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Response to Reviewers of *The Western Case for Monogamy over Polygamy*

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Abstract

This brief response highlights parts of the Western story of monogamy versus polygamy that still need to be told, and responds to the reviewers' question whether the legalization of same sex marriage will lead necessarily to the legalization of polygamous marriages.

Keywords: Polygamy; same-sex marriage; common law; constitutional law; privacy; harm to women; harm to children; self-determination; religious freedom; sexual liberty; sexual morality.

It's a relief to survive the strict scrutiny of these five great scholars of history, constitutional law, family law, religious law, and religious liberty. These are the five main disciplines, alongside theology, that are at the methodological heart of this book. I thank the editors for inviting such apt reviewers, and I thank the reviewers even more for their generous words and searching commentary.

I am especially grateful that all five reviewers have taken the book for what it was intended to be: the first attempt at a comprehensive history of the Western arguments against polygamy – “starting with the Garden and its apparently monogamous lovers,” noted by John Coons, and ending with the modern sexual revolution in America and Europe, outlined by Robin Wilson, Norman Doe, and Richard Garnett. Though parts of this history have been well told, including in Sara McDougall's splendid treatment of medieval bigamy, no book in a Romance language has tried to tell the full Western story of monogamy versus polygamy from antiquity until today.

There's still much more historical and comparative work to be done, of course, as Professors McDougall and Doe properly point out. I have mined the Hebrew Bible passages on marriage, but only scratched the vast scholarship on the Talmud let alone later Judaism. I read all the Church Fathers on point, but had to leave behind most of the distinct and interesting Orthodox Christian teachings on marriage. The surviving Roman, Germanic, and medieval legal sources on polygamy were thin and sporadic enough to allow me to hazard some generalizations for the first 1500 years of the common era. But with the invention of the printing press in the fifteenth century and the breakdown and colonization of Western Christendom thereafter, the primary sources

became far too dense and diverse to analyze in full. The book offered only a few sample studies of civil law lands and their colonies, knowing that we really need comprehensive studies on monogamy versus polygamy in all Western civil law lands from 1500 on. I did more with Anglo-American common law teachings and cases on monogamy versus polygamy. But there are 53 British Commonwealth countries with common law systems that deserve thorough treatment, and all 121 of the 198 countries with anti-polygamy laws in place today also deserve close analysis. Moreover, as Robin Wilson points out, social scientists and comparative lawyers need to do a lot more to document the actual practice of polygamy historically and today. And as Richard Garnett and Norman Doe make clear, Western Christian theologians need to do a lot more theological and canonical work as they encounter polygamy anew in the rapidly Christianizing Global South. The best compliment to this book would be to see a whole series of new studies that fill in and filigree this historical story much more fully.

Professors Wilson, Doe, and Garnett all predict that the Western battles about same-sex marriage will soon give way to legal arguments for polygamy. And they see in this book useful normative frameworks to steady and strengthen some of the loose church canons and creaky state precedents against polygamy. The Western battles over polygamous marriage are in fact starting. When I started the book six plus years ago, *Windsor* was only a dim speck on the horizon, and nobody had heard of *Obergefell*. Now the United States and several other Western lands have legalized same-sex marriage – with astonishing speed. Pro-polygamists are scrambling aboard that same bullet train of liberty, equality, and self-determination. The first cases challenging the constitutionality of anti-polygamy laws have been filed in North America and Europe, with an early win in Utah. The first rounds of public debate about the legality of polygamy have appeared in elite Western newspapers, journals, and social media, with many writers favoring polygamy. The first wave of popular media portrayals of good polygamous families has now broken with record audiences tuning in. Traditional criminal prohibitions against adultery, abortion, contraception, and sodomy have all been struck down, many now argue. Criminal prohibitions against polygamy must be repealed, too. Same-sex marriage is now constitutionally protected. Polygamous marriage must now be allowed, too.

But the legalization of polygamy is neither inevitable nor advisable, I submit, despite the legalization of same sex marriage and liberalization of other sexual mores and relationships. Traditional Western prohibitions on same-sex relationships and many other sexual crimes were largely biblical in origin, and they have fallen aside as biblical faith has waned and constitutional liberties have waxed. But the Western legal tradition's prohibitions on polygamy were both pre-Christian in origin and post-Christian in operation, and now serve to enhance rather than erode constitutional liberties, especially those of women and children.

I say “pre-Christian” because the Bible has no clear prohibition against polygamy, and counts more than two dozen polygamists among the leaders of the faith. The Mosaic law countenanced polygamy in cases of seduction, enslavement, poverty, famine, or premature death of one's married brother. The New Testament said nothing

about polygamy, save in requiring that a bishop or deacon be “the husband of one wife,” and a deaconess “the wife of one husband.” The church was thus rather slow to ban polygamy, even though it quickly condemned many other sexual practices as unbiblical and immoral – fornication, adultery, prostitution, abortion, infanticide, incest, sodomy, transvestism, and more.

It was the “pagan” Greeks of the fifth century b.c.e. who first declared polygamy to be a form of “domestic tyranny.” And it was the “pagan” Roman emperors who first criminalized polygamy in 258 c.e. -- more than a century before they established Christianity and nearly a millennium before church authorities finally issued comparably firm prohibitions in its canon law. The high medieval Catholic Church and early modern Protestant churches, too, eventually made these anti-polygamous sentiments a part of their theology, morality, and church law. They added their own deep arguments that marriage was created as a “two in one flesh” union of male and female, modeled on God’s covenantal love for the elect and Christ’s sacramental love for the church. But Christianity was more of a carrier than inventor of the West’s criminalization of polygamy.

Because of this, the West’s anti-polygamy stand became decidedly “post-Christian” as well. Long after they disestablished Christianity, Europe and North America remained firmly opposed to polygamy. Indeed, some of the strongest Western arguments came from Enlightenment liberals, who firmly rejected Christian theology, but also firmly rejected polygamy as a betrayal of reason, nature, utility, fairness, liberty, and common sense. And, they marshaled their strongest anti-polygamy arguments not so much against secular sexual libertines as against avant-garde Christians who were pressing the case for polygamy as a cure for all manner of sexual, social, and psychological ills both at home and on the mission field.

Historical social observers of polygamy and modern social scientists alike have emphasized the serious harms too often associated with polygamy. Young women are harmed because they are often coerced into early marriages with older men. Once pushed aside for a rival co-wife, women are reduced to rival servants or slaves within the household. They are then exploited periodically for sex and procreation by detached husbands. They are forced to make do for themselves and their children with dwindling resources as still other women and children are added to the household against their wishes. If they protest their plight, if they resort to self-help, if they lose their youthful figure and vigor, they are often cast out of their homes -- impoverished, undereducated, and often incapable of survival without serious help from others.

Children are harmed, these same historical and modern observers continue, because they are often set in perennial rivalry with other children and mothers for the affection and attention of the family patriarch. They are deprived of healthy models of authority and liberty, equality and charity, marital love and fidelity, which are essential to their development as future spouses, citizens, and community leaders. And they are harmed by having too few resources to support their nurture, education, care, and preparation for a full and healthy life as an adult.

Men are harmed by polygamy, too. Polygamy promotes marriage by the richest not necessarily the fittest men in body, mind, or virtue. In isolated communities, polygamy often leads to ostracism of rival younger men, the “lost boys” who have fewer marital opportunities and are often consigned to seduction, prostitution, and other untoward sexual behavior. Polygamy inflames a man’s lust, for once he adds a second wife, he will inevitably desire more, even the wife of another. And polygamy deprives men of that essential organic bond of exclusive marital companionship and friendship, which ancients and moderns alike say is critical to most men’s physical, psychological, moral, and even spiritual health.

Even the biblical titans of faith who practiced polygamy did not fare well. Think of the endless family discord of Abraham with Sarah and Hagar, or Jacob with Rachel and Leah. Think of King David who murdered Uriah the Hittite to add the shapely Bathsheba to his already ample harem. Or King Solomon with his “thousand wives,” whose children ended up raping, abducting, and killing each other, precipitating civil war in ancient Israel. Small wonder that the Hebrew word for “second wife” (*tzarah*) literally means “trouble.”

The Western legal tradition has thus long regarded polygamy as a “*malum in se*” offense -- something “bad in itself.” Other *malum in se* offenses today include slavery, sex trafficking, prostitution, indentured servitude, obscenity, bestiality, incest, sex with children, self-mutilation, organ-selling, cannibalism, and more. Polygamy is usually regarded as less egregious than some other offenses on this list. But polygamy is too often the cause, consequence, or corollary of other wrongdoing, and thus remains a crime in all Western lands. That someone wants to engage in these activities voluntarily for reasons of religion, bravery, custom, or autonomy makes no difference. That other cultures past and present allow such activities makes no difference. That these activities don’t necessarily cause harm in every case also makes no difference. For nearly two millennia, the Western legal tradition has included polygamy among the crimes that are inherently wrong -- because polygamy routinizes patriarchy, jeopardizes consent, fractures fidelity, divides loyalty, dilutes devotion, fosters inequity, promotes rivalry, foments lust, condones adultery, confuses children, and more. Not in every case, to be sure, but in enough cases to make the practice of polygamy too risky to condone as a viable legal option.

Furthermore, allowing religious polygamy as an exception to the rules is even more dangerous, the Western tradition has concluded, because it will make some churches, mosques, tribes, and temples a law unto themselves, and sometimes a danger to the state and society. It is notable that no religious community in the West today regards polygamy as an absolute religious requirement. It’s a custom not a command, an option not an obligation, for the faithful. It is also notable that some Western communities that once preached and practiced polygamy, namely, Jews and Mormons, have now rejected the practice. It is even more notable that polygamy is a shrinking practice in the Muslim world, even though 53 of the 55 Muslim-majority nations today still allow the practice.

But even if polygamy were a religious command, modern Western constitutional laws still empower states to prohibit behavior that the states consider harmful or

dangerous. Again, some religious communities and their members might well thrive with the freedom to practice polygamy. But, inevitably, closed repressive and isolated regimes, like Anabaptist Münster in the sixteenth century or the Fundamentalist Mormon communities in North America today will also emerge—with underage girls duped or coerced into sex and marriages with older men, with women and children trapped in sectarian communities with no realistic access to help or protection from the state and no real legal recourse against a religious community that is following its own rules. The West prizes liberty, equality, and consent too highly to court or countenance such a risk.