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RELIGIOWEST

The meanings of marriage in the West:
law, religion and “nature”

Danièle Hervieu-Léger and Janet Bennion

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ReligioWest

ReligioWest is a four year research project funded by the European Research Council and based at the European University Institute, Florence, Italy. It aims at studying how different western states in Europe and North America are redefining their relationship to religions, under the challenge of an increasing religious activism in the public sphere, associated with new religious movements and with Islam.

Abstract

What are the different understandings of marriage, family, and rights that have been developed during recent debates regarding same sex marriage, and polygamy in France and in North America? What modes of justification and repertoires are used today in order to define marriage and claim the rights it entails? What changes in the anthropological conception of marriage in Western societies do the present disputes imply? These two papers examine these questions from different angles and contexts. They both address the new tension between law, the reference to nature, and the Church. Law now seems to accept the idea of the homosexual family, and it even equates it to the biological family. This legal evolution deconstructs the assumption of an “order of nature”. It is leading in several Western States to a redefinition of the marriage institution and to its opening to same sex partners (Netherlands in 2001; Belgium in 2003; Spain and Canada in 2005; Sweden and Norway in 2009). Whereas law rejects the relevance of the reference to nature, the Catholic Church has sought for several years to base its opposition to same sex marriage on the need to respect a natural order

Keywords

Polygamy, same-sex marriage, church, law, nature

As shown by the late anthropologist Claude Levi Strauss in *Nous sommes tous des cannibales* published in 1989, some issues of family organization, that have been discussed in passionate ways in Europe and North America in the 1970's and 1980's, have in fact existed in other contexts, notably in African cultures, for numerous decades, where they have been resolved in very pragmatic ways. Twenty-five years later, in the context of the heated and passionate debates about polygamy in North America and the redefinition of marriage in France, Levi Strauss's remarks still seem very relevant.

What are the different understandings of marriage, family, and rights that have been developed during recent debates regarding same sex marriage, and polygamy in France and in North America? What modes of justification and repertoires are used today in order to define marriage and claim the rights it entails? What changes in the anthropological conception of marriage in Western societies do the present disputes imply?

In the French debate that took place in 2013 about same-sex marriage, some important archbishops have made provocative statements about the redefinition of marriage. For example archbishop John 23 has claimed that "there is no hermaphrodite reproduction between men". Archbishop Philippe Barbarin added that "the redefinition of marriage would cause the collapse of society, opening the door to the decriminalization of incest and polygamy". In these two quotes, same-sex marriage is rejected not on religious grounds, but on the grounds of nature...

This is surprising because debates about same-sex marriage have revealed a general tendency of law to dismiss references to nature. Law now seems to accept the idea of the homosexual family, and it even equates it to the biological family. This legal evolution deconstructs the assumption of an "order of nature". It is leading in several Western States to a redefinition of the marriage institution and to its opening to same sex partners (Netherlands in 2001; Belgium in 2003; Spain and Canada in 2005; Sweden and Norway in 2009). The French debate has given way to an ironical reversal of discourses that law and the Church traditionally hold. Whereas law rejects the relevance of the reference to nature, the Catholic Church has sought for several years to base its opposition to same sex marriage on the need to respect a natural order. Importantly, this rational is different from traditional references, in the Catholic Church, to natural law. It is precisely to a biological, or even psychoanalytical order, and not to God's law that the Church now refers.

By contrast, reference to nature has been reintroduced in the realm of law, in the Canadian context, during debates about the constitutionality of an article of the criminal code that criminalizes polygamy. In Canada, these debates have recently developed in the judicial sphere despite the fact that this practice is legally forbidden since more than 120 years. In 2011, the government of the province of British Columbia asked its Supreme Court an advice about whether or not polygamy should be decriminalized. It sought expert advice to help it decide whether the criminalization of such practice would be coherent with the constitutional principles of the Canadian Charter of Rights and Freedom (freedom of conscience and religion; equality between women and men). In an advice of November 2011, the Court, resorting to evidence from national contexts very different from Canada, and carefully avoiding any reference to Christian values, judged that the protection of monogamous marriage was a key objective justifying the criminalization of polygamy. A comparable debate has taken place in the United States, about a number of Mormon fundamentalist polygamous communities living in Utah. This debate offers an interesting case of inversion of normative repertoires used by the actors in conflict. While fundamentalist Mormons insist on their right to choose their lifestyle according to their religious beliefs in a very liberal perspective, their opponents speculate about natural order and good morals.

These two debates also contribute in revealing the redefinition of the normative repertoires invoked by participants: the main line of division is not between religious and secular rights (including freedom of conscience and religion), but between nature and these secular rights.

David Koussens (University of Sherbrooke) and Nadia Marzouki (CNRS/EUI)

In May 2013, ReligioWest (EUI, Florence) and the *Chaire de Recherche sur les religions en modernité avancée* of the University of Sherbrooke, Canada, organized a workshop aimed at examining the normative grounds of the prohibition of polygamy and of the redefinition of marriage in the West. In this working paper, we publish two of the presentations discussed during the workshop.

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Media, Gender, and the Law in Contemporary Mormon Polygamy

Janet Bennion

The discourse about polygamy's viability came to a head on April 3, 2008, when authorities raided the Yearning for Zion Ranch in Eldorado, Texas, the largest child-welfare operation in Texas history. Six weeks later, the California Supreme Court issued a historic decision in favor of same-sex marriage, a decision that informs legislation for all alternative marriage. Two years later, in 2010, TLC's reality series *Sister Wives* joined HBO's fictional series *Big Love* in delivering nightly drama sympathetic to polygamists to a combined audience of more than four million people weekly. That same year, a trial in Canada tested the constitutionality of the polygamy ban as laid out in Section 293 of the Criminal Code, finally determining--in November of 2011--that plural marriage should remain a crime.

These recent events call to question the viability of plural marriage, yet provide very little assistance in addressing this viability. Even the Canadian trial was unhelpful--filled with lopsided analyses of the evils of polygamy in the face of numerous testimonials to the contrary (Beaman 2013). The news media is generally devoted to the irreparable harm polygamy causes to women and children based on glimpses of only those groups that contract child-bride marriages, violate welfare laws, or engage in inbreeding. Very little attention is paid to progressive polygamists, associated with independent plural families and the Allred Group, that is, until these less abusive poly forms entered primetime television. Recently, talk shows and newspapers are parading the faces of Kody Brown and his four wives and Brady Williams--of the TLC show, *My Five Wives*--who speaks about his move from Mormonism to Buddhism.

This paper examines the variability in poly forms within Mormon fundamentalist movements and sheds light on the possible viability of this alternative marriage for a small but legitimate cohort of men, women, and children. I draw upon data collected in three environments over the last 20 years: the Allredite compound of the Bitterroot Mountains of Montana, independent polygamists of the Salt Lake Valley of Utah, and the LeBaron group of Chihuahua, Mexico. I have lived and worked with twenty-two extended polygamous families and interviewed more than 355 individuals about their conversion to the movement, their living arrangements, and their lifestyles. I also draw upon my own history as a descendant of Mormon polygamy, on scores of interviews and observations made over ten years of living in Zion, and nearly seventy hours of absorbing tv and internet programs and blogsites.

Based on twenty years' observation of the varied experiences of women, I reject the notion that polygamy is uniformly abusive, anti-feminist, and dysfunctional. I also reject the myth that it exists only in isolated cults. My research shows that polygamy occurs in small towns and big cities, stretching beyond the Mormon-offshoot enclaves to non-Mormon Christian and Muslim communities (Bennion 1998, 2004, 2012). It also shows that Mormon "cults" are not oozing polygamists, but only a fraction of men actually practice polygamy, in fact, most are monogamous. Informal polygamy is much more common in mainstream America than in fundamentalism. Finally, most women I observed bear little resemblance to the underage brides in prairie dresses depicted by the news. Some polygamist wives even follow a feminist track, supporting female autonomy and choice, as does Elizabeth Joseph, a journalist and lawyer, Nora Williams, the CEO of the family business, and Meri Brown, a social worker.

Currently, there are nearly 50,000 fundamentalist Mormons practicing polygamy sorted into four groups and pell-mell independents: The FLDS, the Allreds, the LeBarons, and the Kingstons (Bennion 1998, Wilde 2010). They collectively believe that God is an exalted man, and that if they are worthy, they can become gods and goddesses of their own worlds. Polygamy is seen as a mechanism for the birth of vast kingdoms and polishes the souls of those who practice it. It also offsets the imbalance in sex ratios related to the abundance of religious women and the dearth of good men, as recorded in Isaiah 4. It is a catchall solution for prostitution, infidelity, homosexuality, spinsterhood, childlessness, and various types of sexual sin.

Polygamy first arose in the Mormon context in 1831 with Joseph Smith's revelation to restore plural marriage to the earth. Smith, who married at least thirty-three women and had children with thirteen of them, was told to practice "celestial marriage" from the same source that commanded Abraham to bed his handmaid, Hagar, to produce a righteous seed and glorious progeny. Later, when polygamy blocked Utah's chances for statehood, Wilford Woodruff, banned the practice, sending scores of poly families underground or to prison. The fundamentalists are a vestige of an original Council of Friends, led by Lorin Woolley, to preserve the old-time Joe Smith doctrines of god-making, united order, and plural marriage. Those who join them must consecrate all their assets to be "worthy to have their names written in the book of the law of God" (LeBaron 1981, 166).

Men and boys are expected to be "kings in the making;" taking up the mantle of religious priesthood leadership, economic stewardship, and absolute purity; women play an auxiliary role in this formal priesthood scheme. They may, if worthy and married to a high-ranking Melchizedek priesthood holder, tap into his power when joined in the holy seal of promise. Formally, she must bear and raise a "righteous seed" for her husband's kingdom, and be obedient and respectful, as depicted in Genesis 3:16: "Thy desire shall be to thy husband, and he shall rule over thee." Women should "respect and revere themselves, as holy vessels, destined to sustain and magnify the eternal and sacred relationship of wife and mother." A wife is the "ornament and glory of man; to share with him a never fading crown, and an eternally increasing dominion" (Musser 1948, 134).

Yet there is paradox in these arrangements. In reality, men are not permanent residents, but rove to and from various households and communities on priesthood business, allowing women respite from their husbands and a modicum of autonomy. In some families, the women live in separate dwellings and meet all together only once a week. In others, up to five or six wives live under one-roof and share bathrooms, kitchen, and dining areas, with a separate bedroom for each wife. Where clustered, women often have collective power. And though sexuality is considered a necessary evil, it occurs often, and with gusto, as depicted in the enormous natural birthrate. In some rare cases, women seek female sexual companionship in the prolonged absence of their husbands. Though barrenness is formally seen as a reproach of God, elderly and barren women are grafted onto high-ranking families and respected as fountains of wisdom. They speak of the old days when women bore the priesthood and future days of exaltation as priestesses and goddesses.

Further, though polygamy is patriarchal, communities are brimming with females, who gather for work and worship three times a week. In the Pinesdale, Montana group, for example, I counted approximately 55 men, 150 women, and 650 children. The Allred Group also has a healthy intake of female converts drawn from the large pool of single women, single mothers, divorced and widowed women and unmarriageables in the LDS mainstream. They are attracted to polygamy to find a savior on Mt Zion, bear children, and access economic and priesthood resources, instantly integrated into already established polygynous families.

Among the Allreds, LeBarons, and most "independents," women choose their own spouses freely, discarding husbands they no longer love or need for a better model; accessing valued political and religious positions and economic resources, living closer to sources of secular education and social services. I witnessed the surprising increase in status for Allred women, who are able to marry and raise their children within a strong, supportive network of sister-wives and other community women within the familiar and valued context of their religion. The networks were particularly advantageous for lower-class women, whose economic and educational opportunities increased due to shared labor and childcare. Further, the Allred women have a rich spiritual and emotional life, attending empowering Relief Society meetings where they practice the priesthood power via mother's blessings. Men, however, are still treated harshly, as in the other groups, facing severe competition, alienation, and disenfranchisement.

The female network provides an opposing unity in cases where men are abusive. If 10–15 women stand up for their rights, they have a greater chance of halting or changing their husband's behavior.

Many also thrive in an environment where emotions are not suppressed and where they can escape from the demands of their husband in ways that a monogamous woman cannot. Polygamy also allows women to cope with the imbalanced sex ratios, especially true among African American Muslims who are drawn to polygamy to cope with the severe shortage of eligible men in inner cities. It is interesting that strong, capable women are actively seeking to marry into one of the most rigid forms of patriarchy, all in order to experience marriage and motherhood and to foster friendships with other Muslim women in the black community. Dixon-Spear writes that polygamy is a vehicle for fostering a "womanist ethic of care for sisters" (2009 book jacket)

I observed the importance and vitality of this ethic among Mormon co-wives, especially during the prolonged absences of husbands. Women develop a strong interdependence with each other and in doing so create a large repertoire of domestic and mechanical skills. "If one wife can't fix it, the other can," is a statement I heard repeatedly. The network provides childcare for women who work and economic aid for women who can't work or who have young children to watch. It reduces the number of hours per day that women labor, contributing to increased leisure and contentment. The network also alleviates anxieties, provide a mechanism for support in times of illness or hardship, and mediate disputes.

Despite the many positive and successful examples of polygamy, I encountered an equal number who suffer in the poly lifestyle, especially those affiliated with the Kingston and FLDS groups, whereas found in the British Columbia 2011 ruling--sexual, physical, and emotional abuse occurs. Dissatisfaction also stems from abandonment, poverty, and/or co-wife jealousy. The task of disengagement can risk loss of children, resources, and damnation. More rigid patriarchy is found among the Kingstons and FLDS, where prophets arrange marriages for teen girls and use elite polygamy to dispel competitive rogue males and control all valued productive and reproductive resources. Women experience circumscription, barred from secular education, driver's licenses, job opportunities, and social services. Warren Jeffs' behavior is a prime example of how rigidly controlling polygamy can be for women. As prophet of the FLDS group, he prohibited women from gaining an education and commanded them to be ruled over by their husbands. A woman should wake up each morning yearning to please her husband, "rejoicing in his will towards you" and "the very nature of women in their desires shall be to their husband . . . completely submit where he shall rule over you . . . true womanhood is attained through Priesthood" (Adams 2007, A1). Jeff commonly reassigned the wives of other men, including his brother David, because God had shown him that they "couldn't exalt their ladies, had lost the confidence of God." One of his brother's wives had difficulty accepting the news and could barely bring herself to kiss her new husband. "She showed a great spirit of resistance, yet she went through with it," Warren's records. "She needs to learn to submit to Priesthood" (p. A1).

While investigating evidence of abuse among the four major groups, I discerned five conditions that, when combined with polygamy, may produce a greater risk of abuse and human rights' violations: the low parental investment of the father, an isolated rural environment and circumscription, the absence of a strong female network, overcrowding and economic deprivation, and male supremacy. Note that these factors are not limited to or unique to polygamous family structures. It must also be noted that abuse or abandonment can sometimes lead a woman to love another woman. A handful of women—mostly converts--have "confessed" to me their clandestine relationships with co-wives. Quinn refers to such intimacy between Mormon women as "female homoeroticism," citing many references to "women lovers" and even a form of lesbian and gay club organized in 1891 by the granddaughter of Brigham Young.

Media is now contributing to a new narrative about the lives of polygamists, one that is not so one-sidedly evil. From 1950-2010, Americans became fascinated by the evils of the southern Utah group, often overlooking the rather nondescript, boring lives of most polygamists who actually live near or in the Mormon mainstream. Yet, television drama is now drawing a different picture. Just as the *Brady Bunch* introduced the concept of divorce and the blended family in the 1970s and *Queer Eye for a*

Straight Guy of 2000 created more acceptance of gay professionals at the turn of the twenty-first century, *Big Love*, *Sister Wives*, and *My Five Wives* evoke a dreamlike image of masculine men who are fatherly and sensitive and women who are feminine, motherly, and independent--with careers and economic and political interests beyond the home. This new image is predominantly positive and has the potential to alter the way people think about the poly mindset. *Big Love* and *Sister Wives* familiarize an exotic form of marriage and set the stage for the recognition of new legal rights. Polygamy is no longer relegated to the hidden cultish confines of southern border towns and western desert wastelands. "Progressive" polygamy lives in the mainstream as Bill the gentle hardware store owner of Sandy, Kody the rather goofy, but likeable, ad-executive of Sandy, and Brady, the handsome construction worker of Santaquin.

In *Big Love*, Bill Henrickson's family seeks wants to decriminalize plural marriage and encourage all polygamists to come out of the woodwork. Bill is even voted into public office as the first polygamist to become a state senator since 1905. Feminist viewers love the dynamic women of *Big Love*, vying for a stronger voice, more autonomy, and more direct control of the resources. For example, in Season 5, Barb pushed the gender envelope by demanding the holy priesthood, reminding us of Sonya Johnson, who chained herself to the gates of the Salt Lake temple in the 1970s to fight for the Equal Rights Amendment.

Interestingly, like the Henricksons, the Browns and Williams also try to live a normative life in a non-normative family form, balancing work, home, family, and religion in pursuit of Everyman's American Dream. The wives scurry to make Jell-O and potato salads, the kids play the piano and participate in sports, and the bills pile up to be paid at the end of the month.

Both the Browns and the Williams live in Utah suburbia with interconnecting apartments in large houses with unfenced, adjoining backyards, an "open door" policy that allows both children and co-wives to move freely among the homes to share housework, borrow cups of sugar, and collaborate in child care. Like Bill in *Big Love*, Kody Brown and Brady Williams have a history of being nonconformist rebels who challenged the Allredite prophet's control over resources and jurisdiction of wives. Like so many converts to fundamentalism, Bill's story represents how many polygamists enter plural lifestyles only after being married monogamously for several years in order to obtain the "meat of the gospel" because of dissatisfaction in the mainstream LDS Church's "milk." He owns a Home Depot and seeks to expand his business into video gaming and casinos. He is on an endless treadmill to try to provide for his ever-growing family and his wives' appetites for material goods and more children. Each wife has her own unique, dyadic connection to Bill but they also must live communally, which can be challenging. Barb chastises Margene for making too much noise when making love to their husband, and reprimands Nicki for upsetting Bill and spending too much money. Barb also deals with Bill's emotional needs and strives to get her master's degree. In short, I found real-life corollaries for each feature of *Big Love's* portrayal of polygamous life, which is not surprising as the authors used my ethnography and the Allredite Darger family as templates.

Sister Wives is an unscripted American reality television series that documents the life of a progressive polygamist Allredite family living in Lehi, Utah, comprised of Kody Brown, his wives Meri, Janelle, Christine, Robin, and their sixteen children. Kody and his wives seek to make the public more aware of polygamy and to fight against discrimination. In Kody's words, "There are a lot of families much more like ours than what's being perpetuated in the media. To be transparent makes us more safe" (*Sister Wives*, Episode 1). Kody's openness was criticized by the Allred prophet LaMoine Jenson and the local police who threatened him with arrest. Kody hired a lawyer, stating that he is legally married to only one woman and the other marriages are spiritual unions. That logic failed to appease Utah residents who feel Kody is a blight on the LDS Church, hampering proselytizing efforts and Mitt Romney's run for president. They also feel Kody is violating the Proclamation of the Family, an LDS document sanctioning only monogamous, heterosexual marriages.

The Utah attorney general's office has not ruled out arresting the Browns, but stated they don't have the resources to go after polygamists who are not guilty of child abuse bride trafficking. In Utah, bigamy in Utah is a third-degree felony with a possible penalty of twenty years' imprisonment. If the Browns were convicted, Kody might serve that sentence, and each of his wives might serve five years.

Because of polygamy's entrance into primetime television, more people are able to witness the relative normalcy of the poly lifestyle and begin questioning the efficacy of the ban on polygamy. In 2005, A Canadian Status of Women report expressed reservations about imposing criminal sanctions on plural unions. Martha Bailey, one author of the report, sought to decriminalize polygamy but to retain the criminal sanctions on the harms associated with polygamy. She stated that in order to cope with an ever-changing marital environment, decriminalization must occur, as it has in other western democracies. When polygamy is criminalized, female victims of abuse may be less likely to report their status because they are afraid of being charged or that they will jeopardize the welfare of their entire family with the threat of criminal charges. In this way, prohibition, which is designed to protect women from abuse, arguably in fact puts them at greater risk. As Angela Campbell noted:

It is impossible to reduce the literature on this topic to a general, blanket statement in regard to the social aspects of polygamous life for women: polygamy is neither entirely "good" nor is it entirely "bad" for women. On some levels, the social structure of a polygamous family might forge a sense of support and even "sisterhood" among the wives. At the same time, polygamous women, although possibly collaborative on occasion, are likely to compete with one another in different circumstances.

In my research, I witnessed this variability, which caused me to question the criminalization of poly love and pursue arguments in favor of legal recognition. First, criminalization pushes the practice further underground, exactly where potential abuses are likely to occur. If the fear of incarceration were removed, polygamists would be freer to live in the mainstream, where women and children would have access to counseling, education, and opportunities for economic and emotional autonomy. Criminalization also stigmatizes poly families in the media, local neighborhoods, at school, and the general public. Legal recognition would legitimize polygamy as a faith-based lifestyle to neighbors, employers, and the state, meeting Al-Krenawi's second factor for wellness — that polygamy be religiously-sanctioned (2006). It would serve Mormon fundamentalists and Muslims who believe they are allowed four wives according to the Quran. If plural marriages were to become legal contracts between consenting adults, the stigma would be diminished, even in orthodox Mormon communities that are commanded to follow civil law. Polygamists could "come out" to their neighbors and co-workers without fear of arrest, being fired or ostracized. They would be able to show affection to their wives in public and enjoy meeting with them in parks, at school, or at the mall without having to continually watch for the police or a man in a dark suit with sunglasses. Criminalization actually insures that polygamy goes unmonitored under the laissez-faire enforcement currently used by Arizona and Utah. It also restricts the access of vulnerable individuals to social and economic support. If polygamy were to be legalized, "spiritual" wives would be transformed into legal wives and thus would gain access to their husband's and co-wives' work-related health benefits and pensions, hospital visiting rights, and life insurance. At present, Kody Brown's job provides only his first wife, Meri, with employee benefits; the others go without. In sum, criminalization prevents women and children from accessing the socioeconomic resources that mainstream American families now enjoy: societal recognition, healthcare, public education, full employment, protection from criminal abuse, and access to legal recourse for dealing with divorce and child support.

Most of the world's cultures practice polygamy, representing a viable option for many women. With legal recognition, criminal sanctions against these women would be removed and the civil law would be enlarged to include the poly family. If there is no abuse, fraud, or underage marriage, polygamy should be legally recognized, just as gay/lesbian marriage and serial monogamy are legalized. Americans yearn for a "creative panoply" of options, preferring families "they choose" over families "thrust on them" because of tradition or law (Stacey 2009). With legalization, women could benefit from greater educational and occupational opportunities in the outside world. They could learn

to drive and hold legal drivers' licenses. They could get high school diplomas and attend college and vocational schools and apply for work that best matches their skills without risk of being fired.

Furthermore, anti-polygamy laws are difficult to enforce. Not a single polygamist was criminally prosecuted in the United States from the 1950s to 2001, and in Canada there have been no convictions against polygamy since 1906. Duke lawyer Emily Duncan summarizes the many obstacles to prosecution (2008): 1) you can't ask family members to testify against each other; 2) children are taught to fear and distrust the law; 3) there is no paper trail for births or unlawful marriages; 4) it is nearly impossible to obtain accurate evidence about abuse or about which jurisdiction perpetrators should even be prosecuted in; 5) local police and doctors in the fundamentalist communities often aid and abet residents engaged in criminal activity; 6) law enforcement and political officials are concerned about acting too aggressively against a practice some see as a protected religious activity; and 7) busy prosecutors place greater focus on more serious offenses, ignoring polygamy; many Mormon law enforcement officials are simply unwilling to charge consenting adults for religious beliefs their Mormon ancestors shared.

Legal recognition allows greater regulation of the practice. It would focus on the pursuit of criminal actions of individuals, such as child marriage and incest, not the culture itself. The "rights versus actions" argument of *Reynolds v. United States* will be refuted. Rather, polygamy would be legitimated as a "right" and abusive actions often associated with polygamy will be illegal regardless of their religious foundation, including family actions against minors. Federal Senate Bill 146 could be passed and enforced, making it a felony for parents or religious leaders to solemnize or condone unlawful marriages to minors, bringing abuses.

Most polygamists are not guilty of crimes against the state (other than polygamy), most would benefit from legal recognition. Those that do commit crimes would be prosecuted more fully and easily with the support of law-abiding polygamists who seek to remove the tarnish from their lifestyle. According to one FBI official, "At least 99 percent of all polygamists are peaceful, law-abiding people, no threat to anybody. It's unfortunate that they're stigmatized by a band of renegades" (Stumbo 1988).

If polygamy was legally recognized, more responsibility would be placed on the husband to take care of his economic responsibilities before taking subsequent wives, as is required in South Africa (Stacey 2009). It would force him "to provide independently for his family or to marry fewer women." This measure would require well-constructed plans for dealing with a poly family of multiple spouses with multiple needs and opinions. This would include laws requiring the formal consent of all wives and age of marriage laws, Planned Parenthood facilities, and access to educational resources for plural wives. Adrienne Davis (2010) argues that family law already accommodates intimate multiplicity, or what might be thought of as "de facto" and "serial" polygamy. Commercial partnership law could also be useful in proposing tentative default rules that would accommodate marital multiplicity and at the same time address some of the costs and power disparities that polygamy entails.

Most importantly, if polygamy were regulated, women would have the legal option of divorce to dissolve an unhappy or abusive alliance. As it is now, women who are guilty of a felony offense related to polygamy are unlikely to go outside the group for help when they need it as they are criminals; they have no legal recourse but to stay in an unwanted marriage. Legalization would also hold fundamentalists accountable for following state and federal law related to employment, the environment, and taxes. Exit strategies for women and children could be established. At risk youth could attend public schools and access counseling and college prep courses.

In short, polygamy should be regulated with the same force of law as monogamy is regulated, including registration and documentation of marriages, societal tolerance and acceptance, and appropriate legal models that provide for multiple-spouse families. Regulation can "create and adapt a legal framework around polygamy to better regulate truly deviant practitioners" and give law-abiding polygamists the freedom to practice their religion and marital practices without fear of prosecution.

Polygamy is clearly the next marriage-rights frontier. The First Amendment and due process clause of the Fourteenth Amendment should allow us to define the contours of our sexuality and express our religious beliefs freely, as long as we do not harm the state or other people. Law and policy approaches to plural marriage must be guided by the "goal of facilitating meaningful choices for women" (Campbell 2005, 37). Because it criminalizes consensual, fully adult sexuality motivated by religious beliefs, the United States fails to fulfill the constitutional promise that consenting adults will be free to define love and marriage without fear of government intervention.

Future discourse on polygamy should include an examination of "best practices" in preventing, intervening in, and combating the conditions of abuse. Further, investigations of abuse in monogamous cultures should be undertaken with the same vigor and intensity that is now being visited upon polygamous groups, especially studies of Prozac consumption, marriage satisfaction, and measures of self-esteem. As a side note, I'm also quite interested in studies on the prevalence of lesbianism within polygynous communities.

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The Catholic Church of France against same-sex marriage: a problematic normative offensive

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There are several possible approaches to the recent debate concerning same-sex marriage in France.

One might first comment on the sharpness and even violence of the public discussions (including those in parliament), and the scale of the demonstrations against the issue, in a country where public opinion remains – despite the very high level of societal secularisation – extremely polarised when it comes to dealing with religious issues.

One might see these demonstrations as revealing the ideological and political positioning of a shrinking population of practicing Catholics, who find it difficult (and even unbearable) that they are considered and feel themselves to be a minority among other minorities, and are desperately trying to recover a public identity.

I will focus here only on the way in which the Catholic Church (by which I refer to its institutional representatives) has tried to use this debate to reassert its normative capacity within the public sphere. From this perspective, I will only examine the reasoning of the Catholic hierarchy, as this was a mobilising force during the public controversies. More precisely, I would like to stress several puzzling points.

Evidently, the fact that the Roman Church is fiercely opposed to the principle of same-sex marriage does not come as much of a surprise! Beyond the compassionate stands of its discourse on how welcome gay people are within its communities, it is very clear that its position concerning homosexuality as such offers no tolerance. Of course, the Catholic Church no longer condemns people, but it nonetheless upholds all prohibitions on acts, and until now, there has been nothing to negotiate in this regard.

Anyway, during the last thirty years, in France at least, the ecclesiastical attitude concerning controversial issues (such as contraceptive methods and even abortion) has rather been characterised – beyond the repeated affirmation of principles – by pastoral concern about persons, which has been able to moderate the severity of norms.

More generally, in those domains, the Church of France has remained rather unobtrusive (compared with other branches of the Catholic Church in Europe or America) and cautious in its public interventions, with a view to preserving not only its hard-won compromise with the *laïc* state, but also its ethical magisterium in French society.

This day-to-day discretion makes the vigour of the Church's official involvement in the fight against same-sex marriage seem all the more puzzling, suggesting that this issue is, in a very particular way, of major significance in terms of its implications for Church authority. I would thus like to consider how the manner in which the Church argues its own position can shed light on the stakes implicit in the debate.

I –

1) The first remark to make (and first cause for surprise) concerns the absence (or quasi-absence) of a specifically religious and theological stand in the French bishops' discourse on same-sex marriage. This silence (with the exception of references to Genesis, "as man and woman He created them...") is rather odd if we compare it to the intense mobilisation in favour of religious (biblical) sentencing for homosexuality in other Christian contexts (evangelical protestant churches, in particular). But this absence of arguments based on sacred texts seems less surprising when we remember that, on this matter as on others, the Church doesn't intend to exclusively address its own faithful. It is not its

ambition to speak only to a converted audience, with a message which sets apart a community of saved believers. As a universal institution, the Church aims to extend its truth to the extremities of the earth, and consequently has to communicate the universal validity of its own message (this point denotes the specific difference – in Weberian terms – between the church-type and sect-type modes of communalisation, which lead to different modes of public intervention). For that reason, the message cannot be socially received as a possible normative alternative, one which should be taken into consideration in political debate, unless it maintains a certain degree of affinity with the ethical and legal frames that make reference to the common culture. In other words, it has to preserve a certain level of participation in the “available normativity” within the society (this is another major split between church-type institutions and sectarian groups, which cannot allow any compromise with dominant culture and politics).

From this point of view, the resumption of old biblical anathemas against homosexuals would sound rather counter-productive in a society where explicit discrimination against difference is socially and legally intolerable. A paradoxical effect of the religious imperative of universality which is imposed upon a church-type institution is to drive the institution – when it addresses a modern society which is no longer seen to be regulated by a transcendent law – to “neutralise” the theological grounding of its own discourse, with a view to maintaining its relevance within a secular culture. For that reason, the Church of France has cautiously kept its distance, not only from religious condemnation of homosexuality, but even from theological argumentation against same-sex marriage.

The field of argument, which was invested with all available energy by the Church of France, consisted of defending the sacralisation of a family model which was considered to be the only model capable of providing the appropriate conditions for the nurturing of relationships between wife and husband, parents and children, and between generations. This ideal family was strictly defined as a cell made up of one male, one female, and the children born of their union, and could not be anything else: made universal, a-historical and exclusive, this canonical family model would represent a true “Church cell”. With a view to justifying this model, the Church claimed the “anthropological” validity of its invariant character, allowing the consideration of this as the very foundation of any form of human society. This “anthropological” definition of family was supposed to be accepted as a paradigm for civilisation, even by those who would not themselves refer to its religious doctrine.

2) However, in promoting this model – and this is a second crucial point – the Church was promoting a conception of family which was basically its own historical creation. Moreover, this model is far from having existed – as alleged – from time immemorial. The Christian marriage model found its final form only at the beginning of the thirteenth century. During the fourth Council of Latran in 1215, the Roman Church formally defined the matrimony sacrament as following from the couple’s consent. This consent ruled out forced marriages and could only be broken by death. Also at this time, the publishing of banns was made compulsory, and marriage became a public act. According to this model, the aim and purpose of such a union is to bring children into the world. Furthermore, the very will of God is supposedly expressed directly through the natural order, which equates marriage with reproduction, and submits a wife to her husband by identifying her as a vessel for a maternal destiny. To underplay the significance of this model in the process of civilising the relationships between men and women would be unfair; it certainly played an important role in the protection of individuals (especially women) against the pressures of family and marriage strategies. It is no longer possible to ignore the way in which the development of marital spirituality in the Christian tradition has contributed to shaping the modern ideal of marriage as the expression of an emotional and personal relationship between husband and wife. But, more precisely, it reveals the intellectual sleight of hand that occurred in the transformation of this family model, which was made “sacred” by the Church, into the ultimate “anthropological” reference point for any form of human conjugality through time and space...

At the very least, this model became more stable at the end of a long historical process which was characterised – as Jack Goody has shown – by the Church’s struggle against the Roman family model,

which favoured marriage between relatives and encouraged adoption. The Church had been fighting against adoption for several centuries. The prohibition of adoption was to some extent motivated by spiritual reasoning – specifically, the priority given to nature as an expression of God’s will – but was ultimately maintained for thoroughly worldly reasons: the fortunes and estates of persons dying without descendants had often been bequeathed to the Church. In this context, adoptions were a true financial concurrence agreement: St Salvien, in the fifth century, did not hesitate to speak of adopted children as “the children of betrayal”. And it is interesting to note – even if the principle was forgotten for a while – that the prohibition on adoption was only formally abolished by the Church at the beginning of the twentieth century. The same reasoning, both spiritual and material, was behind the Church’s fight against and final banning of divorce, which had been relatively frequent (despite the evangelical recommendation) in early Christian communities.

I recall these elements merely to stress the extent to which the model of marriage promoted by the Church is a historical and social construction, one that has only been clearly defined relatively recently. In invoking an Anthropology (with a capital A) that views a biologically fertile couple as part of an invariant natural order, the Church is continuing a lengthy process of sacralisation of one specific family model, a model upon which it had, in fact, imposed its own norms. By removing this model from its historical context, this process of sacralisation comes into conflict with all anthropological descriptions of the varieties of family and parenthood organisations in time and space. From this point of view, the Roman Catholic “Anthropology” has very little in common with the anthropology of social scientists. When referring to its own conception of Anthropology, the Church is standing up for very specific European and Christian standards of conjugality, and trying desperately to counter the trend of relativisation brought about by the various configurations of relationships between men and women, husbands and wives, masculinity and femininity.

3) In this process of sacralisation, this so-called “anthropology” was not the only resource. The Church also mobilised, as a legitimating addition, the support of psychoanalysis. This fact is rather puzzling when we remember how reluctant and even hostile the Church had been in the past towards Freudian theories. It is less surprising if we consider the implicit (and rather secret) affinity between the Christian vision of marriage and the psychoanalytic approach to the relationship between men and women! Anyway, it is clear that recourse to a Catholic-compatible psychoanalytic “science” has been a regular part of the Church’s pattern of argumentation against same-sex marriage. Through the reference to this external source of legitimacy, the Church seeks to identify the so-called “anthropological” order with the “natural” (biological) order and to unite them under the sacred canopy of the “symbolic order”: an authentic family link cannot be conceived of beyond the triangle formed by a male/father, a female/mother and the children born from their union. From this point of view, which sacralises biological conjugal fertility, the question of filiation is totally encompassed within and subordinated to the question of reproduction. By the way, a large proportion of the misunderstandings which have polluted the public debates on same-sex marriage have had their origins in this confusion between filiation and procreation: a confusion fed, for a large part, by the biological stance of the Church’s discourse.

II -

1) However, the connection between the reduction of natural law to biology and filiation is only the first axis of the Church argumentation against same-sex marriage. Another major point of argument is the defence of the civil construction of marriage, which is praised to the skies as a major conquest of law and civilisation. The respect shown for (and instrumentalisation of) psychoanalysis was rather amusing: the Church’s sudden fit of enthusiasm for the Civil Code elaborated by Napoleon at the beginning of the nineteenth century is not just surprising, it is truly hilarious when we recall the cries of rage uttered by the clergy when the Code was originally promulgated! At that time, the ecclesiastical authorities had already announced the end of civilisation, the tragic disruption of the

natural relationship between men and women, and the onset of a vicious realm of individualism and relativism...

But this recent and vibrant rallying is less incomprehensible if we look at the philosophy of the Code itself. Indeed, it formally banished any direct reference to God. However, contrary to the revolutionary Civil Code of 1709–92, which defined marriage as a contract between two individuals, the Napoleonic construction halted the march of secularisation on the doorstep of the family. The principles governing the family were no longer grounded in divine will. These principles were, however, equally deeply entrenched within a natural order loaded up with the same degree of sanctity. With the Civil Code, “nature” was substituted for God as the ultimate guarantor of an eternal and unchanging order, “by nature” giving different and unequal places and roles to males and females.

2) This vision of “natural” family links allowed Portalis (the drafter of the Civil Code) to define marriage as “the most sacred of all contracts”, and to consider it as “perpetual by destination”. According to this definition, he advocated a total ban on divorce. On this last point, he was not in accordance with the Assembly, which preferred to preserve a limited form of divorce by mutual consent, with a view to managing “outrageous situations”. On the whole, the civil marriage model of 1804 confirmed a patriarchal form of family organisation, clearly in regression, in comparison with the revolutionary civil law of 1792. In the 1804 model, the father was the sole holder of family authority. He had complete power over his wife’s person and property. The secular institution of marriage clearly reinforced the so-called “natural” status of the wife: “by getting married”, Portalis said, “the woman becomes a mother”. Marriage is no longer seen as a mere contract between two individuals. It is the mode of realisation of a natural imperative inscribed in women’s bodies. Thus civil law has, in a secular form that makes reference to “nature”, simply renewed the same formula as the one that can be found in the Christian conception of marriage, and that makes reference to God. It continues (at least implicitly) to place the reference to nature under the seal of a “divine absolute”.

3) From this point of view, it is interesting to observe the impressive wave of secular discourse – outside of the Catholic sphere – which has emphasised “biological filiation” as “appropriate to the imperatives of nature”, against the “lie” which is supposedly inherent to the notion of adoption by same-sex couples. This discourse has allowed the old idea of adoption as a sort of “betrayal” of “normal filiation”, or at the very least as a stopgap, to resurface. In fact, for a long time, the law submitted plenary adoption to conditions (relating to the age of the mother, in particular) that allowed parents to lead their adopted children to believe that they truly were their biological offspring; this paved the way, quite deliberately, for the concealment of origins. The Civil Code has evolved in this regard recently, through the opening up of access to those who wish to search for their origins, and also through the admission of single persons as eligible to adopt children. However, as Irène Théry shows, the fiction of conformity to a natural order has been preserved in the case of assisted reproduction, with the principle of anonymity remaining absolute for donors. One might argue that the Church’s obstinate determination to consider sexual fertility (in the most biological sense) as the axis of its definition of family pays too little attention to the cultural resistance to the “good family” paradigm. This lack of interest may come from the enduring assumption of the absolute primacy of biological fathering. Out of this paradigm, the Church considers that there are only fake families.

4) This long-lasting affinity between the legal framework for civil marriage and the Catholic conception of marriage has contributed heavily to maintaining the Catholic Church’s cultural presence in society, despite the laicisation of institutions and secularisation of consciences, even though its influence has been removed from politics. Since the nineteenth century, the Roman Church has succeeded in prolonging its fight against modern autonomies through this emphasis on the family sphere, while avoiding direct conflict with the democratic values that can no longer be argued against. It is also through this emphasis on family that the Church of France has maintained, in a highly secularised society, a significant capacity for mobilisation, confirmed (to a certain extent) by the scale of the recent demonstrations against same-sex marriage.

III –

At this point, in the author's view, it is less difficult to understand exactly what is at stake, from a Catholic perspective, with the issue of same-sex marriage. Something so dramatically at stake, in fact, that it necessitates the direct political involvement of bishops, at the risk of undermining the delicate compromise between the Church and the *laïc* State.

As a matter of fact, this issue is the locus for the convergence of three tendencies, a convergence that is currently dissolving the last remaining affinities between the secular and Catholic conceptions of marriage and family. From this point of view, the passing of the law can be considered to be a major turning point for the positioning of Roman Catholicism in French society.

1) The first tendency – as Tocqueville declares – is the irresistible expansion of democratic demands outside of the exclusively political sphere. The claim for autonomy and independence from any law handed down from above (so, a law of God or of Nature), which is a major feature of our advanced modernity, is invading the private – familial and conjugal – sphere. This line of reasoning objects to all inequalities, and discriminations (especially between sexes), that are supposedly rooted in the “natural order”. The inclusion of family and sexual issues in the democratic imperative erases the last reason that public officials could give and makes reference to “natural” differences irrelevant. From this point of view, the legal recognition of same-sex marriage is part of a logical movement which – from the reform of divorce to the liberalisation of contraception and abortion, and from the redefinition of parental rights to the opening up of adoption to single persons – has ensured the affirmation of autonomy and equality of individuals within the private sphere.

2) The expulsion of nature from the legal sphere began, and this process was accelerated and made irreversible because of a second movement, one that called into question the identification of the “natural order” with the “biological order”. Their separation was a direct result of the advances that had been made in the life sciences since the nineteenth century. Irène Théry shows very clearly how the confusion between the “natural” and “biological” family had for a long time been inscribed in law and administrative practice. On the Church side, the “natural” character of conjugal and family links was submitted to the same process of biologisation: because of the identification of God's will with the “natural order”, the traditional theological definition of natural law was progressively absorbed and dissolved within “the laws of nature” which had been discovered by modern science. In order to explain this very surprising confusion, it would be necessary to return to the paradoxical subtleties of Catholic apologetics at the peak (nineteenth century) of the confrontation between Roman intransigency and modernity. I will not dwell upon this rather technical development. But the crucial point in this process was the merge between nature and biology, which came to be - and indeed still is - at the core of the ecclesiastical argument against contraception and assisted reproduction. It is only fair to add that the Church no longer considers reproduction to be the only legitimate aim of marriage. On the contrary, Catholic conjugal spirituality now tends to emphasise the place of sexuality and pleasure as important dimensions of conjugal life. However, while stressing fertility as a blessing in Christian marriage, the Church forbids access to assisted reproduction, even for married, heterosexual couples. It is noteworthy that this ban on assisted reproduction is one of the most divisive issues between the Catholic faithful and the hierarchy, who have shown great resistance and made many pastoral adjustments that now serve to silently undermine the very cohesion of the Roman institutional authority. Anyway, at this point in time, the beginning of the twenty-first century, the problem is not solely one of Church discipline; scientific advances are currently shaking the supposedly absolute character of the laws of nature. In the light of the biological revolution, “nature” is no longer seen as an order, imposing its rules upon the living realm, but is rather seen as a complex system, made up of actions and reactions, regularities and vagaries, coincidences and necessities. This major biological turn is completely modifying our relationship with what had been considered “natural imperatives”, and consequently, the theological conception of these imperatives as expressions of God's will is becoming fragmented. Matters of procreation serve to best illustrate this tendency: for centuries, between unwanted births and the tragedy of sterility, women had lived with procreation as a fact of

life, a matter of natural fate. Moreover, the Church had put a sacred seal upon this fate. The modern approach smashes to pieces the construct of equivalence between the natural and the sacred. Most Catholic couples ignore Church norms and consider procreation to be their own private matter. In this context of normative individualism, the Church has desperately tried to mobilise psychoanalytical science as its last legitimising resort; a highly precarious and controversial move – as the debates have shown – in comparison with the “laws” of ancient biology.

3) In order to complete the picture of the critical situation the Church finds itself in, it is also necessary to consider the third tendency that is currently tearing apart the discipline of Catholic bodies – that is, the transformation of the family model itself in all highly modern societies. Sociologists have provided many descriptions of the major revolution which Louis Roussel has called “l’avènement de la famille relationnelle” (the advent of the relational family). Since the beginning of the 1960s, this revolution has progressively ensured the primacy of relationships between individuals based upon a system of status and position rooted in the alleged “natural” differences between the sexes and between ages. The mastering of reproduction has clearly played a central part in this revolution, in effectuating the separation of the notions of marriage and procreation. Its direct outcome was the pluralisation of family models, an evolution that law could not continue to ignore: in modern Western societies, it is no longer the case that a marriage creates a couple, but rather that couples’ lives ultimately shape what is conceived of as marriage.

These three processes of change (the expansion of rights equality into the private sphere; the deconstruction of evidence of the “natural order”; the relationship between individuals serving as the only basis for the institution of marriage) have crystallised into the claim for legal recognition of same-sex marriage and adoption for gay couples.

Faced with this demand, the Church has once again revisited a discourse developed in the past, with the aim of opposing progress concerning women working outside the home, and refusing any notion of divorce by mutual consent. The arguments about the collapse of family links and the destruction of civilisation seem familiar...

If we consider the weakness of the Church’s influence in French society at this point in time, it is highly unlikely that it has any chance, with these kinds of arguments, of holding back societal evolution. The effectiveness of this strategy is even less plausible because the Church of France is also counting on its social work against discrimination and inequality serving to preserve its ethical magisterium in spheres beyond the ever-diminishing circles of practising Catholics. The Church’s concern regarding the possibility of preserving this (quite real) capital of influence has been apparent in recent months, most significantly in its discretion in relation to same-sex marriage after the law was voted in. As impressive as the demonstrations against same-sex marriage were, and despite the strong participation of militant Catholics, the Church is acutely aware of the harsh realities of its cultural situation. It also knows that, by prioritising an intransigent line of action, it could easily weaken its appeal to the sympathetic networks – not necessarily networks of practicing Christians, but those maintaining an affinity with Christian values – which are the greatest supporters of its influence in a secularised society. For that reason, a good number of priests and even bishops have chosen to distance themselves from the recent debates. They even admit, albeit in private, how anxious they are in relation to the possibility of saving the symbolic capital of the Church, when same-sex marriage will definitely be accepted by the broader public (and they know very well that this is already the case). The Pope’s approach (“Who am I to judge them?”) has of course given strong encouragement to this cautious attitude.

In this context, the question is not whether the Church will win or lose: it is quite clear that it has already lost. Nor is it a question of internal balance between those in favour of same-sex marriage and those who continue to fight it. The most crucial issue for the Church is to find a dignified way to get out of the trap. Its greatest challenge lies in its capacity to produce a discourse that is able to make

sense of the transformations that have taken place in the societal understanding of marriage, family and parenthood. A discourse, for example, that takes into account the equal recognition due to every individual, from a Christian point of view, regardless of his or her sexual preference or orientation. Such a discourse could also take into account the issues at stake in adoption, if the Church admits that all parents – even biological parents – in a sense must “adopt” their own children, with a view to avoiding any possible drifts towards the notion of “the right to have a child”. If, on issues such as these, the Catholic Church is unwilling or unable to formulate a response beyond calls for a return to the traditional/”natural” order, it is highly plausible – from a sociological point of view – that the same-sex marriage issue could have as much of a devastating effect as the publishing of the encyclical *Humanae Vitae* in 1968: an encyclical which served as a crucial benchmark on the Church’s path, leading away from contemporary culture, in France as in all Western countries.

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