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BRITISH COLUMBIA: THE CASE AGAINST POLYGAMY

SUMMARY

The recent polygamy trial in British Columbia brought together a group of distinguished scholars to document harms of polygamy, including Joseph Henrich, a psychology professor at the University of British Columbia, Rose McDermott, a political science professor at Brown University, Shoshana Grossard, an economics professor at San Diego State University, Rebecca Cook, a law professor at the University of Toronto, Dena Hassouneh, a nursing professor at Oregon Health & Sciences University, and Susan Stickevers, a medical doctor at the Stony Brook University Medical Center. The judge's ruling (<http://www.courts.gov.bc.ca/jdb-txt/SC/11/15/2011BCSC1588.htm>) thus offers quick access to the empirical Case Against Polygamy, which this brief summarizes.

BACKGROUND

In 1890, the Canadian Parliament outlawed the practice of polygamy. In 2009, the government of British Columbia submitted two questions to the provincial supreme court about the law. Specifically, they asked whether the prohibition was consistent with the Canadian Charter of Rights and Freedoms and whether the law could be construed to only prohibit polygamy where there were some additional factors such as involvement of a minor or abuse.

The national and provincial attorneys general argued in favor of the law and a court-appointed amicus took the opposite view. A number of other organizations made submissions to the court including, prominently, the Canadian Polyamory Advocacy Association.

On November 23, the British Columbia Supreme Court ruled that the longstanding law criminalizing the practice of polygamy in Canada did not conflict with Canada's Charter of Rights and Freedoms.¹

The bulk of the court's opinion is taken up with three elements: a thorough review of historical context, a detailed description of the evidence provided to the court on the potential harms of polygamy, and the legal analysis of the parties' claims.

This briefing paper will focus on the case the court lays out for the proposition that polygamy is harmful based on a significant body of research evidence. The court heard from a series of experts who had either reviewed relevant social science literature or conducted their own analysis of relevant data.

EVIDENCE ABOUT POLYGAMY

One key witness was Dr. Joseph Henrich, Associate Professor in the Psychology and Economics Department of the the University of British Columbia. The court noted Dr. Henrich “holds a prestigious Tier 1 Canada Research Chair in Culture, Cognition and Evolution.” The court qualified him as an expert in evolutionary psychology, economics, anthropology, and “the interdisciplinary field of culture, cognition and co-evolution.” Dr. Henrich had “over the course of four months, conducted an extensive review of the academic literature on polygyny in the sciences and social sciences.”

Dr. Henrich described three consequences of polygyny—“creation of a pool of unmarried low-status men,” decreased “male parental investment” in children, and increased demand for women leading to lower marriage age and increased inequality between men and women.

The court summarized key aspects of Dr. Henrich’s testimony as follows:

In his report, Dr. Henrich presents evidence that monogamous marriage decreases crime rates for individual men and that unmarried men commit more, and more serious, crimes than married men. He then examines three different approaches to see whether these individual effects aggregate to create societal level impacts on crime rates where the number of unmarried men increases, as it must where polygyny is practiced on a wide scale.

Dr. Henrich begins with an ample body of research that shows marriage makes men much less likely to commit crimes such as murder, robbery and rape. One such study showed that marriage reduced a man’s likelihood of committing a crime by 35%. This study was particularly compelling as it did not simply compare the criminality of married and unmarried men, but used longitudinal data to track boys from a reform school from age 17 to 70. In this study, crime rates not only decreased when those men were married, but increased when they divorced or were widowed. Other studies are consistent in showing the association between monogamous marriage and decreased male criminality. . . .

[T]he cross-country comparison, indicates that greater polygyny is associated with higher rates of murder and rape to a statistically significant degree. These results occur even where GDP per capita and “being an African country” are controlled for.

On the second point:

The patterns observed in recent studies of polygamous African societies are similar. The seven studies of this nature cited by Dr. Henrich reported that “children of polygynous families are at increased risk of diminished nutritional status, poor health outcomes, and mortality” (at 47). One study found that amongst the Dogon of Mali, even though per capita resources were equivalent between monogamous and polygamous households, children under age 10 in polygynous households were 7 to 11 times more likely to die.

In terms of effects on women:

First, Dr. Henrich describes a study that compared highly polygynous African countries (more than 10% of men are married polygynously) to less polygynous African countries, as well as comparable monogamous countries (which were developing countries outside Africa between 20 degrees north and south

latitude). This study showed that the age of first marriage for women was lowest in the highly polygynous countries at 19.9. By comparison, the age of first marriage in less polygynous countries was 22.7 and in comparable monogamous countries it was 25.0. The age gap for marriage between a man and his first wife also increased from 2.7 years in the comparable monogamous countries to 3.9 years in the less polygynous countries to 6.4 years in the highly polygynous countries.

Describing case studies “which compare monogamously married people to polygynously married people in the same societies:”

These case studies all consistently showed that polygyny drives down the age of first marriage for women and increases the age gap between husbands and wives, although in some cases the difference was slight. They also showed an effect specific to polygynous marriages, in that men marrying polygynously seemed to select younger girls as wives compared to monogamists, both in absolute and relative terms.

Finally, Dr. Henrich uses sex ratios as a proxy to determine the effects of polygyny on women. This work is based on the assumption that sex ratios favouring males will mirror the effects of polygyny by similarly increasing the competition among men for wives.

The empirical evidence bears out the prediction of increased control over women. As women become scarce they tend to be viewed as commodities. This is shown by increases in fertility rates and reductions in divorce rates, both of which reflect male control. One study showed that rich families in China acquired infant girls to assure their sons would have wives in the future. Another showed that in some regions of India more than half of females were married before age 15.

Furthermore, these patterns are also evident in highly developed countries. In one study where the sample was biased towards more developed countries (as they are more likely to report the needed data), higher sex ratios predicted lower participation of women in the labour force, lower illegitimacy rates, and lower divorce rates (all illustrating male control). When the sample was limited to more developed countries, sex ratio had a greater effect in all indicators other than participation in the labour force. Overall, according to this study, higher sex ratios predict a lower age at first marriage for women, as well as higher fertility rates and lower literacy.

The court also addressed evidence related to the potential for the practice of polygamy to spread in Canada noting that in France, because of immigration: “By the 1990s, more than 200,000 people were living in polygynous families in France.”

Another key witness was Dr. Rose McDermott, Professor of Political Science at Brown University. She also received a master’s degree in Experimental Social Psychology from Stanford University and had “studied polygyny for the past ten years.”

The court described the key findings of Dr. McDermott’s literature review:

Women in polygynous relationships are at increased risk of mental health problems as a result of higher rates of domestic violence, including sexual abuse, and co-wife conflict. They also tend to fare worse financially.

Children of polygynous unions have worse outcomes than their monogamously born counterparts, as measured in a variety of ways. They face a higher risk of mortality. Young girls are often married to much older men and engage in early sexual behaviour, which has repercussions for their life expectancy and physical well-being. Where girls give birth frequently, shortened inter-birth intervals pose a heightened risk for various problems which can affect both the mother and the child.

As for effects on men, Dr. McDermott notes that polygyny causes the proportion of young unmarried men to be high, up to a ratio of 150 men to 100 women. This leads to a need for a polygynist community (at least a closed one) to excise at least half of the junior boys, the so called "Lost Boys". "Junior boys who are thrown out of such societies at much greater rates in order to make a sexually asymmetrical system viable, often receive less education and achieve lower levels of employment, as they are forced onto a society with few skills and no social support" (at para. 33).

Junior males who are unable to find wives represent "a class of largely poor, young, unmarried men who are statistically predisposed to violence" (at para. 34).

The court noted Dr. McDermott had performed a statistical analysis on "ten years of data collection regarding women and children in over 172 countries" in the WomensStats Project Database. The court identified the results of her analysis:

- a) As polygyny in a society increases, the discrepancy between law and practice concerning women's equality also increases;
- b) Women in polygynous states have more children on average than women in less polygynous states. This trend holds true for girls/women between the ages of 15 and 19;
- c) Polygyny exerts an effect on children's welfare. Girls and boys are both less likely to receive primary or secondary education as polygyny becomes more frequent. The effect is most pronounced for both genders with respect to secondary education;
- d) Increased polygyny heightens the difference in the occurrence of HIV infection between women and men; women become more likely relative to men to suffer from HIV as polygyny becomes more common;
- e) As polygyny increases, the average age at which women marry declines substantially;
- f) Maternal mortality increases dramatically as the degree of polygyny increases;
- g) Women in states with greater polygyny die at a younger age on average. This is likely, at least in part, because they are more likely to die in childbirth, as noted;
- h) As polygyny becomes more frequent, sex trafficking becomes more prevalent;
- i) As polygyny becomes more frequent, female genital mutilation increases;
- j) Women sustain greater domestic violence in polygynous societies;

- k) Differential legal treatment of women relative to men increases, to the detriment of women, in more polygynous societies;
- l) States with higher levels of polygyny spend more money per capita on defence, particularly on arms expenditures; and
- m) States with higher levels of polygyny display fewer political rights and civil liberties for both men and women than those with less polygyny.

Dr. McDermott testified before the court:

Based on the best data available to date in the world, including the majority of countries across the globe, I find that in polygynous societies, women sustain more physical and sexual abuse. They have more children, are more likely to die in childbirth, and live shorter lives than their counterparts in more monogamous societies. In polygynous societies, women are more subject to sex trafficking and female genital mutilation while receiving less equal treatment than men, and encountering more discrimination under the law. In addition, girls are less likely to be educated, restricting a key component allowing for upward mobility and economic independence. In societies with high rates of polygyny, up to half of the boys are ejected from their primary communities, with incalculable effects on them. Moreover, the average individual in a polygynous society has fewer liberties than the average individual in a state which prohibits polygyny. A polygynous state spends more on average on defense, leaving fewer resources available for building domestic infrastructure, including projects devoted to health and education. This is quite a diverse set of effects, confirming the wide-ranging consequences of polygyny in societies in which women live as enforced second class citizens, and the states of which they are a part.

Importantly, the court noted: “Dr. McDermott’s analysis demonstrates that statistically, the harms of polygyny do not depend upon a particular regional, religious or cultural context. They can be generalized, and they can be expected to occur wherever polygyny exists.”

Dr. Shoshana Grossbard provided testimony based on her analysis of data on the practice of polygyny. Dr. Grossbard is Professor of Economics at San Diego State University. She had “studied the economic effects of polygamy for the past three decades.”

The court described her findings:

Dr. Grossbard states that while polygamy increases male competition over women and, thus, increases the value of women in the marriage market, women in polygamous societies do not necessarily capture this added value. Instead, men manipulate social institutions in ways that facilitate their control of women and prevent women from capturing what would otherwise be their value in the marriage market. . . .

Dr. Grossbard cautions that it is not known whether polygamy causes these institutions or whether causality runs the other way. Nevertheless, it is revealing, she states, that crossculturally polygamy is associated with a large number of undesirable features.

Dr. Grossbard also refers to a number of other negative consequences of polygamy, which include widowhood, since husbands are frequently

considerably older than their wives; lower investment in children's human capital, as men tend to invest their resources in having more children as opposed to fewer children with higher levels of investment; and, greater health problems in children.

Another witness, Dr. Rebecca Cook, described the literature on harms to women stemming from polygyny. Dr. Cook is Chair in International Human Rights Law of the Faculty of Law, University of Toronto.

Dr. Cook's report prepared for the court said:

- a) Competition for material and emotional access to a husband can lead to fractious cowife relationships. Jealousy, tension, strain and competitiveness are common among co-wives;
- b) Women in polygynous families face increased family stress, depressive disorders, low self-esteem, feelings of disempowerment, and risks of physical and mental violence;
- c) Women and girls may face greater exposure to sexually transmitted diseases, particularly in areas with high HIV/AIDS prevalence rates;
- d) Polygyny often results in economic deprivation for women when resources are inequitably divided or simply insufficient;
- e) The primary harm to children raised in polygynous families is their exposure to, and potential internalization of, harmful gender stereotypes. As well, when practiced in a closed or semi-closed community, the demographic pressure to maintain an unequal sex ratio leads to an ongoing need to prepare adolescent girls for entry into plural unions and boys for their potential expulsion. Early marriage and pregnancy have negative health implications for girls, and also significantly limit their socio-economic development.
- f) Adolescents from polygynous families have lower levels of socio-economic status, reduced academic achievement and self-esteem, and higher levels of reported family dysfunction and drug use than their counterparts in monogamous families. One explanation for these differences is the higher levels of jealousy, conflict, tension and emotional stress in polygynous families. In particular, rivalry and jealousy among cowives can cause significant emotional problems for children. The inability of fathers to give sufficient affectionate and disciplinary attention to all of their children can further reduce children's emotional security.

Dr. Dena Hassouneh, Associate Professor in the Oregon Health & Sciences University School of Nursing and 2011 Macy Faculty Scholar, testified specifically on the literature about polygamy among Muslims and said there were key patterns.

The court's summary of her evidence identified:

- a) A consistent pattern of emotional distress and disabling psychiatric symptoms among women in polygamous marriages, particularly among senior wives;
- b) Poorer marital satisfaction, self-esteem and life satisfaction, and greater vulnerability to domestic violence;
- c) Higher likelihood of contracting sexually transmitted diseases;

- d) Poorer psychiatric, social and academic outcomes in children;
- e) Decreased access to paternal time and resources by children; and
- f) Jealousy and competition between co-wives.

Dr. Susan Stickevers, Physical Medicine/Rehabilitation Program Director at the Stony Brook University Medical Center, testified about the effects of polygyny on women.

The court's opinion quoted her affidavit:

- Higher rates of depression in senior wives in polygamous marriages
- Higher rates of anxiety in senior wives in polygamous marriages
- Higher rates of psychiatric hospitalization and outpatient psychiatric treatment for polygamous wives
- Higher rates of marital dissatisfaction for polygamous wives
- Lower levels of self esteem observed in wives in polygamous marriages
- Higher levels of somatization observed in wives in polygamous marriages
- Lower levels of academic achievement and more difficulty with mental health and social adjustment in the children of polygamous families.

MONOGAMY AND WESTERN CIVILIZATION

An important feature of the court's opinion is its findings relevant to the importance of monogamous marriage to Western civilization.

Dr. Henrich, whose submissions to the court were highlighted above, testified: "the anthropologically peculiar institution of imposed monogamous marriage may be one of the foundations of Western civilization, and may explain why democratic ideals and notions of human rights first emerged as a Western phenomenon."

The court stressed this point throughout the opinion. For instance, in the history portion of the opinion, the court said:

As I said above, the prevailing view through the millennia in the West has been that exclusive and enduring monogamous marriage is the best way to ensure paternal certainty and joint parental investment in children. It best ensures that men and women are treated with equal dignity and respect, and that husbands and wives (or same sex couples), and parents and children, provide each other with mutual support, protection and edification through their lifetimes.

In responding to criticisms that the prohibition of polygamy was arbitrary "line-drawing", the court explained: "this line reflects, again, the pre-eminent place that the institution of monogamous marriage takes in Western culture and, as we have seen, Western heritage over the millennia." Also, in explaining the justifications for the law that outweigh any potential infringement of the rights of those who seek to practice polygamy, the court said: "in my view, the salutary effects of the prohibition far outweigh the deleterious. The law seeks to advance the institution of monogamous marriage, a fundamental value in Western society from the earliest of times. It seeks to protect against the many harms which are reasonably apprehended to arise out of the practice of polygamy."

CONCLUSION

Although the court found the prohibition of polygamy impacted the religious liberty of some who would practice it for religious reasons, it ultimately sustained the validity of the law because the serious harms of polygamy outweighed what the court considered “minimal” impairment of religious freedom.

This opinion has provided a very strong case against polygamy bolstered by powerful evidence. As the court explained: “I have concluded that this case is essentially about harm; more specifically, Parliament’s reasoned apprehension of harm arising out of the practice of polygamy. This includes harm to women, to children, to society and to the institution of monogamous marriage.”

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NOTES

¹ Reference re: Section 293 of the Criminal Code of Canada, 2011 BCSC 1588, British Columbia Supreme Court, November 23, 2011 at <http://www.courts.gov.bc.ca/jdb-txt/SC/11/15/2011BCSC1588.htm>.