first understand better the many realities of polygamy and the religious and social justifications that surround it, before assessing the implications of legalizing it from the perspective of women's rights in the 21<sup>st</sup> century.

## **PART ONE – POLYGAMY AMONG MORMONS**

To better understand the position of the Mormon community in Bountiful, whose spiritual leaders are currently challenging the Canadian law prohibiting polygamy, it is useful to better know the history and origin of Mormonism as well as its ideology. This aspect, generally little known to the Canadian people, will allow us to better understand the meaning behind the stubborn refusal of Mormons to renounce the principle of polygamy, despite the laws prohibiting it.

In this first part, we begin by presenting a historical overview of Mormonism, its ideology and the repression suffered by its followers in North America (chapter 1) before examining the "theological" justifications surrounding the principle of polygamy in the Mormon Church and the political meaning of this practice (chapter 2). We conclude this part with an analysis of the discourse and realities of polygamy among Mormons today, including the stakes relative to the current legal proceeding. We focus particularly on the analysis of social repercussions of polygamy by relying on the first-person accounts of former members of the polygamous Mormon communities (chapter 3).

## CHAPTER I – HISTORICAL OVERVIEW

The history of Mormonism<sup>5</sup> and the repression suffered by its followers in the United States, for over a century, is highly relevant to understand the importance of the place that polygamy holds, even today, in the eyes of the faithful associated with the fundamentalist branch of this Church.

The Mormon Church, the Church of Jesus Christ of Latter-day Saints (simply designated as the Church of Latter-day Saints (LDS)) was founded in the United States, in 1830, by Joseph Smith, a charismatic young farmer from New York.

The Book of Mormon, considered as the sacred book of the faithful, constitutes a collection of Scriptures similar to the Bible, to which the followers must adhere fully and unconditionally. This book was revealed to Smith under very mysterious circumstances. Smith claimed that one day, he had a visit from a messenger of God who revealed to him the existence of Golden Plates, hidden in the hillside, containing the history of an ancient people. Thanks to the gift and power received from God who made him His Prophet, Smith decided to translate, into English, the sacred scripts, written in an ancient language. He recorded his translations in the Book of Mormon, before handing the mysterious Golden Plates to the messenger of God who had ordered him not to show them to anyone. Even his wife, Emma Smith, was not authorized to see them. However, for obvious reasons of credibility, eleven witnesses, designated by Smith himself, wrote a brief statement witnessing the existence of these Plates and their testimony was recorded in the Preamble of the Holy Book.

It is startling to see the extent of the spread of Mormonism which has been steadily growing since the early 19<sup>th</sup> century. The most critical historians describe Smith as a compulsive liar, the most lenient describe him as a product or a victim of his time. In the social climate of the time, shaped by gold-seekers, magic and folklore, coupled with a wind of religious revival associated with Protestant Biblicism emphasizing individualistic values and promoting a free interpretation of the Bible, the history of the Book of Mormon was enough to seduce an American audience "eager for new experiences and new spiritual horizons to address their daily concerns". ([www.mormonism.com](http://www.mormonism.com))

This particular context explains, at least in a large part, the emergence and the popularity of the new religion proposed by the young Smith. He was gifted with a great talent as a preacher and had extensive knowledge of the Bible and the theological debates of the time, which enabled him to attract many followers.

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5 This historical survey relies on various sources, notably an anthropological study of Altman and Ginat (1996) and the site <http://bit.ly/1VqCb2g>.

## 1.1 THE IDEOLOGICAL BASIS OF MORMONISM

The Mormon Church claims to be a form of Christianity and claims to restore Christianity as advocated by Jesus Christ. The Church is preparing for the second return of Christ on earth, associated with the Apocalypse that the subsequent Mormon prophets predict will happen in the near future. The last prophets predicted the return of Christ to the United States in the year 2000; this date had to be postponed.

However, the doctrine of Mormonism differs from that of Christianity, notably regarding its conception of the nature of God and that of Christ. Smith taught that God and men are of the same nature; that God is not the creator of all things and that He does not have an absolute power. Smith also claimed that as God had been a man, that a man could also become a god through "exaltation" which demands absolute obedience to the principles of the Church, including polygamy. Since the Mormons have elevated their Prophet to the level of Jesus Christ, they do not celebrate Christmas, but instead, the birth of Joseph Smith on December 23.

Moreover, unlike Christian beliefs that the soul comes to the body at birth and leaves the body at death, the Mormons believe in both pre-life existence and life after death. Under this doctrine, there are millions of spirits waiting to be incarnated in bodies, and the faithful have the sacred duty to offer those spirits a chance to live in true faith to earn eternal salvation (Bramham, 2008: 4-5). This belief leads to a strong propensity to procreation which is encouraged with multiple wives.

The concept of the Apocalypse takes center stage in religious education. Considering themselves as the chosen people, the Mormons believe they will be the only ones to be saved on Judgement Day when Christ returns to earth to destroy all of the infidels. The imminent end of the world and the fear of eternal damnation constitutes therefore powerful incentives that force the faithful to follow, in an exemplary fashion, the religious precepts. The reward promised to the righteous men is the attainment of "exaltation", which will allow them to become Gods and possess their own kingdom for eternity, surrounded by their wives and children. In order to be saved, the men must then practise polygamy and women must fulfill their duty of procreation, in addition to being obedient and submissive to their husband, hoping to share his heavenly kingdom.

Socially, Smith advocated the building of an ideal community model, organized around a strong family structure, where the man is considered as the patriarch to whom women and children owe absolute obedience. This family structure must be integrated into a social organization based on the pooling of resources, which must be entrusted to the Church and its representatives. The Church representatives are also responsible for overseeing the social and spiritual aspects of the life of the members of their community, and who in return, must owe to them absolute obedience. Basically, this communitarian structure, adopted by the faithful, is based on a theocratic and patriarchal system demanding women to submit to the authority of their husband, as well as renouncement by the followers of their individual liberties which are usually associated with modernity.

Although this model lies on the margins of contemporary social evolution, it does not lose any of its appeal in the eyes of those who are disillusioned with the contingencies of modernism, and thereby reject claims made by women for equality as well as those made by the minorities. In fact, the doctrine of fundamentalist Mormons is not only opposed to feminist strides, but it also advocates white supremacy. Based on the history of the curse of Ham (Genesis 9: 20-27) and considering that black people are the descendants of Cain and Ham, fundamentalist Mormons adopted a racial interpretation of this biblical story and strongly encouraged the faithful to avoid interracial relationships<sup>6</sup>.

### **The Pressures in favour of Polygamy**

Inspired by the Old Testament which evokes the practice of polygamy of some of the biblical figures, Smith encouraged his closest associates to adopt the practice of plural marriages to follow the example of their ancestors. However, it was only in 1843, then thirteen years after the founding of the Mormon Church, that Smith revealed to all his followers the principles of polygamy, espousing that it was a "revelation" involving an order from God. Smith asserted that polygamy was the most important doctrine of Mormonism, that it was the very basis of its foundation and that only men embracing it could expect to attain the "exaltation" which would allow them to become gods. Some claimed that this "revelation" came at an opportune time in order to convince his first wife, Emma Smith, to share him with other women, which she had all along refused to do until that point. (Altman and Ginat, 1996).

Over the course of the first few years that followed, polygamy was practiced by the Mormons, on a small scale, especially amongst religious leaders. It seemed that until Smith's death (in 1844), only about thirty religious leaders were practicing polygamy. In 1852, after the Mormon Church was soundly established, the doctrine of polygamy was publicly announced. From then on, polygamy was considered a "religious obligation" and a test of loyalty to Smith and the teachings of the Church. (Altman and Ginat, 1996: 28).

Curiously, far from raising the enthusiasm of the men, the practice of polygamy first encountered strong resistance on their part. Many Mormon men were not prepared to disrupt their lifestyle and assume the responsibility of multiple households. During the decades that followed, Smith's successors had to pressure monogamous couples to adopt the model of plural marriages. The Mormon Church has even threatened the recalcitrant men to remove them from the position they held if they did not take other spouses. Women were also pressured to comply with the principle of polygamy and even to encourage their husbands to take additional wives. The theological justifications and the political meaning of polygamy will be discussed in the next chapter.

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6 See: <http://bit.ly/1UfXDoi>

## 1.2 REPRESSIVE MEASURES

Under the leadership of Smith, who was referred to as "the Prophet", the first Mormon communities were established in the states of Ohio and Missouri, where they managed to grow and prosper. However, their doctrine and polygamous lifestyles raised the hostility of local settlers, who had been educated according to traditional Christian values based on the supremacy of God and a monogamous family model.

In 1838, Smith and his key associates were accused of fraudulent economic and political practices. Smith was jailed and sentenced to death but managed to escape, with the complicity of his allies. To escape persecution, Mormons had then to settle in Nauvoo, in the State of Illinois, under the leadership of Brigham Young. Immediately after Smith joined the settlers, the Mormons set up a new and better organized settlement in Nauvoo where they built a large temple around which they established agricultural farms, businesses and factories. They also tried to gain political power by integrating municipal and national bodies of government, and for protection from violence, created an armed militia under Smith's command. Without undue delay, hostilities started to escalate against the Mormons who were now, increasingly, practising polygamy more openly. The conflict reached a peak in 1844, at which time Smith was murdered.

In 1845, led by Brigham Young, the Mormons had to leave Nauvoo, to settle in remote regions. After two difficult years of exodus, they settled in Utah, where they built a city with a strong infrastructure, in the middle of the desert. They occupied all the important positions in public administration: judges, elected municipal officials, police officers, etc.

Before Smith's death, having learned the lessons of repression, missionary work was organized to spread Mormonism and encourage its followers to establish themselves in several neighbouring states, and beyond borders, in order to minimize their vulnerability to local authorities. Following this sound advice, the Mormons therefore congregated, establishing new settlements in various States: Arizona, Nevada, Colorado, Idaho, Wyoming, New Mexico and as far as California. Some of the Mormons also settled in Mexico and Canada.

The practice of polygamy remained the most controversial element of the Mormon theology. The Mormon polygamous lifestyle as well as their rising economic and political influence, contributed to intense hostility toward the Mormons. As a result, in the late 1850s, federal troops were sent to "invade" Utah territory to regain control. To their great surprise, they clashed with armed Mormon militia, determined to fight to defend their autonomy. Negotiations ensued and peace returned (Altman and Ginat, 1996: 33).

During the following decade, the government left the Mormons alone. But in 1862, the American Congress passed the first law prohibiting bigamy (the *Morrill Act*). However, diverted by the civil war, the government did nothing to enforce this law. After the civil war ended, in 1874, Congress strengthened the *Morrill Act* by implementing a new law, the *Poland Act*, aiming at eliminating the

control exercised by the Mormon Church on the justice system in Utah. This 1874 law restricted the political independence of the Mormons and gave increased power to the federal government over the territory of Utah.

### **The *Reynolds v. United States* Case**

Brigham Young, Smith's successor, decided to test the constitutionality of the law prohibiting bigamy by invoking the First Article of the Amendments to the American Constitution, which protects freedom of religion. In October 1874, a lawsuit was brought in the Supreme Court against George Reynolds, personal secretary to Young, who was accused of bigamy. However, in January 1879, a unanimous jury upheld Reynolds' conviction by ruling that polygamy was not protected by the Constitution of the United States.

In this historic Judgement (*Reynolds v. United States*), the U.S. court relied on a statement by U.S. President Thomas Jefferson, who was behind the wording of the provision of religious freedom in the Preamble of the American Constitution of the United States. In his statement, Jefferson made an important distinction between religious *beliefs* and resulting *actions* by stating that:

[...] Religion is a matter which lies solely between man and his God [...] whereas the legislative powers of the government reach actions only, and not opinions.

*Reynolds v. United States* 98 U.S. 145 (1878) para 164

Based on this distinction, the decision of the Supreme Court stated that, in fact, if polygamy practice was allowed based on religious freedom...

It may open the door to allow other actions relating to religious beliefs such as human sacrifice; this would be to make the professed doctrines of religious belief superior to the law of the land, and ultimately allowing every citizen to become a law unto himself.

*Reynolds v. United States*, 98 U.S. 145 (1878) para 166

The Supreme Court concluded that the conviction for polygamy did not constitute a violation of freedom of religion and that the First Amendment protected religious beliefs or opinions, but not related practices. Congress could then prohibit the practice of polygamy. The Mormon Church was quick to condemn the decision, claiming that polygamy was a divine institution, which no government had the right to prohibit and that the faithful ought to defy the government to obey God.

Nevertheless, this historic decision was established as a precedent and has been invoked for recent bigamy charges. In 1984, an American court had to consider the case of a police officer, in Utah, Royston Potter, who was fired from his job, for bigamy. Based on the *Reynold's* decision, the First Instance Court dismissed Potter's defence argument invoking the First Amendment. Lawyers for Potter then wanted to appeal the decision, convinced that the Court would have to reconsider the case law dated from more than a century ago, in light of new asserted rights in matters of morality

and sexual freedoms. However, in October 1985, the US Supreme Court refused to hear the appeal, which means that the decision rendered in the *Reynold's* case is still valid today. (Law, [n.d.]).

### **Other Legal Measures**

Other harsher laws were introduced in the United States, the *Edmunds Act* in 1882 and the *Edmunds-Tucker Act* in 1887, aiming at minimizing the political influence of the Mormons. In addition to criminalizing plural marriages, these laws prohibited polygamists from holding certain positions of authority, such as civil servants, elected officials and jurors to lessen their political influence. In addition, to prevent pressures of polygamists on candidates running for office in Utah and in order to give them the right to vote, the law required the candidates to take an oath that they did not encourage nor practise polygamy. Finally, Federal authorities started to arrest polygamist men who were then tried by a non-Mormon jury.

Three years later, in 1890, other provisions of the law enabled the government to pursue not only individuals who persisted to practise and encourage polygamy, but also the Mormon Church itself, by dissolving its incorporation and by confiscating its assets if they were not strictly dedicated to religious purposes. As a result, by the end of the 19<sup>th</sup> century, these repressive measures forced, among other things, a number of polygamous families to flee Utah and take refuge in Mexico and Canada. Even more importantly, these drastic measures shattered the hopes of the Mormon pioneers to see polygamy legalized.

## **1.3 THE OFFICIAL RENOUNCIATION OF POLYGAMY BY THE MORMON CHURCH**

Faced with adversity, leaders of the Mormon Church formally renounced the practice of polygamy in exchange for the cessation of repressive measures against them and the recognition of the Utah Territory as a State, which guaranteed the Mormons greater political autonomy.

In 1890, the new President of the Mormon Church issued a first Manifesto in which he declared that his Church would obey the laws of the land and, henceforth, would renounce polygamy. This Manifesto allowed the Mormon Church to protect its property and to obtain amnesty for its members already in polygamous marriages. The State of Utah was founded in 1896, and it enshrined in its constitution the "permanent" prohibition of polygamy.

However, the first Manifesto did not disavow polygamy, on a theological level, or provide for penalties to be imposed on those practising polygamy. In 1904, under the pressure of the Federal government, the Mormon Church issued a second, stricter, Manifesto, wherein the church threatened to excommunicate any religious leader who would form a polygamous marriage or celebrated one. During the decades that followed, the practice of polygamy among Mormons declined significantly.

Until 1929, the Mormon Church and the Government of the United States were joined in their efforts to deter and punish the practice of polygamy. Mormons who engaged in new polygamous relationships or continued to promote plural unions were stripped of their ecclesiastic responsibilities and excommunicated by the Church. At the same time, a number of dissident Mormons began organizing themselves to defy the law.

In 1929, a split occurred within the Mormon Church: a structured fundamentalist movement emerged, consisting of faithful who refused to adhere to the Manifesto, claiming that it was a political document and not a divine revelation. From 1930 to 1949, fundamentalist Mormons endured a hard-fought battle to defend the principle of polygamy under the leadership of conservative religious leaders. In 1932, they founded their own church, named The Fundamentalist Church of Jesus Christ of Latter-day Saints (FLDS), designated as the FLDS Church. The communities associated with this fundamentalist branch accused other Mormon members of the official Church (LDS) of apostasy, because they abandoned the practice of polygamy.

Polygamous Mormons established their community in Salt Lake City (now the capital of Utah) and in Short Creek (which was renamed Colorado City) in Arizona. By building the community in cross-borders between two states (Utah and Arizona), the Mormons could constantly travel from one state to the other to escape the control of the authorities. Since then, the Mormon fundamentalist branch practicing polygamy has increasingly grown and expanded their community facilitated by a very high birthrate, despite state repression and opposition from the official Mormon Church.

#### **1.4 THE RAID OF 1953, A TRAUMATIC EVENT**

One of the most marked events in Mormon history is the raid of 1953, initiated by the State of Arizona's authorities and supported by those of Utah, levelled against the fundamentalist Mormon community in Short Creek. This event was traumatic for the small Mormon community, which was then composed of about 400 people. It led to the arrest of about forty men and eighty women as well as the placement in foster care of more than two hundred children.

The raid was widely publicized and infuriated the public opinion, outraged by images of police separating children from their mothers. However, the official Mormon Church (LDS) was one of the few voices supporting the intervention by the police considered as a needed response to stop polygamy and the resulting abuses. After two years of legal proceedings, all of the individuals arrested during the raid were released. Many women chose to return with their children to live in the Mormon community, some of them agreed to give their children up for adoption and others preferred to continue living in group homes with their children for several years.

The fiasco of the police intervention had a negative impact on several levels. First, the raid became a component/element of the history taught to Mormon children, which still contributes to fuel their great distrust in the outside world. Secondly, to increase their hold on the Mormon community, the

Mormon leaders exploited, to their advantage, the fears and the trauma suffered by the members of the community during the raid. Thirdly, following the media fiasco surrounding the raid, government authorities were reluctant to intervene in that community, which translated to a "laissez-faire" policy for the decades that followed.

Even today, the Mormon communities associated with the Fundamentalist Church (FLDS) live in autarky, avoiding interactions with the outside world. Moreover, these communities are built on a cooperative model, based on the pooling of all of the resources. This model was established in 1942 by the creation of a united cooperative, the United Effort Plan (UEP), property of the FLDS Church, which owns these communities' properties, land and businesses. The Mormon community in Bountiful, British Columbia, does not escape this model. A large majority of land and properties in this community belong to the UEP, the headquarters of which is based in Utah.

## **1.5 IMMIGRATION AND GLOBALIZATION**

The early immigration of the Mormons in Canada started in the late 19<sup>th</sup> century, specifically in 1888, two years before the publication of the first Manifesto in which the official Mormon Church (LDS) renounced the practice of polygamy. At that time, the Canadian government, looking to populate the Western Canadian territories, encouraged Mormon communities to immigrate to the region.

The Mormon leaders, eager to obtain official permission to settle in Canada with their numerous wives, addressed a letter to the Canadian Prime Minister, Sir John A. Macdonald, who refused to accommodate their request. By 1890, the Canadian government passed the first law prohibiting polygamy which was included in the first *Criminal Code* in 1893. The wording of this law, judged discriminatory because it was aimed specifically at Mormons, was amended in 1954. Section 293 of the *Criminal Code*, as it stands today, prohibits polygamy without targeting any specific community.

Paradoxically, even though Canada had banned polygamy, it actively continued to encourage the immigration of polygamous Mormons. The government even offered a position- as an immigration officer- to a Mormon leader, John W. Taylor, who had six wives and thirty six children. The latter immediately encouraged many polygamous families to immigrate to Canada to escape the repression in the United States, so that in 1901, Alberta already had a Mormon population estimated at 6,891. That number had more than doubled a decade later. Among these immigrants were the grandparents of Winston Blackmore, the current Mormon leader of Bountiful, who became one of the wealthiest and most influential members of the Mormon communities in North America. According to some critics, the position held by the Canadian authorities demonstrates wilful blindness and total inconsistency (Bramham, 2008: 37-39).

The government's "laissez-faire" attitude contributed to encourage the practice of polygamy and its spread across the country. Since that time, no prosecution has been initiated in Canada against polygamous Mormons until the recent legal proceeding started in 2009 against two rival religious leaders in Bountiful, Winston Blackmore and James Oler.

Moreover, the internationalization of the Mormon Church still continues. According to official statistics of the LDS Mormon Church in 2005, it has nearly 12.5 million members (this figure is based on the number of baptized individuals). More than half live outside the United States, almost one quarter (24%) in Latin America, 13% in Central America, 7% in Asia, 2% in Africa, 3% in Europe and 1% in Canada<sup>7</sup>.

Still today, the religious and administrative center of the official Mormon Church (LDS) is based in Salt Lake City, the capital of Utah. Mormons form the majority of the population of that State, but their proportion is in decline if compared to the population in general.

Estimates of the number of members of the Fundamentalist Church (FLDS) embracing the principle of polygamy differ depending on the sources: the number varies from 50,000 to 100,000 members. Polygamous Mormon communities are established in several regions of North America, notably in Salt Lake City, the capital of Utah, and in the twin cities of Hildale (Utah) and Colorado City (Arizona), where the majority of the 10,000 individuals are members of the FLDS Church. The Church has also built a huge complex (seven square kilometres) in Eldorado, Texas, known as the Yearning for Zion Ranch. Other communities have settled in Westcliffe and Macos (Colorado), Pringle (South Dakota), and in Canada: in Bountiful and Creston (British Columbia), and elsewhere in Alberta. The proportion of members of these communities practising polygamy is unknown (Winslow, 2007). One thing is certain, they maintain very close social ties consolidated by marital relationships.

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7 <http://bit.ly/20H8x8C>

## CHAPTER II – THE RELIGIOUS PARADIGM

As we have previously mentioned, polygamy has been practised prior to the emergence of religions. Moreover, ancient history and the Bible bear many examples of polygamy, an ancient custom which remained unchallenged until the Middle Ages.

### 2.1 THE FOUNDATIONS OF POLYGAMY AMONG MORMONS

The conception of marriage among Mormons is based on the Old Testament and has its origin in the history of Abraham, whose wife, Sarah, unable to bear children, encouraged her husband to marry her servant, Hagar, to ensure his progeny. Although Sarah was older, she subsequently had a son, Isaac. Based on this biblical story, Joseph Smith, founder of the Mormon Church, advocated a family model based on the image of the good patriarch having multiple wives to ensure great progeny to his people.

Inspired by the Bible and the Talmud, Smith taught that a man should have at least three wives to attain "fullness of exaltation", which would enable him to become a god and rule in his own kingdom, surrounded by his wives and children. However, this promise did not seem to be enough to spread the practice of polygamy, which led the Church to increase pressure on the faithful.

#### **The Sacralisation of Polygamy: the 1843 Revelation**

The fate of polygamy was sealed with the July 12, 1843 "revelation" which confirmed the sacredness of polygamy. According to the revelation received by Smith, God "commanded" the men to live according to the principle of polygamy and anyone refusing to comply would be doomed to eternal damnation. The implied threat contained in this revelation was aimed specifically at women, therefore establishing the requirement that they accept their husband's multiple marriages or, failing to do so, be damned for eternity.

Many theological texts written by Smith and his successors then encouraged women to embrace polygamy and to restrain their sphere of responsibilities within the household to entirely devote themselves to their husband and their numerous children. These scripts still continue to inspire many followers, hence contributing to strengthening the polygamous patriarchal model with all of its sexual stereotypes.

In order to have the followers accept this ideal polygamous model, Smith adopted a progressive strategy. Firstly, he developed the concept of celestial marriage, wherein a man and a woman can enter into a spiritual marriage, in anticipation of a common life in the hereafter. Smith then distinguished between marriage "for time", uniting a man and a woman on earth, and marriage "for time and eternity", which establishes ties in the hereafter. He claimed that only marriages consecrated by religious Mormon leaders would last "for time and eternity," which enabled him

to circumvent the civil marriage system. Lastly, Smith argued that polygamous marriages are "acts of God" which cannot be challenged, therefore fostering the followers' spirit of resistance (Altman and Ginat, 1996).

Consistently faithful to the teachings of Smith, the Mormon fundamentalist Church (FLDS) still teaches to all of its followers that a "worthy" man should marry at least three women (some put this ideal model to seven wives) and have a great number of offspring to attain "exaltation", which will allow him to become a god and rule in his own celestial kingdom. The size of the kingdom promised to the "worthy" man is purported to be proportional to the number of wives and children he has had on earth.

At the same time, to encourage women to adhere to the principle of polygamy, which goes against their deepest feelings as evidenced by the resistance of the Mormon pioneers, the FLDS Church teaches the women that, on earth, they must be "sealed" to a "worthy or righteous" man if they want to access the celestial kingdom, but since the number of "worthy" men is limited, women have a moral obligation to share their "worthy" husband with other wives to deserve heaven.

Moreover, the obligation for women to have many children is related to the Mormons' belief that the universe is populated by spirits awaiting a "carnal envelope" to attain their salvation. This belief concretely translates in refusing all contraceptive methods. Procreation of as many children as possible is therefore considered as the sacred duty of women. This explains the very high birthrate among fundamentalist Mormons where it is common that a woman may have ten or more children.

## **2.2 THE POLITICIZATION OF POLYGAMY**

One is entitled to question why the fundamentalist branch of the Mormon Church has insisted so much, and still insists, on the practice of polygamy, to the extent to make the eternal salvation one of its conditions and a test of loyalty to the Church and its founder, Joseph Smith.

In addition to the theological meaning given to polygamy, the persistence to maintain this practice, despite the opposition that it raises, is very significant. As stated in a study done on Mormons, polygamy has allowed reinforcing the cohesion of the group, because once involved in a polygamous lifestyle, it was very difficult for the followers to leave the Church and further they had to separate themselves from mainstream society which disapproved of the practice of Polygamy. (Altman and Ginat, 1996: 28). In fact, today, fundamentalist Mormon communities practicing polygamy still live in small isolated and very closed communities, where religious leaders exercise considerable power over the faithful.

In other words, if it is true that religion represents a redoubtable means of social control, we can say that polygamy constitutes an additional and significant means of control, in the context of general hostility where polygamy is legally forbidden and gives rise to social opprobrium. The history of Mormons reveals that polygamy has been exploited at the outset by the founders of the Mormon Church, to reinforce their religious power over the followers.

In the social model instituted by polygamy, men are considered patriarchs, to whom their wives and children owe absolute obedience, and where Church officials exercise absolute power over men. In this hierarchical model, men must also renounce their individual freedoms and submit to religious leaders, with whom they can expect, one day, to share the power. However, in order to do so, they must meet at least two conditions. Firstly, they must ensure that all of their family members strictly follow the religious rules as prescribed by the Church, and secondly, they must assume increased responsibilities within the structure of the Church, hence contributing to the consolidation of the power of the institution over all the faithful. Therefore, polygamy is linked to a double issue of power, which is both at an individual and a collective level, thereby reinforcing each other.

Therefore, the polygamous lifestyle constitutes the base of the pyramid in which the social and political structure of these communities is built on. Smith had understood this very well as he had always considered the principle of polygamy as being the most important doctrine of Mormonism. This explains also the fierce resistance of the fundamentalist Mormons who still refuse to renounce polygamy, despite repression, for fear of seeing the power and social structure they have built collapse.

Some historians are questioning the central role that Smith has played in the promotion of polygamy and rather attribute it to his successors, accused of having manipulated Smith's scripts after his death to strengthen their own position in favour of polygamy (Price, 2008). Although this does not change much the politicization of polygamy (i.e. the manipulation/use of polygamy for political objectives) by the leaders of the FLDS Church, this information could be useful for a possible reconsideration of the practice of polygamy in the eyes of the Mormons.

## CHAPTER III – DISCOURSE AND ISSUES

Most of the studies relating to polygamy concern African or Muslim populations. Rare are those which have analysed polygamy among Mormons. This is likely because the Mormons live in very closed communities and therefore are very seldom accessible to researchers. However, for the last decade, several former members of the Fundamentalist Church (FLDS), who left their community, have agreed to recount publicly their experiences (Palmer and Perrin, 2004; Llewellyn, 2004; Moore-Emmett, 2004; C. Jessop and Palmer, 2007; Bramham, 2008; Spencer, 2007; F. Jessop and Brown, 2009; Jeffs and Szalavitz, 2009).

The first noticeable conclusion drawn from these first-person accounts is the existence of close social ties uniting the members of the Mormon communities associated with the Mormon Fundamentalist Church (FLDS) living in the United States and Canada. Despite the tensions and competition that sometimes divide the community leaders, the followers are united by family, social and cultural ties, constantly nurtured by frequent social visits and by sharing the same sermons, which emphasize the same religious values and principles, including polygamy. Given these very strong family and ideological ties, which facilitate the permeability of borders, accounts of members of either community are deemed relevant to our analysis.

### 3.1 DISCORDANT VOICES

For a few years now, we have observed a trend toward trivializing polygamy in Western public opinion, reinforced by the media. Certain intellectuals also support it by saying that polygamy is no different than extramarital relations, which are tolerated by mainstream society, and that it is therefore a legitimate choice, not necessarily harmful to women. This trend is in line with the sexual revolution of the 1970s, which led to important transformations in the mentalities, including not only acceptance of common-law unions and homosexuality, but also of pornography and prostitution, once considered morally reprehensible.

Given the history of Mormons and the opposition of American society to polygamy, North American public opinion, up to today, widely disapproved of this practice. Nonetheless, an American television series, entitled "Big Love", presented, in a humorous and positive manner, the life of a polygamous family which had an unexpected popular success. The television series, broadcast in 2006, focused on members of a family, including a husband and his three modern and independent wives, who appeared to benefit from this family arrangement. When asked by the media about this television series, Flora Jessop, a former member of a fundamentalist Mormon community from Arizona, showed outrage at this trivialization of polygamy and said:

It is a fiction that has nothing to do with reality. If reality of polygamy was shown, that is to say, incest, child rape and the massive abuse, no one would watch the show.

(F. Jessop, cited in St-Jacques, 2006)

Moreover, the few studies regarding polygamy among Mormons sometimes convey evidence of Mormon women who purport to be happy with their lifestyle and who seem to find certain benefits from it. This sentiment was supported by about twenty women living in Bountiful when interviewed by a Canadian researcher, Angela Campbell<sup>8</sup>:

Participant #2: I go to school and I've got a babysitter, right there at home. He [my son] doesn't have to go anywhere. They're already home. They're in their own environment, And they are already cared for by their own family. You know and, myself, I can stay home and baby-sit for someone else who has to go to work.

Participant #6: My sister wives are like my very best friends. (...) Sometimes I feel like I'm more married to my co-wives than I am to him (my husband)!

(Campbell, 2009: 41, 43)

These comments are enough to seduce Western public opinion, disillusioned by an individualistic culture that supersedes family values, leaving many elderly in total solitude and many young women with the difficult task to balance work with family life.

The author of this study questions the correlation generally established between polygamy and the harms suffered by women, believing that we tend to generalize from cases of reported abuse. Refuting then the image of submissive women forced to undergo their fate, Ms. Campbell affirms that it should be recognized that there are benefits attached to polygamy and that women can wield some authority in their marriage, family and community (Campbell, 2009: 5).

Nevertheless, the positive accounts collected in this study conducted with a group of Mormon women, none of whom have suffered or at least have spoken about coercion or violence, differ from the accounts of other women who left their polygamous Mormon community. In a book entitled *God's Brothel* (2004), the journalist Andrea Moore-Emmett gives the opportunity to speak to eighteen women, who had left their community associated with the Fundamentalist Church (FLDS) because of the many harms suffered that are, in their view, inherent to polygamy. Their testimony describes the physical and psychological abuse suffered which shows a life that more closely resembles a form of sexual slavery for women. How can we differentiate these discordant voices that reflect entirely conflicting realities about polygamy?

### **The Limits of Certain Studies**

The rare studies concerning the Mormons are more descriptive than analytical. However, they have the merit of giving a voice to women from polygamous families, which helps us to better understand their experiences and the values that animate them. According to anthropological ethics, the

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<sup>8</sup> Angela Campbell, a law professor at McGill University in Montreal and the author of one of the four reports submitted to Status of Women Canada on Polygamy.

researcher must adhere to the perspective of those interviewed and put his or her own values aside to understand from the inside the reality of the group studied. The objective of this approach, although commendable, can however lead to the justification of all practices in the name of respect for cultural differences.

Let us briefly examine the case of the anthropological study of Altman and Ginat (1996), which describes in detail the lifestyle of two Mormon communities associated with the FLDS Church. To meet the women of these communities, the authors had to go through their religious leaders, with whom they had formed a trusting and friendly relationship. Because they are men, the authors admitted having always been accompanied by the husbands when they met the wives in order to collect their accounts. It is therefore reasonable to assume that these logistical constraints may have influenced the accounts of women who were interviewed, which no doubt, in turn, influenced the analysis and conclusions of the authors.

For example, when considering the process leading to the addition of a wife within the family, the authors emphasize more on the "voluntary" participation of the first wives, passing quickly over the feelings of jealousy and tensions raised by some women. Moreover, when it comes to describing the relationship between co-wives, the authors relativized the criticism that some women have dared to timidly express, indicating that the fact of having to share their husband with others is very difficult to endure, as suggested by the following testimony:

Plural family life is a mighty hard day to day struggle. There are good days and there are bad days and you either swim or drown.

(Altman and Ginat, 1996: 355)

Knowing the difficulty for women in these communities to express any criticism or admit that they are experiencing wrenching pain, we are surprised about the conclusion that the authors draw, simply saying:

Relationships between wives also depend on compatibilities and incompatibilities with respect to personality and status.

(Altman and Ginat, 1996: 386)

By putting all of the women's accounts on the same level, thereby believing that they all are of the same merit, the authors obscure the tensions and conflicts inherent to the polygamous lifestyle. Angela Campbell's study suffers from the same methodological bias, even though, as a woman, she was able to meet some of the women of Bountiful without their husbands being present. In a report on policy related to polygamy (submitted to the Status of Women Canada), Angela Campbell stresses the diversity of women's experiences who are practising polygamy while putting their positive and negative experiences at the same level:

This analysis reveals that, given the diversity within the global community of women in polygamous marriages, it is extremely difficult to draw a single, unqualified conclusion as to how women experience polygamy. While some women might suffer socially, economically and health-wise as a result of polygamous life, others might benefit.

(...) polygamy is neither entirely "good" nor is it entirely "bad" for women. The social implications of plural marriage are far more intricate than this.

(Campbell, 200: ii, 3)

If we have, of course, to recognize the diversity and complexity of women's experiences relating to polygamy, it is difficult to ignore the overall global context within which the accounts were collected allowing us to understand their limits. Although such evidence enables us to better understand the perspective of those concerned, this type of study does not shed light on the relations of power and control underlying the family and social structures. Since these are polygamous Mormon communities, one can give several explanations for this unintentional concealment.

First, given the authoritarian and hierarchical structure within these communities, there is no doubt that any media or researchers' interviews given by a member of these communities must be previously authorized by the religious leader. Moreover, given the allegations of abuse made by former members against community leaders of the Fundamentalist Church (FLDS), in recent years, religious leaders concerned with improving their image in the eyes of the media and to rally public opinion in favour of polygamy, have become masters at the art of deception. These interviews hence put forward the voice of women in their community who convincingly support their polygamous way of life, even if they have to deny it a few years later.

Secondly, when the group identity is threatened in a general hostile environment, like the one surrounding polygamous communities in North America, the natural tendency of the members is to defend, in the face of outsiders, the community and its lifestyle. Moreover, if it is a group interview, the participants do not feel free to express a critical or opposing opinion to that of other members, to avoid accusations of betrayal or feelings of guilt.

Thirdly, we must recognize that the statements of the oppressed, most of the time reflect the group norm. Without alternative solutions and the freedom to imagine different social relations, the oppressed members, historically, do tend to internalize the system of dominance and defend it, even against their own interests. Moreover, some of the oppressed always manage to benefit from the system and therefore may have a stake in defending their relative privileges.

Therefore, considering the combined effect of these various factors, there is no need to deny the intelligence of the participants or to doubt their sincerity. This is not an issue of victimizing or infantilizing these women, as claimed by those who adhere to the discourse praising the virtues

of polygamy. The issue is rather to take into account the general context surrounding the studies on polygamy to determine the limits of their validity. This means that the conclusions drawn from those studies should be viewed with the utmost caution.

This also implies that we must look elsewhere for evidence allowing us to determine, in greater depth, the impact of polygamy on women and children. This is why books written by ex-members of the FLDS Church, who have managed to leave their community, are invaluable. In reading these heartfelt testimonials, we understand better how the *omerta*, prohibiting members of the community to complain to the outside world by threat of severe penalties, manages to erect a psychological wall more effective than a prison. In order to continue living in these communities, men, women and children are forced to comply with the values and norms of the group, without being able to criticize or question them.

The case of Irene Spencer is particularly interesting because it reveals the inner motivations that guide some women to praise the virtues of polygamy. Being herself convinced of the superiority of the polygamous lifestyle, Irene "voluntarily" experimented with this family lifestyle for many years, during which time she had thirteen children, before deciding to leave her husband, whom she nevertheless loved. Irene testified about her tragic life and that of other women in her community in a book called *Shattered Dreams*:

I've personally known hundreds of plural wives. Their smiles are a façade required of them by their husbands and spiritual leaders. It's up to the women to make plural marriage appear to be the superior mode of marriage. It's demanded that the wives present themselves as united with one another, with their husbands, and with their religious communities. The success of plural marriage depends entirely on their willingness to play the sacrificial role and play it well.

(...) Like them, I'd vehemently defended polygamy for decades. It was my only sense of identity. I sacrificed everything else for it, so I desperately needed it to be true. I remember parroting the inane arguments of early Mormon prophets who claimed that polygamy would do away with all of society's ills.

(Spencer, 2007: 382)

### **Threats and Pressures: The Concept of Blood Atonement**

The history of Mormons includes a call for murder of dissenting members, considered apostates, sometimes because of a simple act of misconduct which contravened the principles of the Church.

These murders are justified on the theological level by the controversial concept of "Blood Atonement", introduced by Brigham Young (the successor to Joseph Smith). According to this concept, the murder of a member who contravenes the principles taught by the Church is an act of charitable love in order to save the victim from eternal damnation. This concept has been invoked, in

recent years, in the preaching of Warren Jeffs<sup>9</sup>, the current "Prophet" of the FLDS Church, who has recently been sentenced in the United States for various sexual crimes. In contemporary history, such threats have been directed against women who refused to submit to their husbands or religious leader's dictates (Bramham, 2008: 109-111).

Moreover, the accounts of the women who managed to escape from their fundamentalist Mormon community show the extent of the indoctrination at an early age, as well as the physical and psychological violence perpetrated against women in order to retain them, by force if necessary, in the polygamous patriarchal system; this is particularly evident in the cases of Irene Spencer, Debbie Palmer, Flora and Carolyn Jessop.

Given their upbringing, the threats and pressures endured, not to mention the lack of real alternatives, is it any wonder that some of the Mormon women publicly defend their polygamous lifestyle despite the harm they suffer?

### **The Functioning of a Sect**

The mode of operation in communities associated with the Fundamentalist Church (FLDS) can be characterized as sectarian. Like a cult, these communities cultivate secrecy, encourage members to isolate themselves from the outside world and bestow extensive powers to their religious leaders. For example, it is the "Prophet" or the local "Bishop" of the Church who dictates to the faithful, in minute detail, their behaviour, including their dress code, diet and relationships, etc., while also determining who can live together, who will be entitled to a second, third or umpteenth wife, and who will have none at all. Moreover, the faithful are obliged to donate a share of their income and are encouraged to sign away their title of property to the Church. By appropriating the faithful's assets in the name of the values of community sharing, the FLDS Church manages to exercise absolute control over them, therefore denying, with impunity, fundamental freedoms.

Raised in a culture of persecution, members of these communities then refuse systematically any collaboration with government authorities, due to mistrust and fear of internal sanctions. By instilling a fear of foreigners and minimizing interactions with the outside world, the leaders of these communities ensure that their members maintain a level of extreme distrust with members of the surrounding society, making it difficult and unlikely to denounce the abuse. This sectarian context explains the enormous difficulty in obtaining testimonies of victims in any trials involving fundamentalist Mormons.

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9 Warren Jeffs, considered the Head of the FLDS Church, became "Prophet" in 2002 after the death of his father, Rulon Jeffs, who was "Prophet" from 1986 to 2002. Accused of various sex crimes, Warren Jeffs was a fugitive for two years before being arrested and sentenced by the authorities in Utah and Arizona in November 2007. He is serving a ten year sentence in prison. His succession as leader of the FLDS Church is not clear at this time. Twelve other influential members of the Church are also on trial for various sex crimes, following their arrest during the raid carried out in 2008 at the Yearning for Zion Ranch (based in Texas) where resides a large fundamentalist Mormon community.

### 3.2 THE ISSUES OF THE CANADIAN JUDICIAL PROCEEDING

Since 1990, investigations by the Canadian police have been conducted into allegations of sexual abuse in the community of Bountiful in British Columbia. Despite the recommendation to bring charges of polygamy against the leaders of this community, nothing has been done so far.

In 2006, the police authorities recommended bringing charges of sexual abuse against certain individuals in Bountiful, under section 153 of the *Criminal Code*, which prohibits sexual contact between adults and those minors over whom they are in a position of authority or trust. However, the Government of British Columbia still hesitated to pursue criminal charges against members of the Mormon community. Several reasons underlie this reluctance.

First, the government feared that a criminal prosecution against the members of the Bountiful community would be perceived as religious persecution by the public opinion. Secondly, it was feared that accusations of polygamy would lead to challenges of section 293 of the *Criminal Code* which risked being found unconstitutional under the *Canadian Charter* which guarantees religious freedom, as claimed by certain jurists. Thirdly, it believed that it would be even less likely to prove the merit of the accusations of sexual abuse because of the reluctance of community members to testify.

Finally, in January 2009, the Attorney General of British Columbia, Wally Oppal, decided to lay charges of polygamy against two rival leaders of Bountiful: Winston Blackmore, 52, accused of marrying 19 women, and James Oler, 44, accused of having married 3<sup>10</sup>.

Before their arrest, the Attorney General had obtained, in 2008, the opinion of two expert lawyers, Richard Peck and Leonard Doust, who objected to this procedure, convinced that it was preferable to ask the Court of Appeal, by reference, whether the law prohibiting polygamy was consistent with the *Canadian Charter*. Disagreeing with this position, the Attorney General sought the opinion of a third expert, Terry Robertson, who decided to lay charges of polygamy against the two religious leaders.

The underlined issues in the decision were to allow judges to assess the situation based on concrete facts, which would have given a human face to the charges of polygamy, rather than having to decide the question in the abstract. By laying charges of polygamy, witnesses could be called at trial to describe concretely the polygamous lifestyle of Bountiful, which is not the case when an opinion on the constitutionality of the law is sought from the Court of Appeal.

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10 Winston Blackmore and James Oler are two well-known religious leaders of the FLDS Church. Under the reign of Rulon Jeffs, Blackmore was considered the "Bishop" of the Bountiful community. Becoming the new "Prophet" at the death of his father, Warren Jeffs excommunicated Winston Blackmore in 2004, appointing instead James Oler as the Canadian "Bishop". Since that time, members of the Bountiful community have been divided into two rival factions which no longer speak, one loyal to Blackmore and the other loyal to Oler and to the "Prophet" Warren Jeffs.

In September 2009, since the lawyers for the accused had challenged the process followed, Judge Sunni Stromberg-Stein of the Supreme Court of British Columbia found that the Province had no authority to appoint a third expert, after the first two had decided not to indict the two men. In doing so, according to the judge, the Attorney General had violated the principle of the independence of the legal system, which prohibits political interference. As a result, the charges were dismissed on procedural grounds without the Court being able to consider the merits of the case (Bramham, Sept. 2009).

In October 2009, the new Attorney General, Mike de Jong (Wally Oppal had just lost the provincial election by 32 votes) rather than appealing the decision, decided to ask the Supreme Court of British Columbia to evaluate the constitutionality of the law.

Two issues are therefore pending before the Supreme Court of this province:

- First, is section 293 prohibiting polygamy constitutional or does it contravene religious freedom guaranteed by the *Canadian Charter of Rights and Freedoms*?
- Secondly, does the prohibition against polygamy require the involvement of minors or the occurrence in a context of abuse of authority or undue influence of one of the parties?

The federal Justice Minister, Rob Nicholson, agreed with the approach taken by British Columbia and was in favour of the law prohibiting polygamy. But until the Court decides on the constitutionality of the law, no Canadian province would dare to lay charges of polygamy against a citizen.

Ironically, in January 2010, Winston Blackmore, regarded as the most powerful man in Bountiful, decided to sue the Government of British Columbia. He argued that the charges of polygamy laid against him tarnished his reputation, interfered with his business and that he incurred substantial costs for his defence. In addition, Blackmore claimed a status equivalent to that of the Attorney General of British Columbia and sought government funding (several hundreds of thousands of dollars) to ensure his participation in the legal process, otherwise threatening to boycott the process. His request for funding, having no prior legal precedent, was rejected. So far, more than a dozen groups from diverse ideological trends, including defenders of civil liberties and women's rights groups as well as "polyamorist" groups, religious and conservative groups, such as Real Women, have all asked to be heard in this trial (Canadian Press, March 26, 2010).

Furthermore, in an interview granted to the media, Winston Blackmore argued that since Canada officially recognizes only one wife, he could not logically be accused of polygamy, as his other "celestial" wives do not have the status of legitimate wife, and that he was free to maintain extra-marital relations (TMTV, May 2006). In reality, this argument is false. Section 290 of the *Criminal Code* prohibiting bigamy condemns the act of contracting "a form of marriage with a person already married," and section 293 condemns the practice of "any kind of conjugal union with

more than one person at the same time, whether or not it is recognized by law as a form of marriage" (see Appendix II). Yet "celestial" marriages entered into by Blackmore and other Mormons of Bountiful are a form of conjugal union, whether or not recognized by law.

### **3.3 THE SOCIAL REPERCUSSIONS: THE TESTIMONY OF FORMER MEMBERS**

Daphne Bramham<sup>11</sup>, a Vancouver Sun reporter, showed great interest in the case of Mormons in Bountiful. She has published hundreds of columns on the subject since 2004 as well as a very well documented book entitled "*The Secret Lives of Saints: Child Brides and Lost Boys in Canada's Polygamous Mormon Sect*" (2008). This book and others published by former members of the Mormon community associated with the Fundamentalist Church (FLDS), show the implications of polygamy on women and children. The following provides a few excerpts illustrating, in a concrete manner, these effects.

#### **Human Trafficking and Forced Marriage of Minors**

In 2004, seven women from Bountiful including Jane Blackmore, Winston Blackmore's first wife (and the only one legally recognized), lodged a complaint for various physical and psychological abuses and reported the marriage of minors as well as the human trafficking of young girls for the purposes of polygamous marriages.

Their testimony indicated that the Mormon communities of the FLDS Church exchange young women, on both sides of the border (between the United States and Canada), to engage in polygamous unions. In order to obtain permanent residency in Canada, young American women invoke humanitarian reasons. These requests are usually approved without being questioned, even for minors. That is why critics say that Canada is an accomplice to human trafficking for the purposes of polygamous marriage (*Radio-Canada*, October 27, 2005).

These exchanges of women are reflected in family trees of members of Bountiful as well as those in Utah, which are closely linked. According to a police investigation, Winston Blackmore, the "Bishop" of Bountiful, had 29 wives in 2005, many of whom were from Utah and some were minors at the time of their marriage: 9 of them were 15 to 17 years old. (Wallace, 2009).

In a media interview, Craig Chatwin, born into a polygamist family from Colorado, in Utah, who managed to escape from his community, confirmed that twelve of his sisters were taken to Canada to marry men of Bountiful. Two of them are married to the same man, Winston Blackmore. In a television interview, Craig said:

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11 Daphne Bramham received, in June 2004, the National Newspaper Award for columnists, for her rigor and the quality of her reporting.

It bothers me that males here with authority use their authority to leverage sexual favours from young girls, they take young wives, girls raised in this cult, they have no comprehension of an outside world.

(CBC, *The Fifth Estate*, January 15, 2003)

Jane Blackmore's testimony is especially relevant as she knows what she is talking about<sup>12</sup>. As a long time practising nurse in Bountiful, she confirms that she assisted in the birth of hundreds of children in her community, including children of her co-wives, many of whom were minors. She had witnessed dramatic events experienced by women and teenagers in her community who had been forced to marry men the age of their father or grandfather.

Jane admits that she had a privileged life and had publicly supported her husband during seventeen years of marriage during which time and with whom she had seven children, before deciding to leave him. It was when she saw her own daughter becoming a teenager and, in turn, committed to a polygamous marriage that Jane found the courage to leave to protect her other children. One day, her 17 year old daughter went for a simple visit to Colorado with her father, Winston Blackmore, who took this opportunity to marry her to a polygamous man she did not know. Her mother has not seen her since. Jane said that women in her community are rarely free to choose their life partner.

It's very much controlled. We have always been, assigned our partners. It's really the only way it could work. Otherwise you would have all these old guys courting all these young girls –it would be a mess.

(Jane Blackmore, cited in Euringer, 2004)

This astute statement sheds some light on the utilitarian function of early forced or otherwise arranged marriages. It is easier to convince or force very young girls to enter into a polygamous marriage, especially when they are taught from childhood that this is their destiny and a great honour. Once married, they are rapidly drawn into the vortex of family responsibilities and will have little chance of developing their own talents, fulfilling themselves in other areas or even imagining a different life.

As Leah (one of the many co-wives of Winston Blackmore), age 23 and already with four children (her mother and grandmother had also lived in the same fashion) candidly explained:

Some do not want to admit that we choose this life, they believe that we act under pressure. That is false.

(Leah, cited in Clarens, 2005)

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12 CBC News, *The Fifth Estate*, *Bust-up in Bountiful*, broadcast on January 25, 2006 then updated and re-broadcast on April 12, 2008.

This honest testimony must be interpreted in light of the general context described above. Raised within the realm of the cult of polygamy and with no contacts with the outside world, these young women can only think through the prism of values transmitted through education and preaching that predisposes them to live in total self-sacrifice. According to the principles of polygamy, women must merely serve their husbands and have many children to please God and honour their community.

### **Docility and Submission: The Concept of "Keep Sweet"**

The concept of "keep sweet", which demands the faithful to have blind obedience and submission for the patriarch of the family (the father or the husband) and for religious leaders, has become the leitmotiv of the FLDS Church. Winston Blackmore has made it the dictum of Bountiful. Posters with this slogan are hung throughout the schools and framed on the walls of many houses. This concept prohibits all autonomous thinking and requires the children of both sexes, particularly little girls, to remain silent in any circumstances. Women have to include this concept in their lives and submit, joyfully and not reluctantly, to the will of their husbands and religious authorities (Bramham, 2008: 195).

As Debbie Oler Palmer (the sister of Jane Blackmore) explains, young girls are raised from childhood to aspire only to become the wife of a polygamous husband and the mother of many children. Pressed to marry at a very young age, they sometimes accept "wilfully" and even will feel "flattered" to marry an influential polygamous man, often much older, who will impregnate her every two years (Palmer and Perrin, 2004).

In a poignant documentary entitled "Leaving Bountiful", Debbie, who lived and grew up in Bountiful, recounts her life and describes the social and oppressive family system associated with polygamy. She also explains the cycle of sexual, physical and psychological abuse that she has endured and that persists in the FLDS communities. The girls, she says, are raised with no self-esteem, with the only goal being to become co-wives, to have as many children as possible and to obey their husbands in all things.

Debbie was married at 15, "voluntarily", she specifies, to Winston Blackmore's father, Ray Blackmore (former "Bishop" of Bountiful), who was then 56, and sick with cancer, thus becoming his sixth wife. He had dozens of children older than her and was the father of two of her stepmothers (two of Ray Blackmore's daughters married Debbie's father). He died three years later, leaving her then at 18, a widow with one child to care for. Debbie was then assigned, by the new "Bishop" Winston Blackmore (who was of the same age and had attended the same school), to marry a particularly violent polygamist man. For years she had to endure the worst conjugal violence before being authorized by Winston Blackmore (her ex-son-in-law) to leave her husband, to be entrusted to a third husband. She recounted that she lived through hell and became depressed before finally leaving Bountiful at age 34 with her 8 children. After thirty years of silence and suffering, and after lengthy therapy, Debbie wrote to the Federal Minister of Justice, Anne McLellan, requesting her to

take action against fundamentalist Mormons, who conditioned the girls from childhood to regard themselves as having no intrinsic value and which make them a human being who only aspires to become a polygamous wife, preferably to an influential man to bear his children (Bramham, 2008: 101 and 111).

Of significance, Debbie tells how her second husband decided one day to give her newborn son to another woman. After complaining, in vain, to her father and the "Bishop" (Winston Blackmore), they both advised her to obey her husband. Dying inside, she had to resign herself. A few weeks later her husband gave Debbie back her child and told her that she had passed the test of obedience and she was now ready to become pregnant again. This incident of unspeakable cruelty illustrates well the methods used within the sect to break any resistance or rebellious attitude and to remove from the women any desire to protest. Unfortunately, Debbie's case is not unique. Testimonies of other women who managed to leave their polygamous Mormon community confirm that, indeed, this is a harmful and oppressive system for women and children.

### **The difficulty of Leaving the Community**

Some wonder what prevents unhappy members of Mormon communities from leaving the polygamous lifestyle, if they so wish. Although some people seem to cope well with their lifestyle, it should be noted that it is extremely difficult for young people and women to leave if they wish to do so. Three cases, among others, exemplify the obstacles to overcome.

As summarized by Brent Jeffs, the nephew of Warren Jeffs (the "Prophet" of the FLDS Church), who managed to escape from his community after enduring abuse, several reasons prevent people from leaving their community:

One reason we stay is that this is the only life we know. Another is that leaving involves giving up contact with basically every single family member and friend you have – sometimes, everyone you know, period.

(Jeffs & Szalavitz, 2009: 9)

Thirdly, he adds:

And too, there's the fact that you have been kept ignorant of the way the rest of the world works; you have been indoctrinated nearly every single day of your life to believe that all other people are evil, wish to harm you, and are damned by God, unchosen.

(Jeffs & Szalavitz, 2009: 10)

This difficulty is amplified when it comes to women. Married very young and immediately becoming pregnant, they can hardly leave everything behind including their children. When they have acquired the maturity and decide to leave, many already have eight or more children. Although,

in principle, they are "free" to leave, they cannot take their children. The few women who have managed to leave their community with their children had to show great strength of character to overcome all the obstacles, as evidenced by their incredible stories, stranger than fiction.

Carolyn Blackmore Jessop, forced to marry, at 18, a 50 year old influential man of the FLDS Church in Utah, Merrill Jessop, recounts in a book entitled "Escape" (2007) how she managed to escape from her community in the middle of the night, with her eight children and only twenty dollars in her pocket. She explains that when the husband is away, the other wives watch each other and report any misconduct to the husband. She said that although women are allowed to drive to attend their business in the community, the cars have either no license plates or expired license plates. This means that if a woman leaves the community without their husband's permission, he can immediately call the police to arrest her and bring her back to the community. Moreover, members of the local police are also members of the FLDS Church (in Utah) and obey more the religious leaders than they do the local civil authorities.

When Carolyn finally managed to escape with all her children, which was a miracle, she was not yet out of the woods. Her children were terrified by the outside world and wanted to go back to their father. Carolyn had to stand firm and support her children so they could adapt to school and to their new lifestyle outside the community. She also had to fight in court for custody of her children, because her husband had tried to reclaim the children by discrediting her before the court. In 2006, Carolyn's testimony regarding abuse in the community was instrumental in the conviction of Warren Jeffs. Her case illustrates well the multiple obstacles that women, wishing to leave the community, have to overcome.

The case of Debbie Oler Palmer, the first woman to have successfully left Bountiful with all her children, is equally edifying. She argues that "leaving is no less painful than staying". The transition is not easy when you do not know anyone outside your community, with no money, no education, and no job to survive. After leaving her community, Debbie found refuge in Calgary with an aunt that she barely knew. Enrolled in public school, her children had to overcome enormous difficulties to adapt because they were so far behind, as a result of attending school in Bountiful, and in light of the cultural gap that separated them from the rest of Canadian society. The repeated attempts by Winston Blackmore to try to have Debbie's eldest daughter (from her first marriage to Winston's father) turn against her mother and to encourage all of Debbie's children to return to live in Bountiful made her task even harder. Moreover, considering the abuse inflicted, Debbie suffered from depression and suicidal tendencies and had to undergo extensive therapy to recover.

This example, said Bramham, clearly shows how the vulnerability of women and children, deliberately kept ignorant, isolated and fearing the outside world, is the necessary condition created by religious leaders of the Mormon fundamentalist sect (FLDS) to prevent them from leaving their community (Bramham, 2008: 202-204).

## **The Expulsion of Young People: The Case of the Lost Boys**

As Jane Blackmore emphasizes, because older and more influential men marry young girls, it is difficult for young men to find a wife. She says that this discourages many boys who see no future in their community and eventually end up leaving their families if they have not already been expelled for the slightest misbehaviour. Driven into forced exile outside their community, these young men referred to as the "Lost Boys", often fall into delinquency.

This is the tragic lives of some four hundred young Mormons of Utah, excommunicated by Warren Jeffs and banished from their communities between 2000 and 2005. The most trivial pretexts have been used to justify their exclusion, such as the way they dress, the fact that they have listened to music or watched television, gone to the movies or kissed a girl. Expelled from their community, these young men, sometimes as young as fourteen, must survive on their own in a world that is totally alien to them. With little education and distressed, many engage in drugs and prostitution and sometimes end up committing suicide (Palmer and Perrin, 2004).

In Canada, there are dozens of boys (their number is unknown) who left Bountiful voluntarily and who live in different regions of British Columbia and Alberta. It seems that at least twenty of them live around Cranbrook<sup>13</sup> and often work, at lower wages, for logging companies owned by fundamentalist Mormons (Bramham 2008: 251).

In a moving book, Brent Jeffs (2009) recounts the tragic lives of these young people, abandoned by their families, after having experienced extensive physical and psychological violence. He tells how he lost two of his brothers, victims of sexual abuse at age five or six by his uncle (Warren Jeffs, "the Prophet"): one brother committed suicide and the other died of an overdose. Former FLDS Church members have founded an association in the United States, to help these young and distressed men who left voluntarily or were expelled of their communities. No such help, that we are aware of, is available in Canada. Some critics argue that the case of the "Lost Boys" is not an unfortunate consequence of Mormon fundamentalist culture, but a necessary base for the perpetuation of the polygamous lifestyle (Bramham, 2008: 252).

## **The Age Gap between Spouses**

Polygamous marriages, in reality, only work because of age difference. It is a statistical necessity that gives middle-aged men the opportunity to marry women of younger generations hence, in greater numbers, because of the age pyramid which is wider at the bottom than at the top in all traditional societies, as confirmed by studies done in Africa (Pison, 1986).

This observation, however, goes beyond Africa. It also applies to polygamist Mormon communities, where there is an age gap of sometimes twenty to thirty years or more between a husband and

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13 Cranbrook is the biggest city located in the Rocky Mountains of British Columbia.

his most recent wives. In the community of Bountiful, it is common to see young girls, sometimes minors, married to a polygamous man, considerably older, who may be their uncle, their father-in-law or their father's friend and sometimes their grandfather's. Ben Bistline, a historian, noted that when young girls are free to choose their spouses, the polygamy system does not work well, especially for the older men (cited in Bramham, 2008: 74). It is therefore necessary to insist on the sacred duty for women to accept the husband chosen by their father or by the religious leader.

In other words, the significant age gap between spouses observed in polygamous societies is neither fortuitous nor accidental and it is not a trend that may be easily corrected, as some seem to believe. In fact, the age difference is a characteristic inherent to the polygamous system as a result of the privilege granted to men to take several wives. This system works in favour of mature and influential men who use their power to acquire the most beautiful young girls in their community, driven by poverty or encouraged by their family to agree to form a union with a much older man. Polygamy hence thrives on social inequalities and contributes to strengthen forced marriages and abuse done to minors. The age difference also contributes to increase the prestige of the polygamous men in the eyes of the community, while reinforcing their domination over their wives. Finally, it prevents many young men from finding a wife to start their own family, thus pushing them to leave their community or to be expelled from it, all of which denies their rights and pushes them to engage in anti-social behaviour.

Thus, we see that the polygamous system generates a chain of consequences, including abuse and prejudice against women, children and young men whose rights are denied.

### **The Myth of the Benefits of Polygamy**

The apologists for polygamy often invoke the benefits that women can gain from this practice, notably sharing the family responsibilities between co-wives. This is supposed to give women the freedom to work outside or study, without having to worry about preparing meals or finding a babysitter for their children. This simplistic argument "touches a raw nerve" among modern women often trying to balance work and family. Yet, it obscures the harsh realities of women involved in this lifestyle.

First, as Cora Fisher recounts, if it is true that some women may study or work outside, it means that other co-wives stay at home. Married at fourteen, as a second wife, Cora became the servant of the couple as well as the regular babysitter of the first wife's children, who was happy to pass on to Cora all of her family responsibilities.

Some women are afforded autonomy in polygamy, but it's at the expense of other women having to live in complete servitude. And not a single woman I've ever known is happy even though they all say they are. And believe me, a lot of them confided in me.

(Moore-Emmett, 2004: 128)

Secondly, the very high number of children per family makes domestic chores extremely more task intensive for every woman, than in a monogamous family. Therefore, women are often overwhelmed by the material tasks needed for a household full of children of all ages, in order to feed them, dress them, wash their clothes and care for them, 7 days a week, as evidenced by Jane Blackmore's testimony:

Well if you get 20 children or 25 children under five all trying to eat at the same table, that can be a little bit chaotic. Moreover, it is humanly impossible for a polygamous man to respond adequately to the physical, emotional, and whatever needs of many wives and children.

(cited in Euringer, 2004)

Just as the age difference between spouses, the very high birth rate is directly linked to the principle of polygamy taught by the FLDS Church. For example, Winston Blackmore preaches in his sermons that every polygamous family must provide at least one birth per year (Bramham, 2008: 233).

Debbie Palmer explains that families in Bountiful are accustomed to keeping a chart to record the dates of ovulation of each co-wife, to allow the husband to impregnate each of them at the right time. This method, she adds, is drawn from the breeding of farm animals and allows the husband to keep each woman pregnant approximately every two years. (Palmer and Perrin, 2004).

In his testimony, Brent Jeffs deconstructs another persistent myth that polygamy is a paradise for men:

Outsiders tend to think our form of polygamy must be a great deal for us men. You get sexual variety without guilt: in fact, you are commanded by God to have multiple partners and the women are expected to go along with it. Indeed, they are supposed to be happy about doing so and obediently serve you. This is the only way for all of you to get to the highest realms of heaven. To many men, that sounds like heaven right there, without any need for the afterlife part. They focus on the sex – fantasizing about a harem of young, beautiful women, all at their beck and call. They don't think about the responsibility – or the balancing act needed to keep all of those women happy, or even just to minimize their complaints. (...)

But while it might seem good in theory, in practice, at least in my experience, it's actually a recipe for misery for everyone involved. In the FLDS anyway, polygamy and its power structure continuously produce a constant, exhausting struggle for attention and resources. In families as large as mine, it simply isn't possible for all of the women and children to get their needs met. Just making sure the children are fed, clothed, and physically accounted for is an ongoing challenge. Simply keeping dozens of children physically safe is close to impossible.

(Jeffs & Szalavitz, 2009: 8)

Thirdly, in addition to increasing, not reducing family responsibilities which rest on women's shoulders, the polygamous lifestyle is often a source of family tensions and conflicts. These are often fuelled by husbands stirring up rivalry between co-wives to better exercise their control over them. As reported by Carolyn Blackmore Jessop, although polygamous husbands have previously been morally obligated to share their affection equally among their wives, when Warren Jeffs became "Prophet", he changed the rules and has exempted the men from this obligation.

The women who suffered most were those whose husbands didn't like to have sex with them. Their husbands would say they were not worthy to bear their children and quit having sex with them altogether. This freed up men to just have sex with their most favorite wives. He'd tell the other wife that when she was worthy enough he would give her a baby. It was as crass as that.

[...]

Sex is power in the FLDS. If a man stopped sleeping with his wife, she was cut off at her knees. She lost power and status within her family. (...) The woman having the most sex won in the intense sexual competition played out in polygamous families. Her husband treated her like a queen and she used that power to lord it over her sister wives.

But children got caught in the crossfire of these sexual wars. Husbands tended to become more abusive toward the wives they no longer had sex with. They also mistreated the children of those wives.

(C. Jessop & L. Palmer, 2007: 225-226)

Sexual competition among co-wives, coupled with a strong competition to bear children, has multiple consequences. On the one hand, it becomes a tool for enslavement of women, given that the husband bestows sexual favours, as he pleases, to the most "deserving" wife. This power is especially oppressive considering that the value of a woman is measured by the number of children she has. Moreover, according to one of the Mormon religious principles, when a husband is unhappy with a wife, she loses her chance of reaching the highest realm of heaven and will be condemned, for eternity, to be the servant of her husband and his other wives. In other words, the husband has the power to determine the status of the wives on earth and in the hereafter, which urge the most independent of them to comply with all of his demands.

Besides the feelings of jealousy among co-wives, often exacerbated by crowded accommodation, the sexual and procreative competition among them is a source of family conflict. These conflicts often result in verbal and physical abuse toward the husband's least popular wives and their children. This situation establishes a cast system within the family, which opens the door to the worst abuses among its members, says Carolyn Blackmore Jessop. She recounts how her children suffered abuse from their father and his first wife, especially when she had to be away from home to work outside. It is not uncommon, she says, in polygamous families, to see children abused by the co-wives and their children (C. Jessop and Palmer, 2007: 227 and 263).

Although it is always difficult to justify separating a mother from her children, as was recently the case during the raid by the Texas authorities (in April 2008) against the Yearning for Zion Ranch, Carolyn asserts that in communities associated with the FLDS Church women are often a danger to their own children as they are unable to protect them:

Most people believe that the best place for a child to be is with its mother. It's frightening for them to think the State can move in and take children from their parents.

Few people realize how the FLDS severs the bond between a mother and child. A child is conditioned to believe that every one of their father's wives is one of its mothers. One of the things I stressed to those working with the children from the compound is that in many cases, the children's primary attachment will be to another child, not to its mother.

FLDS children often bond like children in orphanages; they find another child about the same age or a little older and the two protect each other.

(C. Jessop & L. Palmer, 2007: 420)

Finally, given the large size of families, it is rare for a polygamist husband to be able to fulfill his role as provider to meet the needs of all of his family members. Women most often have to provide for their own material needs and those of their children. Young mothers usually survive by claiming social assistance from the government, pretending to be single mothers. This is a widespread practice in FLDS communities, which is referred to as "bleeding the beast", the goal being to squeeze out maximum benefits from the government. Furthermore, women who have managed to have remunerated employment within their community are still not independent. They often have to either support the co-wives who have no income or give their salary to the husband who, in turn, gives them very little for their sustenance (Bramham, 2008: 75).

This means that the material and emotional protection that polygamous marriage is supposed to offer women and children is somewhat an illusion. It is clear that the expected benefits of sharing family responsibilities among co-wives "does not weigh heavily in the balance", when compared to the infinitely more significant disadvantages prevalent in a polygamous system. Brent Jeffs states the following:

I don't know if polygamy always produces abuse of women and children, but from my experience, it frequently does. I think it's fair to say that it always has the potential to do so in any closed system that has leadership with unchecked power. When women are seen as second-class citizens, I don't think polygamy can be anything but abusive.

(Jeffs & Szalavitz, 2009: 226)

We are very far here from the idyllic model of harmonious cohabitation and solidarity described by some women when interviewed by the media or the researchers. It does not mean that there are

no real bonds or friendships that develop over the years between co-wives. This is actually the only way for women to survive in this lifestyle. However, this is not an excuse to deny the harm suffered by women and children in a polygamous system.

### **Neglect and Abuse of Minors**

Given the excessive size of polygamous families, children, even very young children, are often deprived of affection and individual attention as evidenced by Brenda Williams Jensen, raised in one of the first founding families in the Bountiful community:

Everything was mass. There was mass love, mass eating, mass discipline and no room for individuality.

(Brenda cited in Bramham, 2008: 86)

This, she adds, results in low self-esteem in children and hinders their emotional development.

Moreover, mothers are often overwhelmed by the number of children and are forced to leave the youngest children in the care of other children, usually a sister, barely older. This leads to a high rate of accidents among children as well as infant mortality, which could have been easily prevented by better supervision, argues Brent Jeffs (Jeffs and Szalavitz, 2009: 8).

Some accidental deaths are suspicious. For example, boys considered rebellious by their community, die suddenly from mysterious accidents (drowning or otherwise). But statistics regarding deaths and accidents involving children in these communities are lacking, as they are seldom reported to civil authorities (Moore-Emmett, 2004: 181).

The lack of supervision also leads to sexual and physical abuse suffered by younger children from their fathers or older children. This is particularly the case of Debbie Palmer, of Bountiful, who was sexually assaulted at age five by her fourteen year old cousin. As stated by Laura Chapman who grew up in Colorado and lived in various FLDS communities, these abuses are not the exception. Having been herself sexually abused by her father until age thirteen and then by her brothers, Laura asserts that:

(...) incest, statutory rape, physical, sexual and emotional abuse, deprivation of education and forced marriages of young girls are endemic to all of the polygamist communities and not as some have proclaimed, no worse than in the general monogamous population or isolated to only a few polygamous groups.

(...) There were no options when prayer is the only solution to your problems, when you do not know you can call 911, and when your mother is powerless to protect you from beatings inflicted by the other mothers or from sexual assault by your father and brothers.

(Moore-Emmett, 2004: 90, 94)

Other stories confirm this dramatic reality. Although the law requires that anyone aware of child abuse must report it to civil authorities, anyone who dares to do so would be immediately threatened by members of his or her community and would put their own life in danger, says Laura Chapman. She, indeed, was threatened and had to seek refuge, with her children, outside her community, fearing for their own safety (Moore-Emmett, 2004: 98).

It is therefore very difficult for a mother to report the abuse suffered by her children, either because the policemen are members of the FLDS Church, as in Utah, or because the husbands and religious leaders are strongly opposed to it in order to avoid the authorities' involvement in their affairs. Even the personnel of health services in these communities do not dare report the abuse they observe during the performance of their duty. When a woman files a complaint against her husband for conjugal violence or abuse committed against her children with the religious authorities, the "Bishop" sends her home and advises her to obey her husband and to follow the motto, "Keep Sweet." According to the religious values taught, it is a sin for a woman to complain about her husband, and if she is abused, it is because she does not live "in harmony" with her husband and therefore should correct her behaviour (F. Jessop and Brown, 2009: 32-33; C. Jessop and Palmer, 2007: 238-240).

Despite the serious allegations of abuse and the human trafficking of minors for the purposes of polygamous marriages in Bountiful, Winston Blackmore's notoriety has enabled him to sign a protocol with civilian authorities regarding claims of alleged abuse involving minors. Rather than teachers reporting the abuse to the police or to health services, they are to report first to the school's principal, who would, in turn, notify Blackmore. As Bramham emphasizes, "we may as well put the fox in charge of the henhouse!" (2008: 129). Thus, all conditions are met to continue to condone the abuse perpetrated against women and children in these communities.

### **Health Risks and Violation of Human Dignity**

Health and life risks associated with early marriage and resulting pregnancy are already well established. Many young girls in Bountiful and in other FLDS communities are paying the price, as evidenced by Jane Blackmore. The risk for the mental health of women living in polygamy is however of no less severity. The facts show that polygamy robs women of their human dignity, in thousands of different ways.

Even when they are conditioned at an early age to aspire to become the wife of a polygamous husband or to claim this "right", women experience feelings of jealousy and frustration that are hard to ignore. These feelings are exacerbated by their living conditions in houses too small and poorly soundproofed, where women can hear their husband's amorous frolics with a co-wife. Not being able to stand this situation, which undermines their dignity as a woman, some choose to live in abject poverty, to avoid cohabiting, at all costs, with their co-wives.

This is the case of Irene Spencer, who chose, at 16, to leave a young man whom she loved (who refused polygamy) to marry "voluntarily" her sister's husband, whom she described as a gentle and very religious man who was trying very hard to share his affection among his co-wives (he had altogether nine wives and 56 children). Convinced that the polygamous lifestyle was superior to monogamy, Irene recounted in her book, "Shattered Dreams", the nightmare she had to live having to share her husband with her co-wives and not being able to satisfy her own sexual needs, in order to comply with the religious principle that dictates that sex ought to be limited to procreation. Irene, who had managed to convince her husband to allow her to live separately from the co-wives, recalls her ordeal:

Now that I had my own house, Verlan couldn't understand why I still spent so many nights crying. I wanted to be strong and live up to his expectations, but jealousy drove me into tearful fits of anger. I'd cover my face with my pillow, sobbing and screaming as my mind flooded with images of him and Lucy breaking all the rules, manufacturing baby boy after baby boy. Even if she was his wife, and even if God had commanded us to live plural marriage, I still hated every minute of it. I spent almost the entire first year of Lucy's marriage weeping and imagining she'd taken my place in Verlan's heart.

(...) Living "the law" was like torture to me. It seemed to be designed for cruelty or punishment. Completely unnatural, it went beyond self-sacrifice to the point of totally rejecting self. One time each month, during the very few months I was not pregnant or nursing, Verlan and I would have sexual relations. The rest of the time, I either had to sleep next to my husband without touching him or suffer alone, believing he was having sex next door with Lucy or Charlotte. These suspicions may have been as off base as theirs were if they were having them about Verlan and me, but I was still plagued by my conjectures. I often thought I would lose my mind.

(...) All the books I'd read on Mormon polygamy were vivid accounts of sacrificing women who upheld and emphatically stated they loved the Principle. I was convinced that these committed women simply did as I'd been taught to do – doggedly affirm the truth and righteousness of plural marriage and stubbornly maintain its advantages over monogamy. Forbidden to acknowledge their true feelings, they smothered their own agony and wrenching pain, just as I'd so emphatically been instructed to do.

(Spencer, 2007: 187-188; 201; 382)

Under these conditions, we understand why many women engaged in polygamous unions suffer from significant psychological problems as a result of the stress of having to suppress, day after day, their deepest emotions and feelings. This stress is increased tenfold when women lose their status of "favourite" in the eyes of their husband or are over the childbearing age, which often comes with additional physical and psychological abuse. Many women living under these conditions suffer

from post-traumatic stress disorder. These are serious physical and mental problems which are often found among war veterans and people who have suffered severe trauma. Carolyn Blackmore Jessop believes that at least a third of women in her FLDS community suffer from depression and are on Prozac. Others, considered too rebellious, are regarded as crazy and are drugged or locked away in mental institutions (C. Jessop and Palmer, 2007: 230).

As sickness is considered God's punishment for one's own faults, these women get no sympathy from their families. In his sermons, Warren Jeffs (the "Prophet") said that anyone who needed medical care to be cured lacked faith. As a result, husbands often object to vaccinations and medical care for their wives and children, convinced that praying and faith in God are the best remedies. As a result, many women and children suffer in silence and sometimes die for lack of medical care (Bramham, 2008: 95, 184, 197).

In addition, some genetic diseases, extremely rare among the general population, are frequently found in polygamous Mormon communities because of consanguineous marriages (between cousins, an uncle and his nieces, without counting the children of incest). That is the case with Fumarylase deficiency, a genetic disorder causing serious neurological disorders in newborn, evidenced by a difficulty to eat, abnormal growth and epileptic seizures. Children who are affected with this disorder usually die in infancy and the survivors experience significant psychomotor problems.

We see that the repercussions of polygamy on women and children's physical and mental health are far from being insignificant.

### **Child Labour and Poor Education**

Since education is undervalued in Bountiful, boys and girls, as young as thirteen or fourteen years old, are encouraged to leave school. Far from encouraging young people to get an education, Winston Blackmore does not allow them to finish school, persuading girls to get married and boys to work for him. These boys are employed in family businesses, sometimes at a very low wage or without pay. Very young children of both sexes must participate in agricultural, forestry and construction work, performing sometimes difficult and dangerous tasks. It is actually child labour that makes the companies in the FLDS communities so prosperous and competitive. (Bramham, 2008: 13).

Bountiful's two schools (from grade one to ten (primary and secondary)) accommodate about five hundred children. Young people rarely continue their education beyond the seventh grade. Carol Anderson, Winston Blackmore's half-sister, argues that many adults in the community of Bountiful have only completed grade one or two. Living near Bountiful, Carol tries, privately, to teach young women how to read and write, which says a lot about the quality of education in the schools. Yet, these independent schools run by rival spiritual leaders (one is run by Winston Blackmore and the other by James Oler) receive millions of dollars in government subsidy (more than one million in 2007) (Bramham, 2008: 128, 130, 259).

In January 2009, the Teachers' Federation of British Columbia reiterated its request to the government to conduct a serious investigation into the schools of Bountiful. It seems that the education offered in these schools is limited to basic subjects and focuses on teaching religious and patriarchal values. For example, it teaches boys to be wary of girls and to consider them as snakes, and teaches girls that their only value is as mothers and wives. Essentially, this is contrary to the principle of equality between the sexes. The religious doctrine transmitted is not only sexist, but also racist as Blacks are viewed as belonging to an inferior race (Bramham 2008b).

According to a February 2007 report done by the Ministry of Education of British Columbia, the government has no idea of the actual contents of the program taught in these schools. The inspectors had never received evidence that the contents of the courses taught correspond to the requirements of the official curriculum. The students, discouraged by religious leaders, refuse to take the general aptitude test required by the province.

The inspection has also revealed several shortcomings. For example, the computer lab has 20 computers, but the teacher assigned is not qualified to teach the computer course and the school has no Internet connection. The only career options available for girls are cooking, cleaning and child-minding. Yet, four religious studies programs are offered, one of which focuses on the sermons taped by the prophets of the FLDS Church. The others relate to the Bible, the Book of Mormon and the history of the Mormon Church. It also teaches children that they owe absolute obedience to their religious leaders, including in their choice of spouse and that unless they engage in the practice of polygamy they would not be able to reach the highest realm of heaven. In other words, they are taught to submit to religious laws, even if it means violating civil laws (Bramham, 2008c).

It is surprising, says Bramham, that the last generation to have finished college education is Bountiful's founding generation. Now, their children and grand-children are left uneducated. (Bramham, 2008: 260). The few selected young people allowed to continue their studies to obtain qualifications for their community must do so by correspondence or attend schools outside the village. Since education is key to independence and freedom, the serious shortcomings observed facilitate the domination and the manipulation of the followers by religious leaders.

In 2004, The Civil Liberties Association of British Columbia sent a letter to the Premier expressing its concerns in regard to the education provided in Bountiful's schools. However, these schools still continue to be funded by the government, without taking the necessary remedial measures.

Finally, the education of children in Bountiful is clearly inadequate and deficient, as evidenced by the high rate of dropouts, the low rate of graduation and the deficiencies in the programs taught. One thing is clear in Bountiful, the right of children to education is denied.

## **The Abuse of Religious Power**

The extent of the power granted to religious leaders in FLDS communities is clearly excessive. Winston Blackmore, who succeeded his father, combines many different functions and has extensive powers over all aspects of the members' lives in the community of Bountiful. He is the "Bishop" of the Church, the school superintendant, a successful businessman, the publisher of the local newspaper and he even obtained the authorization to monitor complaints of alleged abuse of children in his community, as previously indicated above (Bramham, 2008: 129).

In addition, the communal model favoured by the FLDS Church involves combining resources. Therefore, members of the community are not only encouraged to give a fair share of their income to the Church, but also to sign over their title of property, houses and companies to the benefit of the United Effort Plan Trust (UEP), which owns the totality of the lands and properties in Bountiful. Founded by Warren Jeffs' father, the trust has a worth estimated at about US \$400 million. Winston Blackmore was the first and only Canadian director of the UEP group who was eventually forced out in 2003 following a dispute with Warren Jeffs, who excommunicated him (Bramham, 2008: 123).

The monopoly exercised by the Church over the resources of the community provides religious leaders with absolute power, allowing them to control every aspect of the faithful lives. In case of dissent or conflict, the "Bishop" has the power to excommunicate a man, to throw him out of his own house and banish him from his community, then assigning his wives and children to a new husband and father.

This is what happened to hundreds of men deemed unworthy by the "Prophet", Warren Jeffs, who expelled them from their community and assigned their families, women and children, to other patriarchs. These brutal methods give the impression that Winston Blackmore is a moderate. But he did not hesitate to force his father-in-law, Dalmon Oler (Jane and Debbie Blackmore's father), into bankruptcy and human degradation to remove him from power in the Church (Bramham, 2008: 125-127).

It is clear that the FLDS community model based on polygamy is a constant source of abuse and multiple prejudices for all members, particularly for women and children, regardless of the privileges or benefits that certain individuals may find in it.

## CONCLUSION OF PART ONE

The brief historical survey outlined above (chapter 1) reveals at least three things. First, we note the strong commitment of the Mormon communities to the practice of polygamy. Secondly, as we see the difficulty in dealing with this phenomenon solely by repression. Thirdly, it is important to note that a great majority of Mormons, represented by the official Church (LDS), have in effect renounced the practice of polygamy without however abandoning their faith. History shows that this would not have been possible without the state's sustained intervention to enforce the law. However, today the minority fundamentalist branch represented by the FLDS Church continues to advocate polygamy and defy the laws, enabled by the lack of concern of mainstream society and the lax attitude of the authorities which encourages this situation. Moreover, the fact that polygamist Mormons live in small communities isolated from mainstream society makes it extremely difficult for those who wish to leave their communities to escape this lifestyle and its resulting abuse. Far from concluding that polygamy is inevitable and that the solution would be to decriminalize the practice, as some would wish, there is a gap which should not be bridged lightly without considering the underlying stakes.

Moreover, in light of the analysis regarding the politicization of polygamy among Mormons (chapter 2), some might think that legalizing polygamy would be an effective strategy to reduce the religious power over members of their community. However, other factors must be taken into consideration, particularly the prejudices associated with polygamy.

As we have outlined above, polygamy is at the heart of Mormon religious ideology, at least in the fundamentalist branch. This basically constitutes the foundation of their faith, hence the unshakable determination of the followers, ready to stubbornly defend the polygamous lifestyle against all odds, convinced that this practice is their best guarantee of eternal life after death. Therefore, the faithful perceive any repression of polygamy as a religious persecution, to which men and women must oppose a fierce resistance, led by their faith.

It would be a grave mistake to underestimate the immense psychological impact of the 1843 "revelation" (section 2.1). The threat that it encompasses is amplified in the eyes of the faithful by the actual emphasis of religious education of this principle, taught at an early age (we must admit, with great success), by the leaders of the Fundamentalist Church (FLDS). According to accounts of former members of these communities, the women are strongly convinced that they will go to hell if they refuse polygamy, and they are terrified by the thought of it. This means that the practice of polygamy among Mormons cannot be changed by solely repression, without acting upstream regarding the religious values which are taught. The doubt expressed by certain historians as to Joseph Smith's central role in the promotion of polygamy (section 2.2) could become a strategic source of inspiration, if we want to fight polygamy through education.

Finally, the accounts of former members of polygamous Mormon communities (section 3.3) concretely illustrate how women are both full-fledged participants to the building of the community and to maintaining the polygamous lifestyle, as well as victims of this system. The concept of free choice and consent is not at issue here, but it is irrelevant in light of the many prejudices associated with polygamy.

Although some people may find some advantages in the polygamous lifestyle, this system embodies gender inequalities, increases the domination of a small number of patriarchs and encourages the subordination of all women. By its very unequal nature, polygamy leads to abuse and violence, of which women and children are the first victims, having no other alternative.

In light of the findings and analysis above, it is clear that polygamy is not only associated with certain excesses that would be preventable, as some seem to believe. It is the engine of a chain reaction leading to multiple human rights violations on many levels. This is why many say that it is not enough to fight against the excesses associated with polygamy, such as violence and sexual abuse, but that it is essential to tackle the source of the problem which lies in the polygamous system itself which threatens the human dignity of women. The analogy with slavery makes this reasoning more evident: it is obvious that we cannot fight violence associated with slavery, without fighting the system itself.

## **PART TWO – POLYGAMY IN ISLAM**

After addressing polygamy among Mormons living in North America, in a context where this practice is prohibited, we now examine the African and Muslim context where polygamy has been permitted for centuries. This part is complementary to Part One, as it is essential to better understand the realities of polygamy in Islam as the phenomenon faced today by the Western countries is mainly associated with the immigration of African or Muslim populations who have difficulty conceiving that this traditional way of life can be banned.

We first present the religious paradigm of polygamy in Islam as well as the theological controversy that this practice has raised for a century. We then analyze the stakes and strategies used to question polygamy, in Muslim countries, to curtail its practice (chapter 4). We then present the social arguments commonly used to justify polygamy and will further provide an overview of the prevalence of this practice in contemporary societies, in Africa and in Muslim countries. We conclude this part by an analysis of the social repercussions of polygamy and the underlying issues that it raises in a context where it is legally permitted as well as the attempts by some governments, under the initiative of women's groups, to restrain this practice to protect the rights of women (chapter 5).

## CHAPTER IV – RELIGIOUS PARADIGM

Before the advent of Islam in the 7<sup>th</sup> century in Arabia (this territory is today Saudi Arabia), polygamy was practiced without limits: a man could have as many wives as he wanted. Of course, only a minority, among the wealthiest and the most influential, could exercise this privilege. Islam has limited the number of wives permitted to four, and has imposed certain restrictions. For example, marriage is prohibited between the legitimate descendants and ascendants, between uncle and niece or aunt and nephew (Rude-Antoine, 1990: 46). Moreover, the Quran prohibits a man to marry two sisters, unless the marriage of the first sister has been dissolved, or further to marry both an aunt and her niece (Bellefonds, 1965: 138).

As we saw in Part One, no similar restriction exists among Mormons, which put the co-wives in hardship when two sisters, an aunt and a niece, or a mother and her daughter (from another marriage) must share the same husband. It seems that the Prophet Muhammad wanted to spare women having to live in such a situation, which threatens their dignity and fuels the rivalry between women with family ties.

Another important difference is that polygamy in Islam is not regarded as a "religious obligation", as it is in Mormonism, but as "authorized" or even as a "right" recognized by God. This belief is based on two sources of legitimacy: first, the fact that polygamy is explicitly mentioned in the Quran; secondly, the fact that the Prophet himself had several wives, which constitutes an example to follow in the eyes of the followers.

### 4.1 THE THEOLOGICAL FOUNDATIONS OF POLYGAMY IN ISLAM

The first source of legitimacy in Islam is the Quran, considered as the Holy Book for Muslims, which was revealed by God to his Prophet Mohammad, through the angel Gabriel. Only one verse of the Quran refers to polygamy:

And if ye fear that ye will not deal fairly by the orphans, marry of the women, who seem good to you, two or three or four; and if ye fear that ye cannot do justice (to so many) then one (only) or (the captives) that your right hands possess. Thus it is more likely that ye will not do injustice. And give unto the women, (whom ye marry) free gift of their marriage portions; but if they of their accord remit unto you a part thereof, then ye are welcome to absorb it (in your wealth)

(Quran; Surah IV, Verse 3; <http://bit.ly/1WuHhvA> Translation by M. Picktall)<sup>14</sup>

<sup>14</sup> The exact wording of each verse varies with the different translations. The Quran was revealed to the Prophet in Arabic and then transmitted orally before being put in writing almost fifty years after the death of the Prophet.

The interpretation of this verse does not have unanimous approval among the *ulema*<sup>15</sup>. Does this verse grant an absolute right to a man to marry multiple wives or is it an exception? And then, what is the correlation between orphans and polygamy?

The exegetes argue that in order to fully grasp the meaning, we have to know the context of each of the verses of the Quran and interpret them in concert with other verses. With regard to the context surrounding the verse on polygamy, historians agree that it has been revealed at the aftermath of a deadly war, the battle of *Uhud* (against heretics in Mecca), which left many widows and orphans destitute. In this context, polygamy aimed at the protection of girls and women, left without a father or husband, who would not have had any other choice but to resort to prostitution in order to survive. Moreover, in a certain number of cases, we would see a guardian to which the orphans were entrusted (usually a male relative) tempted by their beauty or their inheritance, take advantage of the situation and marry their "ward", often against their will, to appropriate their inheritance. This verse was revealed to the Prophet to prevent this kind of abuse (Belaïd, 2000).

Moreover, this verse, as it is worded, emphasizes fairness in the treatment between spouses and makes it a condition of a polygamous marriage. The Quran also imposes another condition, namely, the obligation to meet the material needs of all the wives. Unfortunately, the religious laws (Sharia) have only retained the first part of the verse which authorizes men to take up to four wives, leaving to the husband the matter of assessing the condition of fairness and his material capacity to meet the needs of several wives (Charfi, 1999).

## 4.2 THE THEOLOGICAL CONTROVERSY

The interpretation of the Quranic verse on polygamy has been challenged since the late 19<sup>th</sup> century by a reformist movement, *El-Nahda* (Renaissance), pioneered by Sheikh Mohamed Abdu<sup>16</sup> (1849-1905), a great Egyptian thinker and Egypt's *Mufti*, who proposed a different lecture of the prescriptive verses from the Quran. Distancing himself from the traditionalist interpretation, considered untouchable to this day, this modernist movement appealed to human reason and intelligence to reflect new social realities. Mohamed Abdu, followed by Tahar Haddad (1899-1935), a Tunisian thinker and politician, tried to limit the practice of polygamy arguing that since it is humanly impossible for a man to be equally fair to all of his wives, it is preferable to stay monogamous to respect the spirit of the Quran (Linant de Bellefonds, 1965: 135).

15 Oulema or ulema, plural of alim, designates Muslim scholars in Islamic jurisprudence or more generally professional religious scholars.

16 Sheikh Mohamed Abdu has been a leading figure of the modernist reformist movement who inspires, still today, many jurists and intellectuals in the Muslim world. His publications testify to the many battles he has waged against religious obscurantism on controversial subjects, such as, ethics, the meaning of the property, the concept of freedom or the status of women. He also defended a rationalist and intelligent interpretation of the Quran and the *hadiths* as part of a liberal and secular vision of society.

This position is based on the second sentence of verse 3, " if ye fear that ye cannot do justice (to so many) then one (only) or (the captives) that your right hands possess", which is reinforced by verse 129 (numbered 128 in some versions of the Quran) of the same Surah, which clearly states:

Ye will not be able to deal equally between (your) wives, however much ye wish (to do so).  
(Quran; Surah IV, Verse 129; <http://bit.ly/1WuHhvA> Translation By M. Picktall)

The context surrounding this verse is linked to the fact that the Prophet had experienced this type of problem, namely the difficulty of being fair to all of his wives. Therefore, as noted by some scholars of Islam: what a man, as exceptional as the Prophet, cannot accomplish is beyond the power of mere mortals (Belaïd, 2000, footnote 90: 188).

As emphasized by Mohamed Charfi (1936-2008), a Tunisian jurist and author of many books<sup>17</sup>, if we compare the two verses of the Quran (3 and 129 of the Surah IV), "tolerance of polygamy is only apparent, and the prohibition of it is more appropriate". Furthermore, he adds, today, one cannot invoke the protection of widows or orphans to maintain polygamy, given the resulting abuses and the fact that women's access to education and the labour market offers other possibilities allowing them to meet their needs (Charfi, 1999).

The second source of legitimacy of polygamy in Islam is based on the life of the Prophet, the *sunna*, and his sayings, the *hadiths*, recorded by his successors in several volumes. Yet, the Prophet first lived, for 25 years, in a monogamous marriage with his first wife, Khadija, and it was only after her death that he formed multiple unions, sometimes dictated by political interests (to gain political alliances with other tribes). Therefore, as pointed out by the modernist movement, it would be legitimate to draw on the first part of the life of the Prophet to defend monogamy.

In addition, this movement demonstrates that it is generally accepted that the situation of the Prophet and his wives is unique and incomparable to that of other men and women. This opinion is based, *inter alia*, on the fact that the Prophet had a dozen wives or so, while the limit permitted by the Quran is four. Moreover, the Quran forbade the wives of the Prophet to remarry after his death, yet he himself encouraged widows and divorcees to remarry (Al-Hibri, 1982, quoted in Mashhour, 2005: 570). Also, according to a *hadith* attributed to the Prophet, he had forbidden his son-in-law, Ali, to marry another woman as long as Fatima (the Prophet's daughter) was alive, because, he said, what would hurt his daughter would also hurt him. This *hadith* shows that the Prophet was aware of the negative effects of polygamy on women and wanted to save his own daughter from this unworthy fate (Saheeh Al Bukhari, vol. 7, Book 62, No. 157, cited in Mashhour, 2005: 571).

17 Mohamed Charfi (1936-2008), a Tunisian jurist, has been a political figure and an intellectual, internationally renowned, committed to reform Tunisian law as well as education. In his book "*Islam and Liberty: the Historical Misunderstanding*" (1999), he opposes the fundamentalist vision, attempting to reconcile Islam, modernity and liberty.

Finally, following a similar line of reasoning found in Islam, Charfi noted that slavery is also mentioned more than once in the Holy Book, including in verse 3 concerning polygamy, but no one today seeks the reintroduction of this long-gone practice by invoking the Quran. Why then, he says, maintain polygamy at all costs, considering all the harm it causes and which reflects the mentality of another time. He concluded that polygamy, like slavery, must be banned in Islam (Charfi, 1999).

Given the credibility of theological arguments invoked to curtail polygamy, how can we explain that the interpretation that prevails today in Islam is one that considers polygamy as a "right" recognized by God that cannot be challenged?

### 4.3 THE STAKES AND STRATEGIES TO QUESTION THE PRACTICE OF POLYGAMY

As emphasized by some studies, (Dib, 2009), the reformist rationalist movement of the early 19<sup>th</sup> century was part of a historical context, marked by the gradual decline of the Ottoman Empire. The decline of this empire produced a social, political and religious crisis throughout the Muslim world and opened the door to the expansion of European colonialism and the modernism that came with it. The Muslim reformist movement was therefore an attempt to overcome this crisis by reclaiming the religious texts and reinterpreting them to reflect new evolving social realities in order to claim its place in this new horizon. Unfortunately, this rationalist movement, full of promise, met opposition from both the traditionalists and the colonial powers which preferred to side with the reactionary forces in order to maintain power. As Mohamed-Cherif Ferjani states:

Everywhere, attempts at reform led to a colonial domination that relied on archaic structures and traditionalists communities [...]. In doing so, the West which claimed, and still claims, to be the incarnation of modernity [...] was most of the time a sure and unconditional ally of the reactionary forces against modern and progressive movements.

(Translation, cited in Dib, 2009: 16)

Professor Sadok Belaïd, Doctor of Law, sheds a very interesting light on the motivations of the traditionalist forces stubbornly refusing to reinterpret the religious texts in light of new realities. As in many other cases, he says, the *fukaha*<sup>18</sup> "did an oriented and biased lecture of the Quran, that is to say, a distortion of its limitations and its original meaning". They interpreted this verse as if it had authorized polygamy in general, pretending to ignore "the fact that the verse applied particularly to the War Orphans", and "overlooking the conditions and limitations set by the Quranic prescriptions". Therefore, he says, they changed "the protection of orphans (of war) against the injustices and greed of their guardians" to a "principle of general application and common law", therefore granting men an absolute right to polygamy (Translation, Belaïd, 2000: 188-189).

18 *Fuqaha*, plural of *faqih*, designate an expert in *fiqh*, that is Islamic jurisprudence. The general term of *oulema* or *ulema* is also sometimes used, plural of *alim*, see footnote 11.

The main objective of traditionalists *fukahs*, Belaïd adds, "was to find, at any cost, a justification for the practice of polygamy" to please the privileged class, to which they themselves also belonged, "who loved to collect wives as an exterior sign of wealth and power". In doing so, they were able "to abort one of the most promising reforms in the Quran regarding the status of people". Even worse, he says, this "sham" has had long-term consequences because "with the sclerosis that had stricken people's intellect during the long centuries of the decline of Islamic civilization, no traditionalist author among the followers of that school of thought had dared to denounce the ancient scholars' mistakes" (Translation, Belaïd, 2000: 198-199).

This insightful analysis sheds light on one of the key social and political stakes of polygamy, still today, that is to say, to strengthen the status of the privileged classes and to legitimize their power to appropriate women.

Belaïd concludes that the dilemma posed by the divergent lectures of the Quran, particularly with regard to polygamy, leaves no choice. "It is in fact, in terms of rupture that this question must be resolved" and "the choice to be made is therefore an all or nothing approach and leaves very little room for tergiversation...". The personal status of women, he adds, requires a reinterpretation of the Quran "and not an incantatory recitation of the outdated dogma of the "*fukahs*" who have so far imposed their misinterpretations (Translation, Belaïd, 2000: 200).

### **The Evaluation of the Different Strategies**

The only Muslim countries having banned polygamy are Turkey (in 1914) and Tunisia (in 1956). It is interesting to note that the two countries have adopted different strategies. While the prohibition of polygamy in Turkey at the beginning of the 20<sup>th</sup> century was entirely based on a secular view, its prohibition in Tunisia, in the mid-20<sup>th</sup> century, was based on religious arguments.

Indeed, the Tunisian legislators based their position on the impossibility of observing perfect equity between wives and on the fact that polygamy no longer corresponded to modern lifestyles, and was causing the disintegration of family ties (Rude-Antoine 1990: 44). At the time when the Tunisian Minister of Justice, Al-Snoui, enacted the law, he had declared that experience over the centuries showed clearly that a man could not treat his wives fairly and considering that polygamy was permitted but not mandatory or even recommended in the Quran, it was perfectly justified for the state to restrict or even prohibit its practice (quoted in Mashhour, 2005: 585).

These different strategies are tied to the history of each country. In the case of Turkey, after the fall of the Ottoman Empire, religious power was perceived as a source of oppression from which one needed to be liberated. Conversely, in Tunisia, after the independence, the source of oppression was clearly linked to the French occupation. Islam was therefore perceived as a source of identity affirmation against a colonial power. This perception is still relevant today in light of the globalization that favours the dominance of the Western culture around the world. This explains the strong resurgence of the religious practices and values which are claimed as an assertion of identity and as a means of resisting the Western cultural domination.

Moreover, as Mohamed Charfi emphasized, one of the guiding principles that history teaches us is that it is difficult to impose legal changes that go completely against the prevailing religious beliefs in a society. The Tunisian example shows us, he said, that despite some resistance at the beginning, the majority of the population accepted the reforms introduced in the Code of personal status, "because they were not contrary to the principles of Islam, but based on a better understanding of it". In that respect, he added, cooperation between intellectuals and politicians with converging stances can produce miracles (Charfi, 1999).

Other factors have also contributed to Tunisian law reform in the interest of women. Before adopting the reforms, President Bourguiba had supported the dissemination of Mohamed Abdu and Tahar Haddad progressive views to raise awareness for the proposed changes. Moreover, as Charfi pointed out, if Tunisia succeeded in introducing these reforms in favour of women it is because at the time, there was no organized and powerful fundamentalist movement, as is the case today. Fundamentalist currents are fiercely resisting any reform in favour of women's rights and argue that polygamy is a sacred right that cannot be challenged.

## CHAPTER V – THE DISCOURSE AND THE FACTS

We observe a significant diversity of family life models associated with polygamy that coexist in African and Muslim countries. It is by no means a retreat into a religious sect living on the margins of society and clandestinely practicing polygamy, as it is among Mormons. On the contrary, since the practice of polygamy has been permitted for centuries, it is socially accepted by the population in the name of traditions or Islam, but it nevertheless raises strong controversy everywhere. Although a minority practice, polygamy is often practised openly, but many men manage to hide from their wives the fact that they are polygamist.

### 5.1 THE APOLOGETIC ARGUMENTS

Besides the religious justifications, the main social reasons advanced to justify polygamy can be summarized as follows:

- Demographic argument: surplus of women over men.
- Humanitarian argument: the sterility of the wife or her inability to fulfill her conjugal duties because of pregnancy, nursing, illness, old age, frigidity or otherwise.
- A cure for adultery in response to the supposedly insatiable sexual appetite of men, that one wife could not satisfy.
- A solution to the celibacy of women.
- An alternative to divorce and other benefits for women.
- Maintaining traditions and identity affirmation.

#### **The Demographic Argument**

Still today, polygamy is often socially justified by claiming that the ratio of females to males is higher. Yet this fanciful argument has been proven wrong by demographic studies which show that an equal number of men and women are found in any society, outside of times of crisis (Pison, 1986).

While in the past, most of the war victims were male fighters (90%), it is different today. With modern weapons and technological progress, civilians now constitute 90% of victims of armed conflicts, which include a great number of women and children. Therefore, in most societies where polygamy is allowed, the high death rate of men is no longer a determinative factor that could justify polygamy.

#### **The Humanitarian Argument**

In response to the humanitarian argument, often invoked, that polygamy is necessary to remedy the issues of sterility, old age or illness of the first wife, Mohamed Charfi notes that this logic should normally be applied to both sexes. Should women not have the right to marry another man, in the case of sterility, old age or illness of the husband? But in the face of the prospect of such a symmetry, the apologists of polygamy are crying foul (Charfi, 1999).

In fact, infertility or illness of the wife, which seems to be the most "morally" acceptable justification, is rarely the reason for multiple marriages. Some Muslim countries, such as Indonesia, have imposed restrictive conditions on polygamy, including specifically the wife's sterility or disability. As to "sexual impediments" related to pregnancy and extended periods of nursing, these are most often sexual taboos that are unjustified. It is therefore possible to overcome those impediments through education rather than by proposing polygamy as a solution.

### **A Cure for Adultery**

One of the most quasi-universal views shared by all cultures (whether polygamist or not) is the alleged insatiable sexual appetite of men which cannot be controlled and must run its ordinary course. This is not a new argument and has often been invoked to justify prostitution and even rape. We will not deal with the issue of whether the insatiable sexual appetite of man is "natural" and inherent, or if it is acquired and a social construct, nor whether it is possible or desirable to suppress it. This is not the subject of our discussion.

We only need to remember that in all polygamous societies, older men have, on average, more young wives than their younger counterparts whose sexual appetite is at its peak in their life cycle. In addition, recent statistics have shown that the sales of Viagra and male sexual stimulants are on the rise everywhere, including in African and Muslim countries where polygamy is allowed. In fact, polygamous men are no more faithful than monogamous husbands, and rarely cater to the emotional needs of all their wives, generally overlooking the needs of the oldest in favour of the new younger wives.

### **A Solution to the Celibacy of Women**

Also, the argument that polygamy is a solution to the celibacy and protection of women against "debauchery" does not stand. First of all, let us reiterate that in African and Muslim societies, permanent celibacy is regarded as an aberration. Past the age of fertility, women are barred from the "matrimonial market". Family pressures are not only exerted on women but also on men, to urge them to marry.

As noted by Ikbal Baraka, Editor in chief of the Egyptian magazine, Oum El Dunia, we see today, in a number of Arab countries, that celibacy affects both women and men and sometimes even more young people who are often unable to marry because of insufficient economic resources caused by unemployment and economic crises. This is also what drives many young girls of marriageable age to accept marriage to an older man, even though married. Therefore, she said, if we want to fight celibacy, why not help single young men who wish to marry, instead of encouraging polygamy<sup>19</sup>?

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19 "The legitimacy of polygamy in the Arab world", televised debate, broadcast in Egypt, in a TV program dated December 9, 2008, available on the Web: <http://bit.ly/24h6wRo>

### **An Alternative to Divorce and other Benefits**

The apologists for polygamy also accuse Western societies of hypocrisy because they impose monogamy, but allow men to have mistresses and extramarital relations. Is not polygamy, they argue, preferable to adultery, which leaves children fatherless, and less damaging than divorce, which is often the result of the husband's infidelity. According to this logic, polygamy would prevent such tragedies and would be more equitable for women and children from subsequent unions, since it would give them recognition and legal status, rather than marginalizing them as it is the case in a monogamous system. In reality, polygamy is not sufficient to eliminate divorce, adultery or illegitimate children as witnessed in all polygamous systems.

Regarding the benefits resulting from the sharing of family responsibilities between co-wives, that rhetorical argument hardly corresponds to contemporary realities, given the family tensions and conflicts associated with the polygamous lifestyle, in a modern context.

As to the protection of widows and orphans, the initial justification invoked in the Quranic verse on polygamy, this justification is no longer relevant today. In most African and Muslim societies women's access to education and labour market offers widows and divorcees other possibilities than polygamous marriage. Moreover, evidence suggests that men practicing polygamy most often choose young virgin girls, rather than widows or divorcees with dependent children.

### **Maintaining Traditions and Identity Affirmation**

In several African and Muslim countries, polygamy is increasingly asserted in the name of Islam, traditions and identity affirmation. For example, in Ivory Coast and Tunisia, two countries where polygamy has long been prohibited, some of the population now requests the application of Islamic law which authorizes polygamy. The reason for this is that polygamy is encouraged by a certain discourse and actively promoted everywhere: in mosques, culture and the media, as will be discussed below.

## **5.2 POLYGAMY, A CHANGING PHENOMENON**

In African and Muslims countries, the estimate of the number of polygamous marriages differs according to the sources and contexts, and ranges usually from 2% to 20% of all marriages. They are most often bigamist marriages (involving two wives); households with three or four wives, according to the limit permitted by Islam, are rarer.

In the context of globalization, polygamy is in mutation as are societies where polygamy appears. Traditionally, polygamy was more common in rural areas where the need for a large labour force drove men to take several wives to have many children. In the absence of a social safety net, children are still often the only security the parents can depend in old age. In a tribal environment, it is also a matter of clan survival. But with increasing urbanization, the economic crisis, job insecurity and unemployment, polygamy has become too costly for most people.

Certain studies show that the trend in polygamy varies "according to more or less interrelated criteria, such as the level of education, ethnicity, religion or social status" and that polygamy tends to rise with increasing income (Translation, Vlei-Yoroba, 1997). Other studies indicate that this practice evolved through social classes. Once considered the privilege of the wealthiest class, polygamy is now viewed by workers and shopkeepers as a way of showing their wealth (Darwish and Jouteau, 2007).

### **The African Context**

In Africa, there is a wide variety of laws relating to polygamy that are not necessarily linked to Islam. Thus, Christian populations also practise polygamy, as it is authorized by customary law. This is the case in Cameroon where there is no statutory limit on the number of wives a man can have. However, since 2003, a growing number of Cameroon couples are opting for monogamy. This trend is encouraged, it seems, by the Church which preaches in favour of monogamy and refuses to bless couples that are not monogamous (Nforgan, 2008).

Several legal systems (such as in Tanzania, Gabon, Cameroon and Mali) offer men a choice when they first marry between monogamy or polygamy status. If a man chooses to be monogamous, he is then unable to change his mind. In practice, most men prefer to keep their options of becoming polygamist open, even when they do not intend to have several wives. If the husband remarries, women have no other choice than to divorce, but with onerous conditions that are sometimes impossible to attain (CNCDH, 2006).

If the choice has not been made at the time of the marriage, some laws provide an option by default known as the "common law regime". According to a study of sub-Saharan countries, polygamy is under the auspices of a "regime of exception" in Burkina Faso, Congo, and less defined in Togo, whereas, in Mali, Senegal and Gabon, it is considered the "common law regime" (Vareilles-Sommières, 1993: 150-151). The option offered by default or the existing "common law regime" influences the frequency of polygamist unions in a society.

African polygamy is regarded primarily as an ancestral custom. Conceived as a symbol of male virility, it contributes to increase the power and status of men in the eyes of members of their community. In addition, it serves to maintain the subordination of women, as emphasized by one Cameroon author:

In Cameroon, many men continue to marry under the polygamous regime, primarily to ensure greater submission of their wives. Resigned, women prefer to be submissive rather than remaining single.

[...] the "monogamous" option entitles the wife to be arrogant and do anything she pleases, aware that her husband will have first to go through the court system and get a divorce before considering another relationship.

(Translation, Nforgan, 2008)

This view expresses a social reality acknowledged in all polygamous societies, that is to say, polygamy gives men increased power within the family, to the detriment of women.

In the context of modernity and given the extensive education of women, their aspirations are now different from those of earlier generations. Studies indicate that the more educated and financially independent women are less likely to accept polygamy than their mothers. In addition, the impact of polygamy on women and children's lives is very different today, and the trend is negative. Once considered a source of social stability enabling the building of family ties between communities and different ethnic groups, polygamy has now become a source of "instability in the development cycle of domestic groups" as emphasized in a study on polygamy in Cameroon (Translation, Houseman, 1980).

### **The Islamic Context: the Revalorization of Polygamy**

Certain scholars believe that the practice of polygamy is already low and in decline in the Islamic world due to urbanization and the progress of education, and will eventually disappear by itself. This optimism seems hardly justified. In Egypt, for example, where the practice of polygamy declined in the 1960s and 1970s as it was considered an archaic custom and an impediment to development, it is now increasingly accepted, even valued, among the urban and educated young adults who had until now abandoned this practice. We can observe this trend in all of the Muslim countries which has contributed to reviving the debate on polygamy, thought to be over.

Although a large majority of Muslim women oppose polygamy, it appears that a certain number of them accept it for various reasons. A recent study done by the United Nations Development Program (UNDP) confirms that 10.6% of women in Egypt accept polygamy, as opposed to 22% in Morocco and 4% in Lebanon (Darwish and Jouteau, 2007).

In addition to the traditional religious discourse which views polygamy as a man's immutable "right" recognized by Islam, there is now an additional pragmatic discourse rooted in modernity and in the implacable logic of the market place. This discourse promotes polygamy for women as a means to satisfy their immediate material needs and for men, as a way of showing both their social status by displaying their ability to maintain the costs of several homes, and their Islamic identity in opposition to Western cultural hegemony. This discourse is being spread thanks to modern means of communications, such as the Web, the media and the film industry. These clever promotions seem to reap positive results.

During a televised debate on "the legitimacy of polygamy in the Arab world"<sup>20</sup>, Ms. Ikbal Baraka denounced the new strategies put forward by certain groups that encourage men to exercise their "right" to polygamy in the name of Islam and identity affirmation. She said that in Jordan,

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20 Televised debate, broadcast in Egypt, TV program dated December 9, 2008 – French translation available on the Web at <http://bit.ly/25ucvET>

for instance, there are associations which encourage men to take a second, third or fourth wife, going as far as paying for their wedding expenses, in addition to offering women a financial bonus if they accept that their husband marries another woman! Defending the opposite view in this debate, Sheikh Ibrahim Al-Khouli, a teacher at the Islamic University Al-Azhar in Cairo, acknowledged that there are some excesses, giving as an example, a fatwa (religious decree) issued in Dubai to "force" men to take four wives. He said that this fatwa is a total aberration, because the Quran "authorizes" but does not oblige men to take four wives.

The debate on polygamy has resurfaced in Egypt after the broadcast, during Ramadan 2001, of a television series entitled "Ailat Al-Hagg Metwalli" (the family of Hagg Metwalli) starring very popular actors. This drama depicts the marital adventures of a man married to four beautiful women, jealous but assertive and especially happy to share him. Giving the success of this production, others have followed. In 2007, no fewer than seven films and television series featuring likeable polygamous families were released on satellite TV during the month of Ramadan, when viewing rates in the Arab world peak.

We cannot underestimate the extent to which such productions contribute to the trivialization and valorization of polygamy. Moreover, the Egyptian National Council for Women responded by organizing a seminar in 2002 to discuss the impact of this type of program that strengthens, according to spokespersons, all negative female stereotypes and, furthermore, promotes polygamy.

At a time of post-satellite communications, local media reaches far beyond borders. There is no doubt that it also impacts immigrants living in Western countries, only too happy to have access to cultural productions from their country of origin. Indeed, the popularity of TV programming from the Middle East among Muslim immigrant populations living in Europe and North America is recognized.

A Norwegian historian has focused on the reaction of Muslim immigrant women following a broadcast by satellite of the series "Ailat Al-Hagg Metwalli". Her study reveals two distinct trends. On the one hand, Muslim women who have assimilated into the host society tend to consider the polygamous husband as a dictator, imposing his will on his wives, preventing them from working outside and leaving the house without permission. On the other hand, immigrant women less integrated into European society admired the husband's success in assuming his family responsibilities and in sharing his affection among all his wives (quoted in Kurtz, 2006).

### **Polygamy, a "Right" of Women**

Besides media productions that trivialize polygamy, we see the emergence of a "feminist" discourse in defence of polygamy "in the interests of women", holding out the prospect of whatever financial security or benefits they may gain. For instance, in Malaysia and Indonesia, clubs have been created

whose main objective is the promotion of polygamy for women, to help them accept their husband's polygamous practice by overcoming their feelings of jealousy and insecurity. Fearing that this will impact on their family life, Indonesian women's groups, in a collective effort, have asked their government to close these clubs, without success (Vaswani, 2009).

Even in Tunisia, where polygamy is prohibited and punishable by prison terms since 1956 (a law envied by feminist groups throughout the Arab world), an appeal for legalizing polygamy was recently made by a woman, Dalanda Sahbi, at a seminar on the progress made by the Tunisian women (held on August 11, 2009). This lone call faced strong opposition from the government as well as from Tunisian women.

In Egypt, three years after the release of the first series "Ailat Al-Hagg Metwalli", Hayam Dorbek, an Egyptian journalist and mother of two, formed an association to promote polygamy called Taysir (facilitation), whose slogan is: "*A single woman is not enough*"! The founder, a very articulate woman dressed in a modern fashion, argues, on various platforms that "polygamy is a right to both women and men". The creation of this association and the discourse of its founder led to an uproar among Egyptian women who objected to this rhetoric. Dorbek has received hate letters from women outraged by her position, accusing her of wanting to destroy their home.

According to Nadia Radwane, a professor of sociology at the American University in Cairo, polygamy cannot be a choice for women because "no woman in the world would agree to share the man she loves with another woman". The problem, she says, is a misinterpretation of the Quran which urges women to consider polygamy as "a man's absolute right" (Translation, quoted in Darwish and Jouteau, 2007).

Among the reasons put forward in favour of polygamy, from the perspective of women, the founder of the association "Tayssir" invokes how difficult it is to satisfy a "narrow-minded and authoritarian" husband, hence, she claims it is in women's interest to "share this burden with another wife." Polygamy would be also a solution to the problems encountered by working women, who do not have enough time to devote to their husband and the household, and also a solution to immorality and adultery. Women who support this position gloss over other women's interests in finding or keeping a husband, even polygamist, as long as he can meet their financial and material needs. They finally emphasize the difficulty for a woman to survive economically as well as the best interests of children, often ignored in the case of divorce (Darwish and Jouteau, 2007).

Thus, to overcome women's resistance to polygamy, this pragmatic discourse appeals to their sense of duty and sacrifice while pointing out the material benefits that a marriage would provide, even a polygamous marriage. Given the stigma afflicting the divorced woman in Muslim societies, coupled with women's lack of financial autonomy and vulnerability in being single in a male-dominated society, these two arguments are probably the main reasons pushing women to accept sharing their husbands with another woman. A study on the impacts of polygamy on first wives

and their children conducted in the United Arab Emirates revealed that almost three quarters of them (72%) have actively contemplated divorcing, but decided not to seek a divorce in the interests of their children (Al-Shamsi and Fulcher, 2005).

### **The Attraction of Pro-Polygamy Modern Discourse**

The media admires women who defend polygamy, only too pleased to broadcast their provocative discourse. Under the cover of modernity and using supposedly feminist arguments, this discourse is interwoven with that of conservative religious groups, which continue to advocate a strict and misogynistic interpretation of Islam. This dual strategy that focuses on both traditions and modernity is extremely efficient. Globalization and petro-dollars help these groups to successfully use the public space in order to influence public opinion in favour of polygamy, using women and the media.

It is important to better understand the appeal of the pro-polygamy modern discourse in the context of market globalization and Western cultural domination. The sex industry, omnipresent in the Western media, now penetrates every home (via satellite and Internet) and, in its wake, significantly impacts attitudes and social behaviours. This new permeability of borders means that young people increasingly adopt permissive sexual behaviours disregarding the traditions and social taboos. We also observe in all societies, including in traditional African and Muslim societies, a sudden increase in prostitution, which is no longer confined to the marginalized, but now reaches people of diverse backgrounds. In this context, polygamy is perceived as an alternative to sexual "immorality", which is appealing to younger and older people alike from different milieu. In other words, polygamy appears to be a more "respectable" way for women to satisfy their desire to consume and, for men, constantly goaded by the media, to satisfy their sexual desires with multiple partners. In this globalized context, the pro-polygamy discourse is undeniably attractive.

As far as determining whether polygamy is in the best interests of women, nothing could be less certain. By emphasising pragmatic reasons which should encourage women to accept polygamy, this discourse obscures the harsh realities of polygamy, which robs women of their dignity and ignores the related social stakes in the long term.

## **5.3 THE SOCIAL REPERCUSSIONS**

Among the most common negative effects of polygamy are the conflicts and the breakdown of families which is very obvious, regardless of background. For a first wife, the marriage of her husband with another woman, usually younger, is felt as a betrayal. Most often, the first wife and her children are marginalized within the family unit to the benefit of the new wife. The situation can vary from one ethnic group to another, as shown by certain studies which indicate that sometimes there is a strict hierarchy among the co-wives. This is the case in certain ethnic groups in Cameroon, where the first wife enjoys a privileged status.

Within polygamous households, there is a hierarchy among wives, some of them exercise power over others, either because of their age or their marital rank or because of their husband's preferences, who then has the power to fuel rivalry between the wives to maintain his own power. We remain in a context of male domination and the few rights granted to some women have mainly the objective to facilitate the exercise of male power.

(Translation, David-Yana, [n.d.])

### **A Source of Conflicts and Violence**

In fact, whatever the mode of distribution of power and status afforded to co-wives in the family, the notion of fairness required by Islam is rarely enforced. With the arrival of a new younger wife and the birth of new children, spending increases and the distribution of resources, already scarce, is too often a source of conflict. The co-wives thus compete with each other to maintain or improve their position, have access to resources and have more children, hoping to retain the husband's favours. While it is true that sometimes ties of solidarity are forged between co-wives, there are nevertheless still tensions and conflicts in the family as a result of the objective conditions of rivalry which are practically inevitable. These tensions too often culminate into physical and emotional abuse between co-wives and between their children.

It is interesting to note that the Arabic word for "co-wife" is *darah*, which also refers to one who makes trouble (Hassouneh-Phillips, 2001). Although, in the popular mind they are associated with the co-wives behaviour, the "troubles" or the harm associated with polygamy are intrinsic in this family lifestyle which disadvantage women. That is why many members of polygamous communities consider polygamy, in and of itself, violence against women and not only because of certain abusive behaviour by one or the other party involved.

To minimize family conflicts associated with polygamy, each co-wife usually has her own separate home or at least an area in the house for her and her children. But in an urban context and under dire economic conditions, this is often impossible to achieve. Cohabitation is then imposed on the co-wives of a polygamous husband, which exacerbates family conflicts and violence. If polygamy cannot be avoided, Rosine Ngwem, President of the Littoral broadcast of the Association for the Fight against Violence to Cameroon Women advises women to add in their marriage contract, after the word "polygamy", the phrase "separate homes for each wife".

### **The Precariousness of Marital Relations and the Impact on Children**

Refuting the view that polygamy is a solution to women's celibacy, Ms. Ikbal Baraka, an Egyptian novelist and editor, asserts:

You do not solve a crisis by creating another. [...] Today the father contributes to the upbringing of his children. If he does not, children turn to delinquency. We have children who are drug addicts or delinquents as a result of the father's lack of involvement in their upbringing. Why are we allowing him to take a new wife and neglect his family? This leads

to what exactly? To a woman hurt, shocked, disgusted with life because her husband has publicly rejected her, often for a younger and more beautiful girl? How can she raise her children alone? We are destroying the Muslim society. Is it not already destroyed enough?

(Translation, Source: TV debate, 2008<sup>21</sup>)

Also refuting the widespread notion that polygamy for women is preferable to divorce, the author adds:

[...] there is today complete chaos in countries that permit polygamy. Polygamy is an insult to women's rights as well as to the first wife. This practice which allows a man to abandon his wife for pleasure [...] touches her pride and dignity because he erases twenty or thirty years of her life ... Why does a husband dissatisfied with his wife, not leave her? She may meet someone else with whom she can be happy.

(Translation Source: TV debate, 2008)

Along the same lines, a study on polygamy in North Africa calls seriously in question the belief that polygamy could be a safety net for women and children.

There is nothing more deceptive than to state that polygamy is a kind of "social security" for the wife and her children. In reality, it is often the opposite. It is enough to read Maghrebian social workers' reports on the perverse effects of this practice on the family structure to understand the hiatus.

(Translation, Koudjil, 2002)

This is also the opinion of Sadok Belaïd, a professor of Islamic law, which states the following:

It would be naive to think that polygamy can be a remedy for sexual excesses or adultery. The best proof is the numerous scandals that erupt everywhere in modern society. Similarly, there is nothing more false than stating, again, that polygamy is a "protection for the mother and her children," because more often it is the opposite that occurs, and the number of injustices suffered by the "unloved children" is as indisputable as it is inestimable.

(Translation, Belaïd, 2000: 183)

Thus, far from guaranteeing the promised family security and stability, polygamy is more often a source of instability and insecurity. It contributes to fostering hostile relationships based on jealousy and rivalry between co-wives and between their children. Many women who have suffered as a result of polygamy are of the view that it undermines their dignity and causes more harm than it claims to prevent.

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21 "The legitimacy of polygamy in the Arab world, televised debate", broadcast in Egypt TV on December 9, 2008, available on the Web:<http://bit.ly/24h6wRo>

## **An Attack on Women's Health and Development of Children**

Many studies show the negative repercussions related to polygamy on all family members, including the deterioration of first wives' physical and mental health. They often suffer more anxiety, low self-esteem, loneliness, distress and also experience feelings of helplessness, associated with their loss of status within the family, than wives from monogamous families. It is thus, by repressing their own feelings and frustrations that women "accept" sharing their husbands to the detriment of their well-being and mental health which has inevitable consequences on their children. These studies also reveal that children born of polygamous families, especially those of the first wife, are more likely to suffer from behavioural problems, lower academic achievement and low self-esteem (Houseman, 1980; Al-Shamsi and Fulcher, 2005; Al Krenawi, 2001; Hassouneh-Phillips 2001).

A study by the Organisation for Economic Cooperation and Development (OECD) conducted in twelve countries in sub-Saharan Africa also shows that "children born of polygamous unions exhibit stunted growth". This can be explained by the fact that polygamous fathers have on average many more mouths to feed, while their resources are not growing at the same pace as their family expenses. (Translation, Morrisson and Linskens, 2000)

Finally, the negative effects of polygamy are evident everywhere in African and Muslim countries. This means that the social consequences of polygamy do not depend on its legal status and cannot be explained by the marginalization or clandestinity of the practice, as claimed by the supporters of the decriminalization of polygamy, but that they are inherent to the polygamous system.

## **5.4 WOMEN'S RESISTANCE AND EXAMPLES OF REFORMS**

As mentioned above, the only Muslim countries to have banned polygamy are Turkey (in 1914) and Tunisia (in 1956). In Africa, Ivory Coast is the only country to have prohibited polygamy (in 1964).

Up to now, in so far as polygamy was considered a practice in regression, most Muslim countries preferred not to legislate to avoid endless arguments between conservatives and modernists. But the expansion of polygamy in a modern context and its harmful social effects has prompted some governments to adopt reforms aimed at curtailing the practice.

Today, in polygamous societies, human rights groups and women's groups are rallying to fight against this practice and have expressed their dissatisfaction toward the trivialization of polygamy by the media. It is therefore in this context that a campaign against polygamy was initiated in Egypt, supported by the National Council for Women (created in January 2000) and chaired by Egypt's First Lady, Suzanne Mubarak.

Farkhonda Hassan, General Secretary of the National Council for Women declares the following:

As a woman, I cannot accept a fatwa (religious decree) calling for taking several wives, because Islam does not allow it and further it is humiliating to women.

(Translation, Cited in Nasreddine, 2004)

A similar position is voiced by Mona Zoulfoqar, an Egyptian feminist lawyer:

Islam has authorized polygamy, but it is an authorization and not an automatic right. There are conditions to be met. Many men abuse this authorization, especially in poor communities which do not have a good understanding of religion. For them, taking multiple wives is a sign of virility and a means to have a large progeny.

Arab countries like Syria, Iraq, Yemen, Libya and Tunisia have introduced, for many years now, restrictions on polygamy. This practice is subject to permission by a judge to ensure that the husband has valid reasons and the financial ability to support multiple households. Tunisia went as far as to impose a jail term of ten years for violation of this legislation.

The lawyer then recommends following a similar system as the one in force in those countries.

(Translation, Cited in Nasreddine, 2004)

Egyptian feminist associations have, for a long time, called for the abolition of polygamy. Reforms concerning marriage and divorce have been recently adopted in order to limit the practice of polygamy without going as far as prohibiting it. Whereas before, a man could marry a subsequent wife, without the first wife's knowledge, or even the new wife's knowledge, the act now requires the husband and the religious advisor to inform the first wife and the prospective wife, before entering into a polygamous marriage. Breach of this law by the husband will lead to a one year jail term. In addition, the law grants the former wife the right to seek divorce because of harm sustained as a result of the husband's marriage to another woman, even without cause, subject to repayment of the dowry (under the law of *khole'a*<sup>22</sup>). Since the adoption of these laws in Egypt, the number of divorces has significantly increased, reaching a record high in 2008 (Darwish and Jouteau, 2007).

Indonesia -the country with the largest Muslim population in the world- has imposed strict conditions to allow a man to marry more than one woman. The law requires the authorization of the first wife or proof of her infertility or inability to perform her conjugal duties, as well as the authorization of a religious advisor. These measures make the practice of polygamy less frequent than in other countries with large Muslim populations (Vaswani, 2009).

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22 The *Khole'a* Act adopted in 2000, gives women the right to seek their own divorce.

In Iran, as well, women have rallied against a Bill introduced in 2008 aiming at removing the restriction imposed by the current law, which requires the permission of the first wife to allow a man to enter into a subsequent marriage. The Bill authorizes a man to take a second wife, only if he has the financial means to support two wives. Following the outcry over this Bill, a new version of the Bill has been submitted, which maintains, in appearance, the authorization of the first wife, but this would be ignored under ten other conditions, including the non-performance of sexual duties by the first wife. A survey conducted in Iran in 2008 indicated that 96% of Iranian women refuse to allow a man to take a rival wife. The spokesperson for the Iranian Women Centre argues that this Bill is "intolerable" and that it "weakens the role and the status of women in the family structure and in society" and that Iranian women will not remain silent (AWID 2008).

The abolition of polygamy has been demanded by Iranian feminists since the 1970s. During this time, the Shah had supported their request, but conservative religious groups prevented this reform and the alternative was the adoption of the current law requiring the authorization of the first wife, which consequently limited the practice of polygamy. Today, Iranian women are more educated (80%) than in the 1970s (while 67% were illiterate), and are therefore better equipped to defend their rights. A campaign to collect one million signatures was launched by different Iranian women's groups opposing the 2008 Bill and demanding the abolition of polygamy.

In Morocco, since the late 1970s, some timid attempts to amend the Family Code (*Mudawana*, enacted in 1958) had failed because of the fierce opposition from traditionalists movements. When the new King Mohammed VI came into power, he began a consultative process in 2001 to reform the Family Code which revived the debate surrounding the claims of Moroccan women's associations demanding, among other things, the prohibition of polygamy. After heated debates, the new Moroccan Code, adopted early 2004, submitted polygamy to strict conditions, including approval of a judge who must verify "the husband's ability to guarantee fair treatment of the subsequent wife and her children, on an equal footing with the first wife". According to the Moroccan Ministry of Justice, these measures have contributed to reducing polygamy by nearly 7% in one year (CNCDH, 2006: 8). In addition, the new Code allows the wife to stipulate "monogamy" as a condition in her marriage contract, and failing to comply with this clause, to seek a divorce for "harm suffered". It is noteworthy that when King Mohamed VI announced the reforms, he relied on and made reference to the Quranic texts and the Prophet's traditions (*sunna*) to indicate that the changes are consistent with Islamic values (Lamchichi, 2006: 160-165).

These examples, among others, show that the social harm arising from polygamy is serious enough to prompt some governments, usually reluctant to act in the interest of women, to adopt reforms aimed at curtailing this practice. Although modest, these reforms supported by women's groups face everywhere a strong opposition from conservative movements who want to maintain patriarchal traditions at the expense of women's rights.

## 5.5 THE SOCIAL AND POLITICAL STAKES

The apologetic arguments invoked in favour of polygamy conceal the real social and political stakes which are responsible for maintaining the practice. First, as observed, taking multiple wives demonstrates the virility of a man and gives him increased status and power within his community, despite the social and family problems that it causes. It is without a doubt the main reason which prompts some immigrants in Western countries to violate the laws prohibiting polygamy. Studies confirm that certain African immigrants, initially reluctant to practise polygamy, succumb to pressure from their families back home, which encourage them to take a new wife to improve their status in the eyes of members of their community (Yakoub, 2008).

Secondly, we must realize that even though polygamy is a very small minority practice, it has a structuring effect on an entire society because it institutionalizes inequality between the sexes and reinforces the subordination of women. During a domestic conflict, the husband often threatens to take another wife in order to break his rebellious wife. This is emphasized by Mohamed Charfi as follows:

As long as the law permits polygamy and gives the husband permission to marry a second wife, even with conditions under the timid and small reforms introduced in the laws in some Muslim countries, there will never be equality within the couple and women will always live under the sword of Damocles, even if the husband does not use this alternative. Legal discrimination inevitably results in an unbalance within the couple, an inequality in fact and in reality and a situation of dependence and inferiority.

(Translation, Charfi, 1999)

Thirdly, today, as with yesterday, the fight against polygamy is part of the broader context of the struggle for democracy and for the recognition of women's rights which represents a crucial issue. As Belaïd noted:

The issue of polygamy is one of the many manifestations of a wider conception of the ancient society and the principles that govern it. It was the expression of the more general principle of man's superiority over woman, which affected both marital and family status, as well as social and legal status.

(Translation, Belaïd, 2000: 201)

## CONCLUSION OF PART TWO

In light of the foregoing analysis, it would be a serious mistake to believe that any opposition to polygamy is contrary to Islam. It is important to note that the controversy surrounding polygamy in Islam is based on the same religious texts from the Middle Ages, which are interpreted differently according to the time and ideology. This is so today also on other controversial topics such as the *hidjab*, the role and status of women or the role of religion in society. Today, as with yesterday, the opposition between conservative and progressive trends revolves around the status and condition of women. By a strict and literal lecture of the religious texts, the conservatives insist on maintaining the patriarchal traditions to preserve the privileges accorded to men. Conversely, the progressive trends advance a more liberal lecture of the same religious texts, in an effort to put forward an Islamic vision more compatible with social changes and the rights of women. In other words, Islam cannot be solely reduced to conservative or fundamentalist forces that dominate today, as we too often tend to believe.

Historically, there are at least two different strategies for opposing polygamy in Islam: a secular approach, often criticized for its alliance with the West, and a reformist Islamic approach, considered more authentic. The first approach is based on a secular vision of society that seeks to lessen the influence of religion in the legal and political spheres. The latter seeks its legitimacy in religious texts in an effort to bring out new meanings compatible with modern society and the rights of women. The relevance of either strategy depends on the social and political context.

It may seem so, but these two approaches are not incompatible. It must be recognized that the secular approach does not suffice to rally people with deep religious convictions. As demonstrated by the case of Tunisia (Section 4.3), a reinterpretation of religious texts is necessary to minimize the internal resistance to the required change in the interests of women. In strategic terms, this element seems crucial if we want to oppose polygamy, especially in a context of religious fervour.

The analysis of the social impacts associated with polygamy in a Muslim context (Section 5.3) reveals that the consequences of polygamy are harmful, even when this practice is legally permitted. It would be naive to believe that we only need to decriminalize polygamy to eliminate its negative consequences.

Moreover, it is wrong to claim that polygamy and monogamy are two family models of equal merit. Although, historically, monogamy was encouraged and even imposed by the Catholic Church, while polygamy is still permitted in African and Islamic traditions, the fact of defending this principle today does not mean that it is the result of cultural ethnocentrism<sup>23</sup>, as some seem to believe.

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23 Ethnocentrism is a concept introduced by W. G. Sumner in 1907, which refers to the tendency to privilege or consider as superior the moral values and cultural forms of ethnic group to which one belongs. This attitude can lead to racist behaviours.

We must admit that the monogamous system was at a breaking point with an old patriarchal practice with structural effects, which reinforced male dominance and women's subordination in any society. By limiting the privileges afforded to men to be entitled to several wives, monogamy has opened the door to a new social structure based on the principle of equality between the sexes, but also between men, which would have been impossible to achieve otherwise.

Conversely, the practice of polygamy, which is more enjoyed by men from the ruling class, tends to exacerbate social inequalities and institutionalize inequality between the sexes, thereby denying the rights of women and their human dignity. Moreover, sexual freedom associated with the West and condemned by polygamy apologists, occurs in a context where women and minorities have won, with hard struggles, rights and increased freedom. While this progress is insufficient, fragile and threatened by economic conditions and the return of a conservative ideology, the fact remains that monogamy has laid the groundwork for a balanced system more egalitarian and fair for women and especially more respectful to their human dignity. Despite its imperfections, the monogamous model has allowed men and women to have recognized equal rights and obligations within the couple, which are totally denied in a polygamous system.

## **PART THREE: THE SOCIAL DEBATE IN THE WEST**

In this part, we examine the social debate and challenges that polygamy raises in the West, in the context of immigration. We begin by recalling the case of France, which is particularly interesting, as this country experienced an increase in the number of cases of polygamous families after adopting a policy of openness towards the immigration of wives of polygamous husbands, before reversing course, which allows us to have a view of the social repercussions linked to such a policy (chapter 6). We then analyze in a critical way the pragmatic arguments in favour of decriminalizing polygamy, in light of the social repercussions of polygamy in the various contexts previously examined (chapter 7). Finally, we present the arguments in favour of maintaining the prohibition of polygamy, based on the responsibility of the state in matters of equality between the sexes and the protection of the rights of women and children (chapter 8), before making the recommendations resulting from our analysis (chapter 9).

## **CHAPTER VI – POLYGAMY IN THE CONTEXT OF IMMIGRATION: THE CASE OF FRANCE**

The example of France is highly relevant for us, since this country experimented for years with a policy of openness towards the immigration of polygamous families from Africa, which gave rise to numerous social problems. This example offers us a precious look at the social repercussions of a policy of openness towards polygamy, in a Western context.

### **6.1 THE STATE OF AFFAIRS AND THE CONTROVERSY**

France, like other European countries, has experienced a growth in the number of polygamous households, linked to immigration. It is estimated that there are 16,000 to 20,000 polygamous families living in France, involving 180,000 to 200,000 people, according to a study by the French National Consultative Commission on Human Rights (Commission nationale consultative des droits de l'Homme: CNCDH). This study reveals that polygamy is less frequent among immigrants of Maghrebian origin and is found mostly among persons originating from sub-Saharan African countries. It is most often individuals originating from Mali (80 percent of polygamous families in France come from this country) and, to a lesser extent, persons originating from Senegal and Mauritania (CNCDH, 2006: 3).

A minor phenomenon within immigrant populations, polygamy nevertheless raises important challenges in the neighbourhoods where it is concentrated, situated predominantly in the Parisian region. Polygamous families are also found in Seine-Maritime (Rouen, Evreux), in the North (suburb of Lille), in the Rhône region (Lyon), in Strasbourg, Mulhouse and in Marseille (CNCDH, 2006: 5).

This situation worries many and leads to controversy between a progressive trend, encompassing advocates of tolerance and respect for cultural differences, and a conservative trend, more cautious and resistant to immigration. The former assert that polygamy is a legitimate family model, while the latter strongly oppose it and criticize the social benefits, allegedly too generous, afforded to immigrants who would benefit the most from them given their large families.

#### **The case of the burka and polygamy**

Recently (in April 2010), the controversy resurfaced in France, when a woman wearing the full veil (or burka, which hides the face, leaving only a slit for the eyes) challenged a ticket for driving an automobile in unsafe conditions. The driver and her husband made headlines by hosting a press conference to denounce what they perceived as unfair treatment. The police revealed that the husband of the lady, Lies Hebbadj, a 34-year-old shopkeeper, lives in France with four wives and a dozen children. Since only one is officially recognized as a legitimate spouse, the others are considered single mothers. Police suspect the husband of committing fraud in relation to family benefits.

The Minister of the Interior, Brice Hortefeux, reacted strongly by threatening to strip Mr. Hebbadj of his French citizenship for breaking the law prohibiting polygamy. Some commentators pointed out, rightly so, that a deprivation of citizenship requires a judicial process which cannot be replaced by a political decision. Crying foul, Mr. Hebbadj announced to the media that "if we are deprived of citizenship for having mistresses, there are many French men who would be deprived of their citizenship." The comparison of his wives to mistresses shocked his co-religionists, and the Muslim Association of Meaux and his region are currently pursuing an action against him for defamation.

This highly publicized case came about during the course of the debate on the prohibition of the full veil in France, which itself occurs within a climate of economic and identity crisis, coupled with increased hostility toward immigrants, more particularly Muslims, which contributes to clouding the issue.

### **A tendency to minimize problems linked to certain practices**

Given the global context, marked by the rise of the right, several progressive intellectuals and human rights groups accuse the French government of instrumentalizing the case of polygamy as well as that of the burka. Arguing that this is a very small minority practice, some intellectuals maintain this is a false problem that does not deserve all the attention given to it by the media and politicians. We believe this constitutes a simplistic shortcut which completely ignores the underlying problems of polygamy.

First, the parallel drawn by some between polygamy and having mistresses is weak. It is by no means a question here of equal sexual liberties. Furthermore, unlike mistresses, wives of polygamous husbands are held to faithfulness and obedience to the husband, in addition to bearing his children. They must therefore assume conjugal responsibilities, even when the husband cannot assume his own.

Secondly, even as a minority practice, polygamy within a monogamous society, endowed with a welfare system for families, raises significant contradictions that cannot be ignored. As happens frequently, polygamous husbands living in a difficult context of immigration are often unable to meet the financial needs of several homes. They therefore unload their responsibilities to the state, by declaring one wife and making the others appear as single mothers, which involves fraudulent claims relative to family benefits. Closing our eyes to this anomaly is condoning an abuse of the system's social safety net, designed to meet the needs of smaller sized monogamous families. In fact, it is the entire social structure of modern society that is not adapted to the needs of polygamous families, hence exacerbating the social problems linked to polygamy.

Thirdly, we must of course recognize that the phenomenon of polygamy is amplified by the media and that it is sometimes co-opted for partisan purposes, to attract the electorate of the right. Nevertheless, we cannot ignore the violations of the rights of women and children associated with this practice. Although inspired by a generous spirit and openness toward others, the trivialization

of polygamy, like that of other traditional practices related to patriarchy, sometimes disguises a subtle racism. This consists in regarding the other person as so different that he/she could not have the same human needs or the same aspirations to equal dignity that deserve to be protected by law. In any case, this is what is expressed by many Muslim women living in the West, who refuse to see legitimized, in the name of cultural diversity, traditional practices that are harmful to women (Tamzali, 2009; Arjomand, [nd]; WLUMML, 2008).

Fourthly, regardless of the feelings that animate it, the position that consists of minimizing or trivializing certain traditional practices only strengthens conservative and misogynistic trends of all stripes. And above all, it does not allow us to recognize and analyze with clarity the harms that flow from certain traditional customs damaging to women (such as female circumcision, underage marriages, forced marriages, polygamy), nor especially to act to change them in the interests of women. Inspired by cultural relativism, this position leads to abandoning the principle of the universality of rights, instead of seeking global solutions that are more respectful of the needs and dignity of women of all backgrounds.

## **6.2 A SURVEY OF FRENCH LAW CONCERNING POLYGAMY**

Polygamy is prohibited in France, as in other European countries. Since 1993, it has been punishable by one year in prison and a 45,000 Euro fine. But for the crime to be recognized, there must have been multiple civil marriages. Article 147 of the French Civil Code stipulates that one cannot contract a second marriage before the dissolution of the first. The prohibition on polygamy applies therefore to all, regardless of the nationality of those affected. In addition, Article 188 provides that "the spouse, to whose detriment a second marriage was contracted, can request its nullification, during the lifetime of the other spouse" (Translation, CNCDH, 2006: 6).

However, to accommodate the family practices of immigrants from polygamous societies, France considers that polygamous marriages contracted by persons having dual nationality, in accordance with the civil law (not religious or customary) of their country of origin, have certain recognized effects, notably as regards alimony and inheritance rights for the second wives and their children. The only exception is that "public policy does not allow the effects of a polygamous marriage to be binding on a first spouse if she is French" (Translation, CNCDH, 2006: 8). This limit indicates that the French legislators were aware that the recognition of polygamy violates the rights of the first wife, which it considered unacceptable for a French woman, but not for a foreigner. This provision represents an infringement of the principle of the universality of human rights.

Despite the ban on polygamy in France, the jurisprudence of the Council of State permitted, in 1980 (Montcho judgment of July 11), the family reunification of "polygamous" type for a foreign worker. A husband therefore had the right to bring in his second or umpteenth wife, as well as the children born of this union, which caused a sudden increase in the number of polygamous families in France.

Faced with the practical difficulties raised by their integration, the authorities have since reversed course, deciding to discontinue the practice linked to this jurisprudence by adopting the law of August 24, 1993, known as the Pasqua Law, which put an end to the ability of a foreigner to bring more than one wife to France. We will review below the consequences of this law on women from polygamous households living in France, after first examining the repercussions of polygamy on these women.

Furthermore, in 2003, the European Union adopted a directive (2003/86/EC) that recognizes the duty of member states to regulate the right to family reunification of children from polygamous households and does not authorize member states to allow for the bringing in of all spouses (CNCDH, 2006: 11).

### **6.3 THE SOCIAL REPERCUSSIONS AND THE CHALLENGES RAISED**

In November 2009, the Montaigne Institute, a liberal think tank, published a damning report on polygamy in France, considered too alarmist by some. Its author, Sonia Imloul (2009), knows well the phenomenon of polygamy, being the founder and president of the association Respect 93, which takes preventative action against delinquency among minors in problem neighbourhoods. But the subject being considered very delicate and fraught with political meaning, her report earned her the criticism of advocates for the rights of immigrant workers.

Given that in France the practice of polygamy is linked to immigration from sub-Saharan Africa, any criticism of this phenomenon carries with it risks of racist drift and political co-opting by a movement hostile to immigration. In the particular context of this country, where a populist political party, the National Front, openly defends anti-immigration positions, it is undeniable that the controversy surrounding polygamy contributes to fuelling xenophobia and racism against foreigners, accused of taking advantage of the system of child benefits granted according to the number of children. For example, the media recently reported the case of a 54-year-old African living in Montreuil-sous-Bois, who has two wives and 13 children, drawing a salary of 1500 Euros for a modest job, to which is added 1,000 Euros per month in child benefits (Chahine<sup>24</sup>, 2010). This case among others, exposed by the media, does not fail to scandalize many French people.

Certain media and politicians have even associated polygamy with the social unrest of 2005, as affirmed by Bernard Accoyer, current President of the National Assembly, according to whom polygamy is "certainly one of the causes of urban violence." Nicolas Sarkozy, then Minister of the Interior, also asserted that polygamy was one of the reasons why "an African integrates less well than a Hungarian." For her part, historian H  l  ne Carr  re d'Encausse, Secretary of the French Academy, had explained as follows the riots on Russian television:

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24 This article published February 8, 2010, in the daily "Liberation" in France, received the Ren  -Mauri  s Prize, which is awarded each year to a student in journalism.

Many of these Africans are polygamous. In one apartment, there are three or four women and 25 children. They are so crowded that these are no longer apartments, but God knows what! One understands why these children wander the streets.

(Translation, Cited in Chahine, 2010)

It is undeniable that such remarks fuel animosity towards immigrants. Anxious to dissociate themselves from this xenophobic shift, some politicians have asserted that it is false and absurd to claim that children from polygamous families, settled in France, generate more violence or delinquency than others. Refuting both assertions, Sonia Imloul noted that if it is true that there is nothing that allows such a link to be established, there is also nothing that disproves it, in view of the absence of studies on individual and collective behaviours induced by polygamy in France (Imloul, 2009).

According to the study by the National Consultative Commission on Human Rights (CNCDH, 2006) on the repercussions of polygamy, the situation of African women living in polygamy in France is often much worse than in their country of origin:

Indeed, in their country of origin, each woman in a polygamous household has her own housing (even if this is sometimes no more than a simple hut) where she lives alone with her children. She is moreover surrounded by her own family, in particular her mother, who guides her during pregnancy, childbirth, and in the course of learning how to parent. In case of conflict with her husband or the other wives, the whole of the family structure has the capacity to arbitrate and impose peace.

But in France, polygamy quickly becomes a hell for women. Most of the time, these wives are young girls who attended little school in their country, speak French with difficulty, and have no familiarity with our way of life. Married most often by force or in any case without having had a choice, they find themselves isolated, under the total domination of the husband. The abrupt severance with all structural roots especially at the time of motherhood is particularly traumatic. The crowding, in housing which is too small and not suited to a collective lifestyle, creates permanent conflicts between women, between children, and as rarely exists in these societies, between generations. Furthermore, over-occupancy and lack of maintenance of the housing can cause damage and affect settlements nearby. Furthermore, the disputes, the wandering of children, create nuisances for the environment and thus, even at the neighbourhood level, the tension mounts.

(Translation, CNCDH, 2006)

Despite the diversity of situations encountered, the common element that emerges from the case studies confirms the existence of serious harms derived from the polygamous way of life for the women concerned.

The only truth is the suffering of all players, including many men who admit, as an aside, that had they known, they would not have chosen to be polygamous in France.

[...] The main idea is the distress of women, their isolation, the manipulation by men of which they are victims. The point, of course, is not to generalize and to consider all polygamous men as torturers. But it certainly seems, despite everything, through the situations described by these women, that other situations of polygamy, even imagining them in less dramatic terms, can never become idyllic!

(Translation, CNCDH, 2006)

This bleak picture is confirmed by others intervening with polygamous families. In her report, Sonia Imloul (2009) insists on "the destructive character of this practice" for the women and children who are subjected to it:

The apartment of a polygamous family is like a prison for the wives. These latter may have their papers in order [...] or be without papers. Administrative documents certifying their identity and legal existence are often confiscated by their husband. They have not often attended educational institutions in their country of origin or in France itself. They also live in a situation of displacement and isolation. Moreover, these women often poorly master the French language and the codes of French society. Victims of arranged and forced marriages, trapped in the domination of a husband who monopolizes the whole of the available financial resources, they have to accept without challenge the arrival of a new wife and hence new children.

The mothers in polygamous families live in isolation. They rarely leave home and they may be victims of physical violence. The desire for pregnancy does not belong to them and contraceptive methods are either unknown or inaccessible. They have little professional activity. Their husband may also decide to send them back to their countries of origin, with or without their children (useful for the receipt of child benefits) as it seems that this was the case after the adoption of the law of 1993.

(Translation, Imloul, 2009)

The author also reports situations where family conflicts, exacerbated by the cohabitation of co-wives and their children, leads to physical violence with dramatic consequences:

I followed for some time several wives of a polygamous family in La Courneuve: the description of their situation confirms that children are in the front seat and are the first victims behind these closed family doors. The daughter in one of them was accidentally scalded during an argument between two wives and placed in an induced medical coma. Her brother, in revenge, raped one of the children of the wife implicated in the altercation. The promiscuity imposed on these children and teenagers evidently hinders their personal development, causing irreparable consequences.

These conflicts are sometimes carried outside the family and extend into the immediate neighbourhood. Some teens know the situation of wandering the streets to avoid as much as possible the latent tensions in the family apartment. Stigmatized for their aggressive behaviour or acting outside the rules of society, there does not exist any solution appropriate to their difficulty nor is there any outstretched hand to offer them an educational environment adapted to their situation.

(Translation, Imloul, 2009)

Finally, the author emphasizes the perverse effects of the immigration of polygamous families, split between France and their country of origin:

The children of polygamous families who see their mother leave France pressured by her husband or even after the law of 1993 banning polygamy, are also victims. These children for their part remain in France where they were born and where their number is essential for the payment of government family benefits.

[...] And last victims are the children of polygamous families split between France and another country, who can be exchanged with a half-brother or half-sister during a summer trip and never return to France.

(Translation, Imloul, 2009)

Finally, the study concludes that, although it is practiced by a minority, polygamy nevertheless constitutes a danger to the social organization of the neighbourhoods where it is concentrated. The author therefore maintains that we must act with firmness to combat this phenomenon, rather than giving up and accepting it as an inevitability.

#### **6.4 THE PERVERSE EFFECTS OF THE FRENCH LAW ON WOMEN**

As we already mentioned, after having allowed family reunification for polygamous families for over a decade (from 1980 to 1993), France reversed course, taking into account the social problems raised by this practice, and decided to put an end to it with the adoption of the Pasqua Law (of August 24, 1993).

The law of 1993 introduced two provisions designed to combat the practice of polygamy in France: first, the prohibition on bringing in more than one wife through family reunification as well as the children born of a wife other than the one already present in France; secondly, the withdrawal of the residence permit issued to a polygamous husband and a second wife, unless she "de-cohabits", which means leaving the marital home and establishing herself separately.

The Group for Information and Support for Immigrants (GISTI) strongly denounced the consequences of this law for the women involved in polygamous households in France. One of the perverse effects of this law is that members of polygamous families, settled in a perfectly legal manner

in France before 1993, have been refused renewal of their residency card (of ten years) on account of polygamy. By losing their residency cards, these men and women became illegal immigrants and could no longer work to support their needs and those of their children. In addition, they were no longer eligible for welfare, which created inhuman and aberrant situations (GISTI, 2000).

To mitigate these gaps, a late circular of the Minister of the Interior (April 25, 2000) clarified that it was necessary to accord polygamous foreigners having residency status before 1993 a temporary residence permit (for one year) permitting them to work. To renew their residency card, they must prove that they no longer live in a situation of polygamy, without necessarily divorcing, and that all the co-wives, save one, have "de-cohabited".

In the eyes of the law, only the first wife (according to her date of arrival in France, not her marital rank) could stay in the conjugal home and keep her ten-year residency card. Another perverse effect of this law was that certain polygamous husbands, preferring to live with a given wife, did not hesitate to divorce the first to marry the one they preferred. Other husbands decided to keep one wife with all the children, so as to continue receiving child benefits, and sent the undesirable wives back to their country of origin (CNCDH, 2006: 16-17).

Measures, considered insufficient, were put in place to assist women obliged to "de-cohabit" to find independent housing. But emergency shelters were quickly swamped. Some of these women wishing to "de-cohabit"—to end an intolerable situation, often triggered by the arrival of a new wife, or simply in order to remain in France with their children—have been listed for five years on a waiting list to obtain social housing. In the meantime, these women, termed "repudiated by the law" by GISTI, often find themselves on the streets or in squatted refuges, reduced to living in utter precariousness. And even when they succeed in finally finding decent housing, still they must find a source of independent income and overcome all the administrative obstacles to obtain the papers necessary for their residence permit (Alaux, 2001).

The organizations that support polygamous families who wish to "de-cohabit" admit that certain women and children born into polygamous households have been smuggled into France. The situation of these women "without papers" is even more difficult than that of those who entered legally, as they are more isolated and have little or no contact with the outside world (CNCDH, 2006: 5).

Finally, the law of 1993, which was supposed to protect women, has had perverse effects. As emphasized by Daniele Lochak, a professor of law at the University of Paris X Nanterre and a member of GISTI:

The prohibition on polygamous family reunification was not in and of itself objectionable: it was moreover requested by many associations of immigrant women, those most directly affected by the question.

[...] If we were really concerned to protect these women, it would have been logical to regularize the situation of those who were there before the passage of the law, instead of leaving them underground and in precariousness.

But even as concerns men, however much one hates polygamy (at least when it is officially sanctioned by marriage, since tolerance for double households is indeed, we know, very large), how can it be that people who had lived in France for years—sometimes several decades—with two wives, without anyone having found anything to say about it, suddenly found themselves refused the renewal of their residence permit and therefore obliged to leave France? Is this really acceptable? Polygamists are not, as far as we know, dangerous criminals.

(Translation, Lochak, 1998)

This difficult situation, created by a legal-political shift which initially opened the door to the reunification of polygamous families for over a decade before prohibiting it, encourages the greatest caution when it comes to opening the door to polygamy, under the guise of tolerance and respect for cultural diversity, as some would wish, without carefully weighing the long-term consequences of such a policy.

## CHAPTER VII – THE ARGUMENTS IN FAVOUR OF DECRIMINALIZATION

The practice of polygamy, with which more and more Western countries are confronted, raises important ethical questions. Canada is faced with a double challenge as polygamy is practiced both by Mormon communities established more than a century ago in the country as well as by an increasing number of immigrants from African or Asian countries. This double reality requires coherence in the application of laws and policies. We cannot take a lax approach to polygamy practiced by the Mormons, which has been the case until now, and then claim to apply the law only to polygamous immigrants.

In fact, the application of the law prohibiting polygamy raises multiple questions, to which no simple or obvious answer exists. How are individuals resident in Canada to be prevented from contracting polygamous marriages abroad? How to act in the face of religious polygamous marriages contracted illegally in the country? Should we intervene only if it is a question of marriages of underage girls and in a context of exploitation or abuse of authority? How can we grant the women involved in polygamous marriages the same rights and protections accorded to other citizens, without establishing a double standard? Can we decriminalize or legalize polygamy, without endorsing this practice, as some assert? And how is this to be done without renouncing the chosen model of society, centred on monogamy, and without denying the principle of equality between the sexes, which seems to be compromised by the privilege accorded to men to have several wives? Otherwise, would it be necessary, in the name of equality between the sexes, to acknowledge polygamy for men (polygyny, including several wives) and for women (polyandry, including several husbands)? And finally, would it suffice to permit polyandry to resolve the thorny problem of equality between the sexes?

The question relative to polyandry is not just hypothetical. It is difficult to see how we could justify, according solely to men, the right to contract plural unions or how this right is to be limited to certain men to the exclusion of others, which would constitute religious discrimination. Some "polyamorist" groups already defend the position that multiple unions must be decriminalized for all (male and female), without discrimination. These groups will support their position before the Supreme Court of British Columbia, in the Reference on the constitutionality of s. 293 of the *Criminal Code*. According to the philosophy of the "polyamorists", individuals have the right to choose the emotional bonds that unite them with others, including multi-partner unions. These, according to the "polyamorist" groups, ought to be recognized in the same way as heterosexual or homosexual marriage. This would amount to recognizing group marriages, including those consisting of several partners of both sexes. Certain jurists and university professors seriously support this position, affirming that polygamy is not necessarily patriarchal and that if it were to be decriminalized, it would be accessible to women, homosexuals, and lesbians (Kurtz, 2006).

In a study commissioned by Status of Women Canada (SWC) on the social and legal implications of polygamy in Canada, a team composed of jurists and researchers in the social sciences did not succeed in agreeing on the positions defended regarding policies. Consequently, four distinct reports were submitted on this subject, of which two support the prohibition of polygamy, the other two recommending total decriminalization or legalization to better manage this practice. The authors in favour of decriminalization or legalization raise legitimate concerns. These are tied to the more or less coherent application of the law and to the effects of criminalization on the women involved in polygamous unions and their children. It is important to better understand the arguments in favour of decriminalization, before analyzing the issues associated with it.

We can summarize these arguments by classifying them under four categories of principles:

- the principle of respect for individual liberties;
- the principle of protection;
- the principle of equality of the rights of wives;
- the principle of non-discrimination towards polygamous immigrants.

## **7.1 THE PRINCIPLE OF RESPECT FOR INDIVIDUAL LIBERTIES**

Three distinct conceptions of polygamy underlie the arguments centred on respect for individual liberties. Polygamy is sometimes conceived as a religious freedom, sometimes as a legitimate conjugal choice, sometimes as the expression of a sexual liberty. In fact, these categories are not mutually exclusive. They combine to become an irrefutable argument in the eyes of the defenders of individual rights and liberties who, without being necessarily in favour of polygamy, firmly oppose its criminalization.

### **Polygamy as religious freedom**

Considering that polygamy is an ancient and legitimate religious belief, as much for fundamentalist Mormons as for Muslims, several jurists maintain that the criminalization of multiple unions violates the right to religious freedom of the persons concerned, protected by section 2(a) of the *Canadian Charter of Rights and Freedoms*. This is the opinion defended by the jurists from Queen's University (in Ontario), authors of one of the reports submitted to SWC (Bailey *et al.*, 2005: 22).

### **Polygamy as sexual liberty**

Several intellectuals defend "the right to be polygamous", not for love of patriarchy, but from the perspective of sexual liberties. In our society, they say, each individual is free to have consensual sexual relations with as many partners as he or she desires just as each individual is free to marry several in succession, as do certain celebrities. So then, why criminalize those who would wish to assume conjugal responsibilities with multiple partners (Turley, 2004)? This argument rests on a weak parallel between polygamy and adultery or the fact of having extramarital relations or again of marrying successively several partners, while ignoring that in the case of polygamy it is in no way a question of a symmetrical liberty that would be accorded equally to women.

### **Polygamy as legitimate conjugal choice**

Placing emphasis on the legitimacy of polygamy as compared to other conjugal choices, some question the pertinence of criminalizing an act simply on the basis that it is situated outside traditional marriage, when many members of Canadian society choose to live as a couple, without being married, and the law now recognizes familial obligations that apply to conjugal relationships outside marriage (Campbell, 2005: 39).

Formulated slightly differently, why should a conjugal relation that is recognized legally abroad be the object of penal sanction, when neither prostitution, nor adultery, nor cohabitation outside marriage are criminal offences in Canada (Bailey *et al.*, 2005: 22)?

To this is added the argument of free choice and of the consent of women who accept joining a polygamous union, for various reasons. According to this logic, it matters little whether or not we agree with this choice, if there is no question of an underage girl or coercion, it would be necessary to admit the free will of consenting adults, wanting to enter into multiple unions.

## **7.2 THE PRINCIPLE OF PROTECTION**

Various arguments in favour of decriminalization concern the protection of women and children born of polygamous families.

First, some advance that the fact of considering polygamy a criminal offence, subject to penal sanctions, such as a fine or imprisonment, risks having "terrible consequences for the women and the children who live in polygamous families", more especially as the man is generally the principal provider in these families. Moreover, worded as it is, the law permits sanctioning as well the wives of the polygamous husband, which would penalize more seriously the children in the case of condemnation of their two parents (Campbell, 2005: 39-40).

Secondly, it is advanced that criminalization, far from dissuading the polygamists, does no more than to push the practice underground. On that account, it increases the isolation of members of polygamous families as well as the risks of violence and abuse towards women and children, and prevents the victims from lodging complaints, for fear of legal reprisal. Decriminalization would thus permit the practice to come out into the open, to ensure the protection of women and children living in polygamous families (Bailey *et al.*, 2005: 30).

Thirdly, it is asserted as well that it is not polygamy itself that is condemnable, but solely the violence and the abuses associated with it, such as the marriages of underage girls and the physical, mental, and sexual violence inflicted on women and on children. However, the laws already exist in the Canadian *Criminal Code* to punish violence and abuse with respect to children. It would suffice to enforce them, whether or not members of polygamous unions are in issue (Campbell, 2005: 42; Bailey *et al.*, 2005: 28).

In an incisive article published in "USA Today", a law professor stated that "banning polygamy is no more a solution to child abuse than banning marriage would be a solution to spousal abuse. The country has laws to punish pedophiles and there is no religious exception to those laws". Remembering that the anti-sodomy laws led to the persecution of gays, the author argued that it is imperative to decriminalize polygamy to protect the rights of a minority, regardless of how popular their practice is. (Turley, 2004).

Finally, questioning the connection between polygamy and subordination of women, some jurists argue that "criminalization is not the best way to address gender inequality in polygamous relationships" and emphasize that "Canada should repeal the prohibition of polygamy and plural unions under s. 293 of the *Criminal Code*" (Bailey *et al.* 2005: 30).

### **7.3 THE PRINCIPLE OF EQUALITY OF THE RIGHTS OF WIVES**

Some emphasize that the fact of recognizing a single legitimate wife of a polygamous husband, as is now the case in Canada, is inequitable for the other wives. The non-recognition of polygamous marriages means that the women who are involved in them do not have access to the same protections and advantages conferred by marriage, notably in the case of separation or death of the husband. Certain jurists recommend therefore the full recognition of polygamous marriages contracted abroad in order to offer the women involved in these unions the same protection provided for in the Family Law Act (Bailey *et al.*, 2005: 12-14).

### **7.4 THE PRINCIPLE OF NON-DISCRIMINATION TOWARDS POLYGAMOUS IMMIGRANTS**

As far as immigration is concerned, the members of a polygamous household cannot immigrate to Canada as a complete family unit. Only the husband and one wife are admissible, and the latter is advised that he will not be able to demand the admission of other wives subsequently, within the framework of family reunification. As a result, emphasize certain jurists, "the parties most susceptible to being injured by this rule are the wives left abroad". The situation seems all the more unjust since the polygamous husbands sometimes choose to emigrate with their new wife, leaving the first wives to manage on their own with their children in their country of origin. Certain jurists recommend therefore preserving family unity, by permitting the immigration of all the members of a polygamous family, which "would be a proof of tolerance" and does not mean that we adhere to this practice in Canada (Bailey *et al.*, 2005: v, 19).

### **7.5 A LEGAL ILLUSION**

#### **Decriminalizing to better protect**

The key argument that decriminalization of polygamy is necessary to ensure the protection of women and children born of polygamous families, is part of the liberal postmodern trend. On the view that all cultural practices are of equal merit, this argument advocates non-interference of the

state in the choices of individuals, to avoid stigmatizing a behaviour that distinguishes itself from the general norm. According to this logic, as the law does not suffice to eliminate a behaviour judged undesirable by some and valued by others, it is better to accept this reality and modify the law to avoid stigmatizing and penalizing vulnerable persons.

This position is based on a sophism. It supposes that all the problems associated with a practice banned by the law flow essentially from the prohibition and not from the practice itself, and thus that it would suffice to remove the prohibition to resolve all the problems. If it is true that the underground nature of the practice contributes to aggravating the problems experienced by women and children born of polygamous families, it is dangerous to believe that the legalization of polygamy would be an adequate solution. Bearing this out are the multiple harmful social repercussions of polygamy on women and children in the countries that have legally permitted this practice for centuries. This situation encourages us to be extremely cautious as regards the recommended solutions, based on the pragmatic arguments, which obscure the painful realities of polygamy, ignoring the fact that it is all about a family system linked to patriarchy, founded on the authority of men and the social and legal inferiority of women.

### **Personal choices, collective consequences**

The call for decriminalization of polygamy, based on the principles of respect for individual liberties and of cultural diversity, is part of the more general paradigm of multiculturalism, which has become more and more controversial in the countries that have adopted this policy. In Canada, the policy of multiculturalism, adopted in 1982 and enshrined in the *Canadian Charter of Rights and Freedoms*<sup>25</sup>, established that "ours will be an open and pluralistic society which must accommodate these small inconveniences that might occur where different religious practices are recognized as permissible exceptions to otherwise justifiable homogeneous requirements" (<http://bit.ly/1VkpLsC>).

If the fact of entering into a plural union is a matter of "personal choice", more often than not that of men, its consequences are collective. Far from being harmless, this decision has a structural effect on the whole of a society in addition to contributing to the denial of the rights and dignity of women.

To claim that adultery is a similar activity is not viable. Nor is the parallel that some make with the fact of being married then separated, and becoming involved with another person, without having divorced. Canadian courts that have examined this parallel have concluded that the law prohibiting polygamy (s. 293) does not apply to adultery, even though the persons involved cohabite<sup>26</sup>, as these persons do not claim to have contracted a form of marriage (cited in ACLRC, 2005: 5).

25 Section 27 of the *Charter* provides as follows: "This *Charter* shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians."

26 *R. v. Tolhurst and Wright* (1937), O.R. 570 (C.A.).

Moreover, it is necessary to emphasize that polygamy, by contrast with infidelity, is founded on an asymmetrical relationship, including constraining conjugal obligations.

Furthermore, the parallel that some draw between the decriminalization of homosexuality and that of polygamy, on the view that the recent acceptance of homosexual marriage should lead logically to the acceptance of polygamous marriage, obscures important differences. Despite a similarity with regard to social stigmatization, there exist fundamental differences between marriage of persons of the same sex and polygamous marriage. The former is consensual and unites two persons considered as having the same rights and the same obligations within the couple, while the latter is asymmetrical and is based on the power and domination of the man over several women, which is in flagrant contradiction with the principle of equality between the sexes.

This weak parallel aspires to reduce polygamy to a simple question of sexual liberty. A similar confusion has tainted the debate concerning prostitution<sup>27</sup>. It is a question of a patriarchal institution in these two cases, which objectivises and legitimizes the appropriation of women's and girls' bodies by men, which reinforces male domination and the subordination of women. Moreover, resort to various forms of physical and psychological violence is necessary to maintain these two systems. Polygamy as much as prostitution is a source of many harms for women and children. It is therefore absurd to confuse these practices with sexual liberties.

Finally, to claim that the state should in no way intervene in the personal choices of individuals leads to ignoring the responsibilities of the state in the protection of the equality of the rights of the most vulnerable persons. Moreover, wanting to legitimize plural unions, in accordance with individual liberties and cultural diversity, reverts to spurning the struggles led by women of various origins to ban polygamy, considering that this practice infringes their human dignity.

### **The value of consent**

The argument of free choice to continue or quit the polygamous mode of life, often invoked in support of decriminalization of this practice, is very questionable. It tends to ignore the pressures and the multiple constraints, social, economic and ideological, exerted on women to bring them to "accept" sharing their husband with others. Experience clearly shows us that women rarely have the choice to refuse a polygamous husband or to prevent their husband from marrying other women.

This brings us back to a reflection on the value of consent. If it is true that no one can act as a substitute for another person, to know what is good or bad for her, what value should we accord to the speech of those who affirm having "freely chosen" to involve themselves in a way of life entailing numerous harms for them as well as their children and requiring renunciation of their own human dignity? To better grasp the meaning of such testimonies, it is necessary to ask who is speaking on

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27 For more information relating to the debate on prostitution, see: Y. Geadah, "*Prostitution, un métier comme un autre?*" Montreal, VLB, 2003.

behalf of whom and in order to say what. As emphasized by Michela Marzano in the context of a more general reflection focussing on the value of consent,

everything expressed in the first person demands of the listener particular attention in order not to lose the multiplicity of meanings that it may assume.

(Translation, Marzano, 2006: 216)

This means that we cannot take literally the speech of persons who defend a way of life that is harmful to them, without having other real solutions or even the possibility of imagining life otherwise. In effect, in the majority of cases, African, Muslim and Mormon women know full well that they cannot escape from polygamy, which remains the prerogative of men in their society. Many women admit in private that their public consent to the remarriage of their husband constitutes for them the only way to "save face" and to keep their head held high in the eyes of their peers.

By paraphrasing Marzano, who questions the notion of consent (in connection with prostitution), we would therefore be able to affirm that we cannot justify polygamy on the basis of individual consent of women and claim that it is the proof of their free choice. This would amount to ignoring the real conditions that influence choices and obscuring the male domination that is exerted on women, both in the private sphere and in the public space. It is difficult to believe, adds Marzano, that human beings are always rational agents, who self-determine after having defined their objectives and the necessary means to implement them, without considering that the right to self-determination may, if the conditions of real life are occulted, reinforce the oppression of the weaker and the power of the stronger (Marzano, 2006: 149-150).

In other words, to see the situation more clearly, it is necessary to learn how to decode the discourse on polygamy like that of other harmful cultural practices (such as prostitution or female circumcision). The liberal rhetoric creates a loss of meaning of what the repercussions of these practices really mean in the lives of the women who are subjected to them. The notion of free choice or consent cannot be a substitute for analysis in directing our policies. This requires taking into account the social repercussions of these practices in the long term, not only on the women directly affected, but on the whole of the members of a society.

### **A breach of the principle of the universality of rights**

As far as immigration policies are concerned, if it is true that the practice of Canada (like that of other European countries) in permitting the immigration of a polygamous husband with only one wife "would infringes the rights of the wives left abroad", the recommended solution, that is to say accepting the multiple wives of a polygamous husband, raises more problems than it claims to resolve. The experience of France, having experimented with such a policy before reversing course, encourages even greater caution.

If we were to seek coherence in immigration policies, we would be able to argue conversely that it is necessary to consider polygamy as a criterion justifying the refusal of candidates for immigration, rather than accepting a polygamous husband with only one wife. The justification for such a choice could be supported by the harms and multiple social problems associated with polygamy and by the fact that it is a system incompatible with the principles that underlie a democratic society, founded on monogamy and equality between the sexes.

Furthermore, experience shows us that the legalization of polygamy is not essential in order to acknowledge certain rights of women involved in polygamous unions. Following the example of the Commonwealth countries, whose laws have evolved to protect the rights of the wives of polygamous unions, certain Canadian provinces, such as Ontario, accord limited legal recognition to polygamous marriages legally contracted abroad. This means that the definition of "spouse" includes all the parties to a polygamous relationship, for the purposes of separation or the law of succession, if the marriage is valid in the country where it was contracted (Bala *et al.*, 2005: 4). The same principle applies under the civil law of Quebec, unless this recognition would be incompatible with public order as understood in international relations (Campbell, 2005: 35).

The authors of a report submitted to SWC recommending decriminalization maintain that all "the provinces, territories and federal government should consider amending the definition of 'spouse' for the purposes of public law benefits and burdens to include parties to a valid foreign polygamous marriage" (Bailey *et al.*, 2005: 15). This recommendation would expand the rights and obligations that would be applicable to the spouses of a polygamous marriage. Although inspired by generous sentiments, this position is not free from contradictions.

Firstly, why limit it to "parties to a valid foreign polygamous marriage"? How do we justify the refusal to accord the same recognition to the spouses of a polygamous marriage contracted in Canada, even if it contravenes the law? Would this not amount to legitimizing *de facto* polygamy, which would render completely obsolete s. 293 prohibiting polygamy? Secondly, it must be recognized that the rights and expectations of the wives of a polygamous husband are conflicting. If the new wives acquire rights over the resources of the husband, this diminishes commensurately the resources available to the first wife and her children. This situation would undermine the principle of the universality of rights, as the co-wives of a polygamous husband would not be able to enjoy the same rights and protections accorded to other women in society.

This is moreover why Canadian Muslim women oppose fiercely the legalization of polygamy, which would entail the erosion of their rights. Farzana Hassan, president of the Canadian Muslim Congress, a progressive organization opposed to the legalization of polygamy, says this:

As a Muslim woman from Pakistan, I have seen the negative effects of polygamy. Women are always short-changed when polygamy is allowed to flourish. [...] I would oppose it tooth and nail if I were in that situation. Islam allows men to take up to four wives—I would end up with a quarter of a husband. That's a huge iniquity in society.

(Cited in Ivison, 2009)

This is also the position defended by the initiators of the Canadian campaign entitled Stop Polygamy, which argues as follows:

Legalizing polygamy would cause further inequalities between men and women. Legalising polygamy means legalising degrading, male chauvinism, and the patriarchal treatment of women living in marginalised communities.

(<http://bit.ly/1Ub1JvI>)

There is no doubt that the proliferation of polygamous unions, even on a small scale, in a monogamous society poses an immense challenge. Wanting to accord recognition to polygamous marriages, in a society based on monogamy and the principle of equality between the sexes, without renouncing its values, is a matter of trying to square the circle. This legal illusion takes us onto a slippery slope, which leads to eroding more and more women's equality rights.

## CHAPTER VIII – THE ARGUMENTS IN FAVOUR OF MAINTAINING CRIMINALIZATION

In the present context, marked by cultural diversity, the prohibition of polygamy in Canada cannot, as in the past, be supported on a moral basis inspired by Christianity. The arguments in favour of criminalization nevertheless can be founded on the multiple harms, including the physical, psychological, sexual, reproductive and economic damages, associated with polygamy and recognized in all the societies that practise it.

They can also rely on Canada's obligations that follow from international conventions in which it has committed to protect children and eliminate obstacles to equal rights between women and men.

Moreover, the Canadian *Charter* guarantees equality between the sexes, a right that, in our opinion, could not be compromised for cultural or religious purposes. In effect, the human dignity of women is flouted by polygamy and it would go against fundamental Canadian democratic values to permit this practice. The Alberta Civil Liberties Research Centre (ACLRC), in one of the four reports submitted to Status of Women Canada (SWC) concerning polygamy in Canada, concludes that even if s. 293 prohibiting polygamy infringes on the freedom of religion protected by the Canadian *Charter*, this restriction is justified given the harms caused by polygamy to women and children of polygamous families (ACLRC, 2005). This is also the position that the government of British Columbia will defend before the Supreme Court of that province that will evaluate the constitutionality of this provision of the *Criminal Code*.

### 8.1 CANADA'S INTERNATIONAL OBLIGATIONS

Canada is subject to the international conventions that it has signed and ratified. An international consensus exists as regards the harmful effects of the practice of polygamy for women and children and for its eradication.

Thus, Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) provides as follows:

#### **Article 16**

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:
  - (a) The same right to enter into marriage;
  - (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
  - (c) The same rights and responsibilities during marriage and at its dissolution;

- (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
- (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
- (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
- (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
- (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

Paragraph 5 (a) of CEDAW obliges states to take measures in order to eliminate sexist customs or traditions:

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 and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

The Committee on the Elimination of Discrimination against Women, a body that monitors the application of CEDAW, publishes texts that aim to explain the scope of state obligations, although they do not bind signatory states. As far as marriage is concerned, in 1994, this Committee published its General Recommendation 21, which concerns equality in marriage and family relations. It considers that the right of women to equality is violated by polygamous marriage:

14. States parties' reports also disclose that polygamy is practised in a number of countries. 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 the provisions of article 5 (a) of the Convention<sup>28</sup>.

<sup>28</sup> General Recommendations adopted by the Committee on the Elimination of Discrimination against Women, General Recommendation No. 21 (13<sup>th</sup> session), *Equality in Marriage and Family Relations* (<http://bit.ly/1sRQ53s>)

Moreover, the Universal Declaration of Human Rights guarantees that women and men have "equal rights as to marriage, during marriage and at its dissolution" and that "marriage shall be entered into only with the free and full consent of the intending spouses" (Article 16).

The International Covenant on Economic, Social and Cultural Rights provides in this regard that "the widest possible protection and assistance should be accorded to the family" and that "marriage must be entered into with the free consent of the intending spouses" (Article 10). It also guarantees the right to education, which shall "be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms" (Article 13).

The International Covenant on Civil and Political Rights also affirms that marriage must be freely consented to and requires states to take "appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution" (Article 23).

This means that states have the responsibility to take positive action with a view to achieving the objective of equality between the sexes. In fact, where polygamy is accepted according to religious or customary norms, "it often relies on obedience, modesty, and chastity codes that preclude women from operating as full citizens and enjoying their civil and political rights. Within this framework, women can often be socialized into subservient roles that inhibit their full participation in family and public life" (Cook and Kelly, 2006: 2).

In regard to the protection of children, the Convention on the Rights of the Child provides as follows:

**Article 34**

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity.
- (b) The exploitative use of children in prostitution or other unlawful sexual practices.

In order to respect this provision, the Canadian government must take all necessary preventative measures and intervene in the case of violation of the *Criminal Code* as regards the marriage of underage girls in the community of Bountiful (ACLRC, 2005: 8).

We can see that the appeal to all states to prohibit polygamy is not the result of a Western cultural bias, as some might allege. It emanates from a broad consensus that includes representatives of states where polygamy is permitted. The latter are the most passionate defenders of the prohibition of polygamy, for they know pertinently the extent to which this practice denies equality of rights and entails "grave consequences" for women and children.

Consequently, rather than giving up on polygamy and closing our eyes on this practice, Canada has not only the right but also the obligation in accordance with the international conventions to take all possible steps to eliminate the practice of polygamy within its borders. Acting to the contrary would be abdicating our responsibilities to ensure the equal rights of women and their protection from the harms associated with polygamy. The Attorney General of British Columbia will defend this position, in arguing that the criminalization of polygamy is completely compatible with the Canadian *Charter* and relying on Canada's international obligations.

Finally, to our knowledge, all challenges to the laws prohibiting or criminalizing polygamy in other countries on the ground that they would be contrary to freedom of religion have been rejected, notably in the United States (Bala *et al.*, 2005: 25). It would be therefore extremely shocking and surprising if Canada were to make history in becoming the first state to accord constitutional protection to the practice of polygamy.

## **8.2 SECTION 293 OF THE *CRIMINAL CODE* AND THE *CANADIAN CHARTER***

The Attorney General of British Columbia has submitted to the Supreme Court a request for Reference concerning the Constitutionality of s. 293 of the *Criminal Code* with regards to the rights and freedoms guaranteed by the Canadian *Charter*.

In addition to the freedom of religion, the rights to liberty and to equality are susceptible to being invoked in order to invalidate this provision. Section 7 of the *Charter*, which guarantees the legal rights to liberty is in all likelihood compromised by the fact that s. 293 imposes a sentence of imprisonment (Robert and Bernatchez, 2010, forthcoming). The Court would therefore have to determine that this criminal offence respects the principles of fundamental justice if it is to be saved. Also, the right to equality provided for in section 15 of the Canadian *Charter* could be compromised on the ground that s. 293 establishes a distinction based on religion, sex, national or ethnic origin, or even family situation, in a disadvantageous manner. Although each of these rights demands separate consideration, we will treat them globally considering the freedom of religion as well as the perspective of women's right to equality that applies to the whole of the Canadian *Charter*. Indeed, section 28 states as follows:

28. Notwithstanding anything in this *Charter*, the rights and freedoms referred to in it are guaranteed equally to male and female persons.

This guarantee of equality between the sexes cannot be subject to any derogation or restriction, which is not the case for most of the other guarantees of the Canadian *Charter*. Section 28 will therefore have to be taken into account in the interpretation of each of the rights and freedoms guaranteed.

### **8.2.1 THE OBJECTIVE OF SECTION 293 OF THE *CRIMINAL CODE***

The offence provided for in s. 293 of the *Criminal Code* was created in 1892. It goes without saying that at the time, the monogamous Judeo-Christian view of marriage dominated, but the influence of the United States was also of consequence (Bala *et al.*, 2005: 31). The objective revealed by the legislative debates was to prevent the migration of polygamists from the United States. Moreover, the text of this provision expressly made mention of Mormons and it was not until 1953-54 that the reference was removed. The Canadian jurisprudence also clearly identified that the objective of s. 293 of the *Criminal Code* was the repression of Mormon polygamists (Robert and Bernatchez, 2010, forthcoming).

When considering the constitutionality of the provision, the Court will examine the objective which was that of the legislators at the time of the adoption of s. 293 in the *Criminal Code*. Indeed, it is not possible to attribute a new objective to a provision, which would conform better to today's society. The Supreme Court has expressly rejected the "doctrine of shifting purpose". At best a "permissible shift in emphasis" will be accepted. This means that we cannot maintain that the criminalization of polygamy is aimed at preserving equality between the sexes, since at the time this was not the goal of the legislators (Robert and Bernatchez, 2010, forthcoming). This aspect of equality between the sexes will nevertheless be taken into account by the Court at a later stage, when it examines the effects caused by this provision.

In our opinion, the objective of the federal legislators to prevent the establishment of polygamists in Canada is always valid and is even reinforced by reason of the increase in immigration; if Canada were to legalize polygamy, it would open the door to polygamists from Asia and Africa who would find a country of asylum. Moreover, Canada would no doubt have to modify its immigration policy so as to permit the sponsorship of polygamous wives for the purposes of family reunification, which for the time being is prohibited. This would entail the proliferation of polygamous families in Canada (Bala *et al.*, 2005: 44, 45).

Moreover, we believe as well that it is possible to maintain that monogamy is a value recognized in our society, independently of its religious aspect.

Furthermore, without affirming that monogamy is the guarantee of democracy or equality between the sexes, history reveals that it constitutes a component of democratic societies. Conversely, in the case of Mormons as in Muslim societies, the obstinate refusal of the religious authorities to renounce polygamy serves the interests of religious power which combines with political autocratic power, desiring to keep society under its yoke, while denying democratic values and equality between the sexes.

The facts reveal that in all polygamous societies, equality is flouted. Men are not equal among themselves; those who are wealthy and influential benefit from the system of polygamy, while men of inferior status must content themselves with a single wife and sometimes even with giving up on

starting a family, for lack of means. In this sense, the monogamous model places men on a footing of equality, by subjecting them to the same laws concerning marriage, while the polygamous system contributes to exacerbating social inequalities, between the classes and not only between the sexes.

The adoption of the practice of polygamy by the Mormons at the end of the 19<sup>th</sup> century coincided with the emergence of liberal and individualist values in the United States, from which the Mormon religious leaders wanted to shield their faithful in order to keep their absolute power over their community. It is only by agreeing to renounce polygamy (in 1890) that the control of the Mormon Church over the social life of its faithful could relax, which permitted the majority of Mormons to integrate the democratic values of their society. Conversely, a minority of Mormons remaining faithful to the principle of polygamy still live today within communities of the patriarchal and theocratic type, according to a social model that rests on the negation of democratic values and the principle of equality between the sexes.

The link that some make between monogamy and democracy is also closely akin to the analysis of Muslim thinkers who affirm that the struggle of Islamic reformists to put an end to polygamy, since the beginning of the 20<sup>th</sup> century until today, is aimed at transforming the foundations of a patriarchal society, in order to permit the construction of a modern society, centred on more egalitarian values. This is what makes certain contemporary analysts in the Muslim world say that the controversy surrounding polygamy hides in reality a struggle for democracy (Charfi, 1999; Belaïd, 2000).

For these reasons, the objective of s. 293 of the *Criminal Code* is legitimate, urgent and real. In our opinion, the means used by the legislators to achieve the objective of repressing polygamy and favouring the monogamous model are proportionate and have the effect of supporting and promoting equality between the sexes and the well-being of children.

## **8.2.2 THE LIMITS OF FREEDOM OF RELIGION**

The Canadian *Charter* protects precisely freedom of religion:

2. Everyone has the following fundamental freedoms:
  - (a) freedom of conscience and religion.

In the leading case *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295 at paras. 94, 95 and 123, the Supreme Court of Canada had occasion to define the content of this guarantee as well as its limits:

... Freedom must surely be founded in respect for the inherent dignity and the inviolable rights of the human person. The essence of the concept of freedom of religion is the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal, and the right to manifest religious belief by worship and practice or by teaching and dissemination. But the concept means more than that.

Freedom can primarily be characterized by the absence of coercion or constraint. If a person is compelled by the state or the will of another to a course of action or inaction which he would not otherwise have chosen, he is not acting of his own volition and he cannot be said to be truly free. One of the major purposes of the *Charter* is to protect, within reason, from compulsion or restraint. Coercion includes not only such blatant forms of compulsion as direct commands to act or refrain from acting on pain of sanction, coercion includes indirect forms of control which determine or limit alternative courses of conduct available to others. Freedom in a broad sense embraces both the absence of coercion and constraint, and the right to manifest beliefs and practices. Freedom means that, subject to such limitations as are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others, no one is to be forced to act in a way contrary to his beliefs or his conscience.

[...]

Viewed in this context, the purpose of freedom of conscience and religion becomes clear. The values that underlie our political and philosophic traditions demand that every individual be free to hold and to manifest whatever beliefs and opinions his or her conscience dictates, provided *inter alia* only that such manifestations do not injure his or her neighbours or their parallel rights to hold and manifest beliefs and opinions of their own. ...

[Emphasis added]

Freedom of religion guarantees to a person in particular that he or she can entertain religious beliefs, express them and put them into practice. In order to benefit from this protection of the *Charter*, it suffices to demonstrate that the person believes sincerely and that his or her spiritual faith obliges him or her to carry out certain rituals or actions or to abstain from carrying them out. It is therefore a question of fact which involves, before everything, the evaluation of the credibility of the believer.

Nevertheless, the behaviours that follow from the person's sincere belief will be able to receive a less extensive protection by reason of their effect on the rights of others. For example, the Supreme Court of Canada has recognized that even if parents have a sincere belief, the practice of this belief cannot have the effect of harming others, particularly their children.

In the fundamentalist Mormon religion, it appears that followers have the sincere belief that they must practice polygamy. From this angle, polygamy would therefore be protected by section 2(a) of the *Charter*.

Nevertheless, judges will take into account the significance of the practice of this belief on the other rights guaranteed by the *Charter*. In the decision in *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v. Lafontaine (Village)*, [2004] 2 S.C.R. 650, judge LeBel states that: "This

freedom is limited by the rights and freedoms of others. The diversity of opinions and convictions requires mutual tolerance and respect for others. Freedom of religion is also subject to necessary limits in order 'to protect public safety, order, health, or public morals...' (para. 69).

As the Council explained in 2007 in its opinion *The Right to Equality between Men and Women and Religious Freedom*<sup>29</sup>, this latter aspect is essential and cannot be ignored: the impact on the right to equality between the sexes must be considered when it comes to delimiting the content of freedom of religion. A standard hindering a religious practice should not be considered to be contrary to freedom of religion if it has as its objective or effect to protect the right to equality between the sexes.

This reasoning is analogous to that followed by four judges of the Supreme Court in *B. (R.) v. Children's Aid Society of Metropolitan Toronto*, [1995] 1 S.C.R. 315, which called into question the right of Jehovah's Witness parents to refuse a blood transfusion to their child by reason of their religious beliefs:

However, the freedom of religion is not absolute. Although La Forest J. considered that limitations on this right are best considered under a s. 1 analysis, we are of the view that the right itself must have a definition, and even if a broad and flexible definition is appropriate, there must be an outer boundary. Conduct which lies outside that boundary, is not protected by the *Charter*. That boundary is reached in the circumstances of this case.

We are of the view that the constitutional question should be: to what extent can an infant's right to life and health be subordinated to conduct emanating from a parent's religious convictions? With this perspective as a starting point, we find that the appellants do not benefit from the protection of s. 2(a) of the *Charter* since a parent's freedom of religion does not include the imposition upon the child of religious practices which threaten the safety, health or life of the child.

Just as there are limits to the ambit of freedom of expression (e.g. s. 2(b) does not protect violent acts: *R. v. Zundel*, 1992 CanLII 75 (S.C.C.), [1992] 2 S.C.R. 731, at pp. 753 and 801; *R. v. Keegstra*, 1990 CanLII 24 (S.C.C.), [1990] 3 S.C.R. 697, at pp. 732 and 830), so are there limits to the scope of s. 2(a), especially so when this provision is called upon to protect activity that threatens the physical or psychological well-being of others. In other words, although the freedom of belief may be broad, the freedom to act upon those beliefs is considerably narrower, and it is the latter freedom at issue in this case...

[...]

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29 Online: [www.csf.gouv.qc.ca/fr/egalite\\_religion/](http://www.csf.gouv.qc.ca/fr/egalite_religion/).

Furthermore, in the even more recent decision of this Court in *P. (D.) v. S. (C.)*, *supra*, L'Heureux-Dubé J. (writing for the majority on this point) held at p. 182 that:

As the Court has reiterated many times, freedom of religion, like any freedom, is not absolute. It is inherently limited by the rights and freedoms of others. Whereas parents are free to choose and practise the religion of their choice, such activities can and must be restricted when they are against the child's best interests, without thereby infringing the parents' freedom of religion. [Emphasis added.]

A similar approach was taken by McLachlin J. in *Young*, *supra*, at p. 122, this decision released concurrently with *P. (D.)*, *supra*:

It is clear that conduct which poses a risk of harm to the child would not be protected. As noted earlier, religious expression and comment of a parent which is found to violate the best interests of a child will often do so because it poses a risk of harm to the child. If so, it is clear that the guarantee of religious freedom can offer no protection.

[Underlining by Major and Iacobucci JJ., bolding by authors]

Manifestly, according to this reasoning, the practice of polygamy would not be protected by freedom of religion by reason of the numerous harms that flow from it for the women and children that are its victims. The well-being of children and the guarantee of equality between the sexes cannot be subordinated to actions ensuing from religious beliefs.

Freedom of religion finds its limits in the rights to life, liberty and security of the person. Like genital mutilation and spousal violence which are offences targeted by the *Criminal Code* (the offences of assault and battery), the practice of polygamy cannot be part of freedom of religion; this would be contrary to public order and Canadian democratic values as affirmed in the *Charter*. In the same way, parents cannot justify the bad treatment of their children in the name of their religious beliefs.

As emphasized by the ACLRC in its report, "women would argue that permitting polygamy seriously threatens their 'human dignity' ". Moreover, in the context of Bountiful, "the failure to prosecute polygamy reinforces inaccurate understandings of the merits, capabilities and worth of women and girls within Canadian society, perpetuating their disadvantage." We could therefore argue that the policy of non-intervention contributes to "the preservation of subservient status for the women and children of polygamy" (ACLRC, 2005: 12, 14).

It is important to mention, adds the report, that even if "traditional monogamous relationships (...) cannot be upheld as some paragon of equality", it must be recognized that "at least a contemporary monogamous relationship does carry the *potential* for an equal sharing of the load associated with supporting children". Conversely, polygamous families are founded on "a division of a husband's labour, time and resources among several wives and children". Considering the size of polygamous families, where a single man may have dozens of children (from forty to eighty or

more) born of different wives, these children "essentially grow up in homes with a part-time father who can provide only transient support and parenting" (ACLRC, 2005: 13). Although this type of problem may exist equally in a monogamous family, the structure of the polygamous family accentuates and amplifies this problem. Moreover, by introducing restrictive norms for women, it perpetuates conditions of inequality between the sexes, contributes to the subservience of women and infringes their rights to autonomy and the development of their potential.

In his Statement of Position regarding the examination of s. 293 of the *Criminal Code*, the Attorney General of British Columbia emphasizes that certain harms associated with polygamy are of a systemic nature, and this, for various reasons. First, the numerical imbalance resulting from the union of several women to one man leads to a pressure for the recruitment of young women, sometimes minors, to satisfy the demand for multiple wives, which encourages the human trafficking of young women and girls for the purposes of polygamous marriages.

Second, the age gap, often significant (from twenty to thirty years or more), between a husband and his new wives also constitutes one of the characteristics of the polygamous system. In the case of Bountiful, some young girls scarcely of marriageable age are encouraged to become the celestial wives of men the age of their father or grandfather. Experience shows us that the significant age gap between spouses has the effect of reinforcing the domination of the husband over his wives.

Third, this double imbalance (concerning number and age) deprives a good number of young men from polygamous communities of the possibility of finding a wife and starting their own family. The case of the "lost boys" expelled from their Mormon community illustrates in a flagrant way this violation of the rights of young men in the polygamous system. This situation renders them vulnerable to exploitation and predisposes them to anti-social behaviours, including resorting to drugs and suicide.

Fourth, an elevated birth rate is very closely linked to polygamy. In the case of Bountiful, a polygamous husband can have from forty to eighty children or more. As emphasized by the Attorney General of British Columbia, there are good reasons to fear that the practice of polygamy leads to the proliferation of family units that are not economically viable (to the detriment of women and children) and that would be more and more dependent on public services.

Finally, polygamy is characterized by an asymmetry in the relations between the sexes. Men can have several wives, while women are held to exclusivity, which accords a disproportionate power to men. The acquisition of multiple wives betters the social status of men and at the same time reduces women and girls to the status of commodities. The very structure of polygamy creates conditions favouring the subordination of women, who must compete with one another to obtain the husband's attention and access to the family's resources. In all societies where it is practiced, polygamy has the effect of depriving women and girls of their rights to equality and dignity. This means that it is a question of an institution antithetical to the emancipation of women and the equality of rights.

Experience shows us that violations of the individual rights of women and children in polygamous communities are systematic rather than accidental. In the case of the community of Bountiful, the right of children of both sexes to an adequate education is denied as well as their right to protection from economic exploitation, bad treatment and sexual and other abuses.

The report of the British Columbia Ministry of Education (2007) concerning the schools in Bountiful indicates that the system of education in this community is deficient as far as curriculum is concerned and contrary to democratic values. The education passed on in these schools prevent the students from developing a critical mind and trains young people to submit themselves blindly to religious laws, in contempt of civil laws. The values passed on to young people of both sexes are sexist and racist (advocating white supremacy). The rights of children of both sexes are denied in several regards.

The attack on the health of women and children linked to the polygamous mode of life is not negligible. Early pregnancies, multiple and at close intervals, often endanger the health and life of young women. Polygamy is the source of family tensions and conflicts that often lead to violence, between co-wives and between their children. It results in serious health problems, including various psychological problems, such as stress, depression and symptoms of post-traumatic stress, from which women involved in a polygamous union frequently suffer. Genetic diseases, resulting from consanguineous marriages, are also prevalent in Mormon polygamous communities.

Experience tells us that polygamy increases the risks of violence and sexual abuse towards women and children. In the case of Bountiful, the code of silence and the isolation of the members of the community from the rest of society make very difficult all prosecution and strongly improbable all convictions for these abuses. This is why we cannot be content to tackle the criminal behaviours linked to polygamy, as recommended by the supporters of decriminalization. As emphasized in the report of the ACLRC, prosecutions for incest and sexual abuse of underage girls would not sort out at all the problems linked to overall psychological harms and multiple violations of the rights of women and children associated with polygamy. It is therefore essential to tackle the very source of the problem, which lies in the system of polygamy itself.

As emphasized by Vasquez, an American jurist, in an article dealing with harms linked to polygamy in Mormon communities similar to Bountiful:

[a] even if strict constitutional scrutiny were applied to anti-polygamy laws, they would be shown to serve a compelling government interest. Reasons for prosecuting polygamy include heightened potential for sexual abuse of children in polygamous communities, protection of women from physical and sexual abuse and prosecution of fraud (Vazquez 2001-2002: 230, 233, 239). (...) Criminalizing polygamy may serve to break down the wall that allows these crimes to thrive (Vazquez 2001-2002: 243).

(Cited in ACLRC, 2005: 19)

Moreover, in the case of separation, the right of children to an alimony from their father is rarely respected when this man is a polygamist since he has dozens of other children to feed. Studies show also that the investment of polygamous husbands in their offspring is minimal as regards time and resources, which are notably diverted towards the acquisition of a new wife (Joseph Henrich, affidavit, unpublished).

Finally, studies conducted in various cultural contexts indicate that a large proportion of single men is associated with an aggressive social climate and an elevated rate of crime. This correlation is confirmed in the societies having a high rate of polygamy (Joseph Henrich, affidavit, unpublished).

These findings constitute the many valid reasons for excluding the practice of polygamy from the protection of the Canadian *Charter*. Our position is reinforced by the fact that the protection of human dignity is at the heart of the guarantee of equality in section 15 of the Canadian *Charter*. Professor Christian Brunelle (2006: 154) considers that it is a question of a "real legal principle". As the linchpin of the guarantee of equality, human dignity underlies as well each of the other rights guaranteed in the *charters*.

Dignity implies that a person feels respect and esteem for herself and for others. It does not have to be demanded; it exists only because the human being exists. Reference to it is found in all the major international treaties. Since human dignity underlies each of the rights guaranteed, including freedom of religion, it is entirely logical to interpret freedom of religion, the right to liberty or the right to equality as not permitting, intrinsically, an attack on the concept of dignity. And as human dignity is found at the heart of the right to equality, we fail to see how a measure could at once guarantee a freedom and compromise the human dignity of women. Therefore, considering that s. 293 of the *Criminal Code* has beneficial effects on the preservation of human dignity that transcend easily the disadvantages that it imposes on violators, it ought to be maintained.

## CONCLUSION AND RECOMMENDATIONS

In light of the foregoing analysis, it is clear that the decriminalization advocated by some is not a solution to the problems associated with polygamy. It would do no more than amplify those problems. This is evidenced by the immense social problems that flow from polygamy in all the countries where this practice is legally accepted. The consequences of decriminalizing polygamy in Canada would be many.

First, by legitimizing polygamy, Canada would become the only Western country to have done so, which would render it very attractive for immigration by those who practice or wish to practice polygamy, particularly Mormon communities from the United States and polygamous families from Africa or Asia. It would also encourage a greater number of people in the country to form polygamous unions, whether or not founded on religion. Such a policy would not be viable in the long term, in a democratic society centred on the principle of equality between the sexes and that intends to remain so, for it would legitimize second-class status as citizens for the women involved in such unions. Moreover, the significant increase in the number of polygamous families would have negative social effects, as demonstrated by the experience of France. This would necessitate, among other things, a complete revision of the schemes of tax benefits, health and disability insurance, the schemes for retirement, succession and other matters, which were not conceived to respond to the needs of polygamous families with numerous children, which would entail an increase in social and economic costs for society.

Secondly, the decriminalization of polygamy would flout Canada's obligations under international conventions that require states to take all necessary measures to ensure equality between the sexes, a fundamental democratic value in Canada and one guaranteed by the Canadian *Charter*. Yet this principle is completely denied in polygamous marriages, founded on inequality between men and women.

Thirdly, such a policy would legitimize polygamy, which would run counter to the interests of women and cause disdain to all those around the world who struggle against this patriarchal practice for a more dignified lot. It would damage the image and role of Canada, considered a leader in the struggle for women's rights on the international scene.

Moreover, the current *status quo* policy, according to which the state neglects to intervene to enforce the law, is unacceptable. As revealed by Ayelet Shachar (1998), the policy of non-intervention of the state in the matter of polygamy gives free rein to those who violate the rights of the most vulnerable, in this case women and children, within minority groups, whether Mormons or immigrants. It is therefore urgent to act to curb the practice of polygamy and ensure the protection of the rights of the women and children concerned, in accordance with the obligations and responsibilities of the state.

In the current context of Quebec, the presence of fundamentalists Mormons is no doubt minimal. Polygamy concerns more immigrant populations originating in African or Asian countries that allow this practice. Although polygamy constitutes for the time being very much a minority practice within these communities, the situation could evolve rapidly under the combined effect of an increase in the number of immigrants from polygamous societies and the non-intervention of the state, along with the active promotion of polygamy, in the name of religion or identity affirmation. Consequently, we propose the following measures to cope with the complex phenomenon of polygamy, without waiting for the number of polygamists to reach alarming proportions.

### **Recommendations**

As a starting point, it would be imperative to recognize that the negative repercussions of polygamy on women and children are more important than the cultural or religious justifications supporting this type of union. This is the first step with a view to adopting a coherent policy aimed both at the elimination of this practice and the protection of the rights of the women and children concerned. We propose the adoption of a three-dimensional approach addressing the legal, immigration and social aspects of the problem. Of course, our recommendations are formulated according to the current state of the law, on the assumption that s. 293 of the *Criminal Code* will be maintained.

### **Legal aspects**

- 1. The criminalization of polygamy in Canada must be maintained, and governments must vigorously support the constitutionality of s. 293 of the *Criminal Code* before the courts.**
- 2. Intervention policies must be developed to strengthen and focus state action against polygamy.**

The authorities must be vigilant in cracking down on cases of polygamy for, even if the latter are a minor phenomenon, they could encourage others to adopt the practice.

Legal action against polygamy should be applied with great care. There is no need to conduct a witch hunt to arrest everyone in the country who is in a polygamous marriage. Intervention should be focused, strategically, to dissuade as many people as possible in the communities concerned from practicing polygamy. Intervention policies should be established and applied by Crown prosecutors, police forces, youth protection officers, educators and social services. For example, the first priority should be religious leaders who violate Canadian law by consecrating polygamous unions. It would also be important to deal severely with the most visible cases of polygamy, which serve as examples to community members. When a woman suspects her husband of active or planned polygamy, the matter should be investigated and dissuasion exerted. Logically, legal penalties should only be applied to polygamous men, since their wives have only a single husband. Any attempt to take action against women living in a polygamous union would be counter-productive.

However, before conducting any operation to strengthen the ban against polygamy, two conditions are necessary. First, it is crucial to raise public awareness on the matter, particularly among the media and human rights groups, by informing them adequately about polygamy's harmful effects and the reasons for the intervention. Second, any action to demand application of the law must be accompanied by adequate measures to protect the women and children who would be directly affected. If those two conditions are not met, public opinion would turn swiftly against such intervention, giving indirect support to polygamy. The history of the Mormons tells us that state intervention without previously raising public awareness would, in the long term, cause more damage than doing nothing.

Of course, as with other practices defended in the name of individual liberties or a culture, religion or identity, polygamy will no doubt always be a matter of controversy. Consequently, we cannot wait for unanimity before acting. But we must be prepared to face criticism, and must seek broad support for the ban against polygamy and for state intervention. Other strategic measures should also be developed, in close consultation with the women of communities where polygamy is practised, to reduce internal resistance to application of the law.

**3. Existing laws prohibiting the delegation of powers related to the family law to religious authorities must be maintained and strengthened.**

Experience shows that religious authorities of all faiths are likely to apply rules of marriage and divorce that are not in line with civil law and the principle of equal rights. Entrusting marriage and family relations to non-public powers would impede the state's capacity to guarantee and apply the principle of equal rights for both sexes.

## **Immigration aspects**

**4. Canada, and Quebec especially, must deny admission to any immigrant who is engaged in a polygamous marriage, in order to avoid increasing the number of polygamous families living here.**

The current Canadian policy, which consists of accepting the immigration of a polygamous husband and a single spouse by considering the marriage monogamous, is incoherent and infringes on the rights of the other wives who are left behind in their country of origin. Furthermore, in fact the polygamous husband tends to immigrate with his favourite wife, who was not necessarily the first. He is then allowed to bring with him the minor children of his other wives, thus separating them from their mother, who could not be accepted under the right to family reunification because their husband already has a wife in Canada.

To respect the rights of women and children from polygamous societies, it would be fairer to make polygamy a criterion rendering a person ineligible for immigration. It would be irresponsible to do the opposite, accepting all members of a polygamous family, as certain partisans of decriminalization suggest. That would open the door to enormous social problems. France experienced those problems before changing course and prohibiting the immigration of multiple wives with a polygamous husband.

5. **Strengthen the rule by which citizenship obtained through misrepresentation regarding polygamy can be revoked, to cut down on fraud.**

## **Social aspects**

### **Prevention and education**

To eliminate polygamy, prevention and education are what is most important, particularly for minorities that accept the practice. It is therefore essential that the emphasis be placed on the following priorities:

6. **Exercise greater vigilance toward private confessional schools of all origins to ensure the following three indispensable conditions:**
  - a) **that the curriculum taught in such schools complies fully with the requirements of the Ministry of Education;**
  - b) **that girls receive a complete education, identical to that of boys, so they can have access to all professions;**
  - c) **that there be no promotion of polygamy or any content of a misogynist or racist character in religious or other instruction. Ultimately, subsidies must cease to schools that in any way promote polygamy and inequality between the sexes.**

In sum, we must affirm the principle that any educational program must respect the principles set forth in the *Charters of Rights*. That implies that all religious communities must voluntarily renounce the promotion of polygamy and the misogynist or racist interpretation of sacred texts, which is in no way a negation of religious freedom. The vigilance and support of the state are necessary to ensure that this minimum standard is respected by all faiths, without exception, to avoid the discrimination or victimization of women.

7. **Provide adequate training to social workers in contact with communities from polygamous societies, so they can recognize and understand the social implications of polygamy and can protect the rights of the women and children concerned.**
8. **Actively promote the rights of women and children, particularly among new immigrants and communities where polygamy is accepted, to prevent any increase of polygamous marriages here.**

If we want to avoid an increase in the number of clandestine polygamous marriages in Canada, it is essential to take whatever steps are necessary to reach women and girls in communities where polygamy is traditionally accepted. Not only must they be informed of their rights as citizens, including the right to refuse or leave a forced or polygamous marriage, they must also be offered the support they need to resist pressure from those around them, thereby preventing polygamy and the violation of their rights.

We should also put greater emphasis on education about democratic values, about the harmful effects of polygamy on women and children, and about theological divergence on the subject of polygamy. Since polygamy is often a matter of sincere religious belief, a secular approach is not enough. Strategic alliances could be formed with people in the communities concerned, people who could propose an interpretation of the religious texts that is more in line with respect for women rights; this would reduce internal resistance to the changes sought.

### **Protecting persons at risk**

We must recognize of course that of itself, a law is not enough to fight effectively against polygamy and the violation of rights it entails. It is essential to ensure in parallel the protection of women and children in polygamous families.

- 9. Integrate into existing programs a component aimed at ensuring the protection of women and children in polygamous families, and provide for measures adapted to their needs.**

It is indeed critical that protection and adequate support be offered to persons at risk, so they can bring charges and protect themselves from the abuses associated with the polygamous way of life. To this effect, we must explore all existing anchor points by which these people could be reached, for example schools, the health system and social services.

- 10. Provide support to women and girls who want to leave the polygamous way of life.**

The history of the Mormons reveals that the wives of a polygamous husband, even when married by force, shackled by a succession of pregnancies and reduced to the status of domestic slaves, nevertheless receive a form of security. For them, the idea of leaving their community is like jumping into the void, with no safety net. We believe that the same difficulty affects women immigrants who are in a polygamous marriage that they wish to leave.

Consequently, it is essential to provide for measures that are tailored to each context, that would be part of a process of long-term support aimed at helping women overcome the multiple challenges of leaving their polygamous way of life. Such measures could include, for example, support in terms of housing, employment, professional training, parental support and social integration.

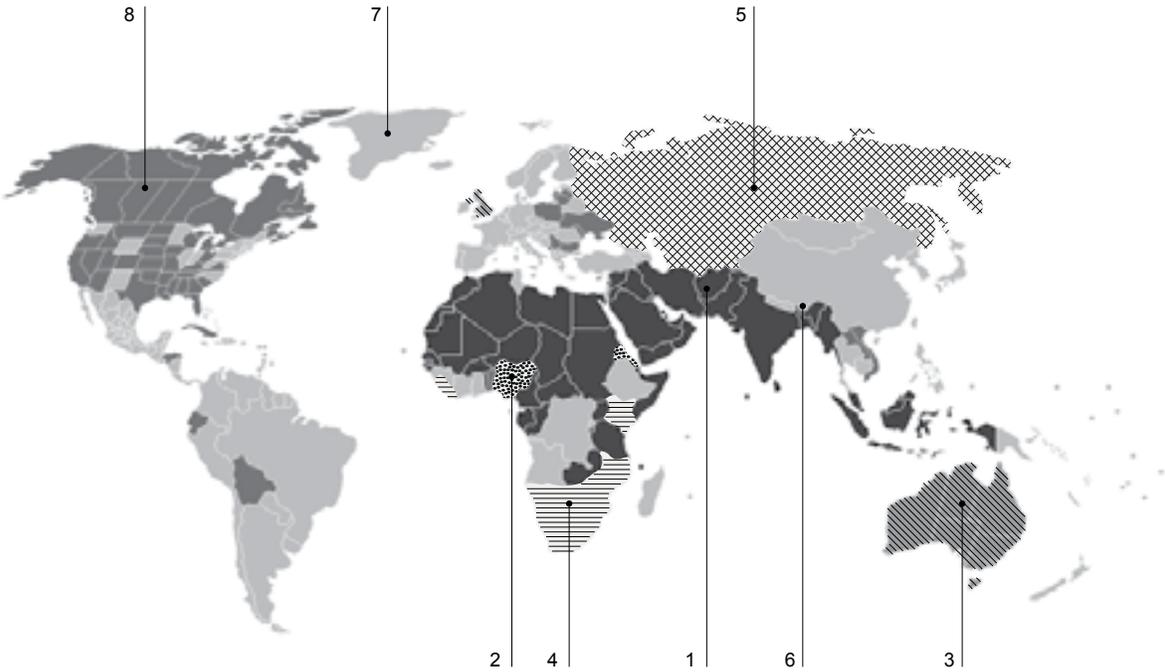
We could consider the possibility of providing community associations, and particularly women's groups, with the means to fulfill this mission. We should put greater emphasis on civil society as the way to achieve the elimination of polygamy.

11. Finally, given the complexity of the questions raised by the practice of polygamy, funding should be provided for studies on women living or who were formerly living polygamous union in order to better understand their realities and needs. In the same vein, issue tables should be set up to initiate and pursue discussion with people in civil society, including women affected by polygamy, with the goal of stopping and eliminating this practice in due respect for the rights of women and children.

## LIST OF RECOMMENDATIONS OF THE CONSEIL DU STATUT DE LA FEMME

1. The criminalization of polygamy in Canada must be maintained, and governments must vigorously support the constitutionality of s. 293 of the *Criminal Code* before the courts.
2. Intervention policies must be developed to strengthen and focus state action against polygamy.
3. Existing laws prohibiting the delegation of power related to the family law to religious authorities must be maintained and strengthened.
4. Canada, and Quebec especially, must deny admission to any immigrant who is engaged in a polygamous marriage, in order to avoid increasing the number of polygamous families living here.
5. Strengthen the rule by which citizenship obtained through misrepresentation regarding polygamy can be revoked, to cut down on fraud.
6. Exercise greater vigilance toward private confessional schools of all origins to ensure the following three indispensable conditions:
  - a) that the curriculum taught in such schools complies fully with the requirements of the Ministry of Education;
  - b) that girls receive a complete education, identical to that of boys, so they can have access to all professions;
  - c) that there be no promotion of polygamy or any content of a misogynist or racist character in religious or other instruction. Ultimately, subsidies must cease to schools that in any way promote polygamy and inequality between the sexes.
7. Provide adequate training to social workers in contact with communities from polygamous societies, so they can recognize and understand the social implications of polygamy and can protect the rights of the women and children concerned.
8. Actively promote the rights of women and children, particularly among new immigrants and communities where polygamy is accepted, to prevent any increase of polygamous marriages here.
9. Integrate into existing programs a component aimed at ensuring the protection of women and children in polygamous families, and provide for measures adapted to their needs.
10. Provide support to women and girls who want to leave the polygamous way of life.
11. Finally, given the complexity of the questions raised by the practice of polygamy, funding should be provided for studies on women living or who were formerly living polygamous union in order to better understand their realities and needs. In the same vein, issue tables should be set up to initiate and pursue discussion with people in civil society, including women affected by polygamy, with the goal of stopping and eliminating this practice in due respect for the rights of women and children.

# APPENDIX I – LEGAL STATUS OF POLYGAMY IN THE WORLD



- 1 - Polygamous marriages recognized under civil law
- 2 - Polygamous marriages recognized under civil law in some regions
- 3 - Polygamous marriages performed abroad recognized
- 4 - Customary law recognizes polygamous unions
- 5 - Issue under political consideration
- 6 - No recognition, polygamy legal
- 7 - Polygamy illegal
- 8 - Polygamy illegal, polygamous marriages constitutionally banned

Source: Wikipedia  
 Consulted on October 25, 2010  
[http://en.wikipedia.org/wiki/legal\\_status\\_of\\_polygamy](http://en.wikipedia.org/wiki/legal_status_of_polygamy)

## Legislation existing in various countries

### Permitting polygamy

The table below covers recent pieces of legislation that have been debated, proposed, or voted on; all of which concern a form of polygamous union. The table does not cover legislation that restricts polygamy.

Country	Date	Polygamous union	Upper house	Lower house	President	Final outcome
Iraq	1963	Polygamous marriage recognised by civil law (revoke prohibitions)	Passed	Passed	Signed	Yes
Malawi	1994	Customary law recognizes polygamous unions	Passed	Passed	Signed	Yes
Libya	1998	Polygamous marriage recognised by civil law (abolishes wife's right to consent/reject additional wives)	Passed	Passed	Signed	Yes
Namibia	2003	Customary law recognizes polygamous unions	Passed	Passed	Signed	Yes
Namibia	2004	Pension benefits to wives of a deceased president	-	Failed	-	No
Uganda	2005	Polygamous marriage recognised by civil law (easing of laws; plus restrictions)	Passed	Passed	Signed	Yes
Kyrgyzstan	2007	Polygamous civil marriage	Failed	--	-	No
Kazakhstan	2007	Polygamous civil marriage	Failed	--	-	No
Uzbekistan	2007	Polygamous civil marriage	Failed	--	-	No
Tajikistan	2007	Polygamous civil marriage	Failed	--	-	No
Turkmenistan	2007	Polygamous civil marriage	Failed	--	-	No
Kazakhstan	June 2008	Polygamous civil marriage	Failed	--	-	No
United Kingdom	February 2008	Welfare benefits (for families with foreign polygamous marriages)				Yes
Iran	Sept. 2008	Polygamous civil marriage (easing of laws)	Failed	--	-	No
Kenya	July 2009	Polygamous civil marriage	Pending	--	-	
Namibia	July 2009	Polygamous civil marriage	Proposed	--	-	
Russia	2009	Polygamous civil marriage	Proposed	--	-	

## Restricting polygamy

Country	Date	Polygamous union	Upper house	Lower house	President	Final outcome
United States	July 1862	Morrill Anti-Bigamy Act, which made polygamy a misdemeanour offence in US territories and other areas where the federal government has exclusive jurisdiction.	Passed	Passed	Signed	Yes
United States	March 1882	Edmunds Act, which reinforced Morrill by making polygamy a felony in the jurisdictions covered by Morrill; also prohibited "bigamous" or "unlawful cohabitation" as a misdemeanour offense, which removed the need to prove that actual marriages had occurred in order to obtain convictions on polygamy related charges.	Passed	Passed	Signed	Yes
Kyrgyzstan	October 1921	Outlaws polygamy	Passed	Passed	Signed	Yes
Thailand	October 1935	Outlaws polygamy; polygamous marriage prohibited	Passed	Passed	Signed	Yes
Vietnam	October 1950	Outlaws polygamy	Passed	Passed	Signed	Yes
Syria	1953	Restrictions on polygamous marriage	Passed	Passed	Signed	Yes
India	1955	Outlaws polygamy; forbids polygamous marriages (for Hindus only)	Passed	Passed	Signed	Yes
Tunisia	1956	Ban on polygamy; polygamous marriages prohibited	Passed	Passed	Signed	Yes
Iraq	1959	Ban on polygamy; polygamous marriage prohibited	Passed	Passed	Signed	Revoked
Côte d'Ivoire	1964	New penal code outlaws polygamy; polygamous marriages prohibited (upholds existing)	Passed	Passed	Signed	Yes
Hong Kong	1971	Outlaws polygamy	Passed	Passed	Signed	Yes
Eritrea	1977	Outlaws polygamy; polygamous marriage prohibited (districts under Sharia exempted)	Passed	Passed	Signed	Yes
Egypt	1979	Restrictions on polygamous marriage; ease of divorce laws	Passed; abrogated	--	-	No

Country	Date	Polygamous union	Upper house	Lower house	President	Final outcome
Egypt	1985	Restrictions on polygamous marriage (less liberal)	Passed	Passed	Signed	Yes
France	1993	Outlaws family reunion for polygamist immigrants	Passed	Passed	Signed	Yes
Uganda	December 2003	Outlaws polygamy	Failed	-	-	No
Morocco	2003	Restrictions on polygamous marriage	Passed	Passed	Signed	Yes
Benin	August 2004	New penal code outlaws polygamy; polygamous marriages prohibited (upholds existing)	Passed	Passed	Signed	Yes
Morocco	February 2005	Restrictions on polygamous marriage (heavy restrictions)	Passed	Passed	Signed	Yes
Uganda	July 2005	Outlaws polygamy	Failed	-	-	No
Indonesia	2007	Bans civil servants from living polygamously	Passed	Passed	Signed	Yes
Morocco	May 2008	Restrictions on polygamous marriage (heavy restrictions)	Passed	Passed	Signed	Yes
Uganda	June 2008	Outlaws polygamy	Failed	-	-	No
Iraqi Kurdistan	Nov. 2008	Abolishes polygamy except in selective circumstances	Passed	Passed	Signed	Yes
Mayotte	March 2009	Mahoran status referendum, 2009 (passage abolishes polygamy)	Territory-wide Referendum			Yes
Turkey	May 2009	Prohibits polygamists from immigrating into the country				Yes
Indonesia	July 2009	Restrictions on polygamous marriage	Pending	Pending	-	
United Kingdom	July 2009	Stricter laws against polygamy	Proposed	--	-	
Namibia	July 2009	Ban on polygamy & polygamous customary marriages	Proposed	--	-	

## Recently proposed, failed, or pending efforts to limit polygamy

Country	Description
Malawi	A proposal to outlaw polygamy was defeated in 2008.
Uganda	Another bill that would outlaw polygamy in the country was defeated in the legislature in 2008.
Saudi Arabia	Women's groups within the United Nations have called on Saudi Arabia to outlaw polygamy. Most consider such a move extremely unlikely.
Egypt	The complete abolishment of polygamy in Egypt has been the discussion of numerous political debates.
France	Stricter sanctions against polygamist have been proposed in attempt to battle polygamy.
Indonesia	A proposal that would limit polygamy even further is being considered in the legislature.
United Kingdom	Several politicians have discussed proposing a bill that would revoke the state's granting of welfare benefits to polygamous households.
Namibia	A bill that would ban polygamous unions from being recognized by customary law and additionally, outlaw all forms of polygamy, has been submitted to the legislature.
United States	A senator from Nevada has announced his intentions to introduce a bill that would increase the sanctions against polygamy.
Indonesia	Feminists groups and individuals have stated their intent to work for the complete abolishment of polygamy and ban polygamous marriage in the country.

## Countries in which polygamous marriages are performed nationwide

Afghanistan · Algeria · Bahrain · Bangladesh · Brunei · Burkina Faso · Burma · Cameroon · Chad · CAR · Comoros · Congo · Djibouti · Egypt · Gabon · Gambia · India · Indonesia · Iran · Iraq · Jordan · Kuwait · Libya · Malaysia · Maldives · Mali · Mauritania · Morocco · Niger · Oman · Pakistan · Qatar · Saudi Arabia · Senegal · Sierra Leone · Singapore · Somalia · Sri Lanka · Sudan · Syria · Tanzania · Togo · Uganda · UAE · Western Sahara · Yemen · Zambia

## **Countries in which polygamous marriages are performed in certain regions**

Eritrea (Sharia districts) · Nigeria (Bauchi State (2001) · Borno State (2000) · Gombe State (2001) · Jigawa State (2000) · Kaduna State (2000) · Kano State (2000) · Katsina State (2000) · Kebbi State (2001) · Niger State (2000) · Sokoto State (2000) · Yobe State (2000) · Zamfara State · Palestine (Gaza Strip · West Bank)

## **Polygamous marriages performed abroad recognized**

Australia  
United Kingdom

## **Debate in other countries and regions**

Botswana  
Kazakhstan  
Kenya  
Kyrgyzstan  
Mongolia  
Namibia  
Congo  
Nigeria (Imo, Kwara, and Oyo States)  
Russia  
Swaziland  
Tajikistan  
Turkmenistan  
Uzbekistan

## APPENDIX II – EXCERPTS FROM THE CANADIAN *CRIMINAL CODE*

### OFFENCES AGAINST CONJUGAL RIGHTS

#### **Bigamy**

290. (1) Every one commits bigamy who

(a) in Canada,

(i) being married, goes through a form of marriage with another person,

(ii) knowing that another person is married, goes through a form of marriage with that person, or

(iii) on the same day or simultaneously, goes through a form of marriage with more than one person; or

(b) being a Canadian citizen resident in Canada leaves Canada with intent to do anything mentioned in subparagraphs (a) (i) to (iii) and, pursuant thereto, does outside Canada anything mentioned in those subparagraphs in circumstances mentioned therein.

#### **Matters of defence**

(2) No person commits bigamy by going through a form of marriage if

(a) that person in good faith and on reasonable grounds believes that his spouse is dead;

(b) the spouse of that person has been continuously absent from him for seven years immediately preceding the time when he goes through the form of marriage, unless he knew that his spouse was alive at any time during those seven years;

(c) that person has been divorced from the bond of the first marriage; or

(d) the former marriage has been declared void by a court of competent jurisdiction.

#### **Incompetency no defence**

(3) Where a person is alleged to have committed bigamy, it is not a defence that the parties would, if unmarried, have been incompetent to contract marriage under the law of the place where the offence is alleged to have been committed.

#### **Validity presumed**

(4) Every marriage or form of marriage shall, for the purpose of this section, be deemed to be valid unless the accused establishes that it was invalid.

### **Act or omission by accused**

(5) No act or omission on the part of an accused who is charged with bigamy invalidates a marriage or form of marriage that is otherwise valid.

R.S., c. C-34, s. 254.

### **Punishment**

291. (1) Every one who commits bigamy is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

### **Certificate of marriage**

(2) For the purposes of this section, a certificate of marriage issued under the authority of law is evidence of the marriage or form of marriage to which it relates without proof of the signature or official character of the person by whom it purports to be signed.

R.S., c. C-34, s. 255.

### **Polygamy**

293. (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.

### **Evidence in case of polygamy**

(2) Where an accused is charged with an offence under this section, no averment or proof of the method by which the alleged relationship was entered into, agreed to or consented to is necessary in the indictment or on the trial of the accused, nor is it necessary on the trial to prove that the persons who are alleged to have entered into the relationship had or intended to have sexual intercourse.

R.S., c. C-34, s. 257.

## **Unlawful Solemnization of Marriage**

### **Pretending to solemnize marriage**

294. Every one who

- (a) solemnizes or pretends to solemnize a marriage without lawful authority, the proof of which lies on him, or
- (b) procures a person to solemnize a marriage knowing that he is not lawfully authorized to solemnize the marriage,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.

R.S., c. C-34, s. 258.

### **Marriage contrary to law**

295. Every one who, being lawfully authorized to solemnize marriage, knowingly and wilfully solemnizes a marriage in contravention of the laws of the province in which the marriage is solemnized is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.

R.S., c. C-34, s. 259.

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