Creating, Challenging, Imposing, and Defending the Marriage “Fortress”
“Marriage ‘Fortress’ Guards Way of Life”; this was the headline of a 3 June 2006 editorial by Ted Byfield in the *Calgary Sunday Sun*. The highlighted quotation read, “A viable society depends on stable families, which depend on stable marriages.” The next day marriage was once again on the front page, this time in Toronto’s *Globe and Mail*, as Prime Minister Stephen Harper had announced that Members of Parliament would vote in the fall on a motion asking if they wanted to reopen debate on the contentious issue of same-sex marriage. That same month President George W. Bush called for a ban on same-sex marriage in the United States. Conservative authors, politicians, and religious leaders in North America are continually informing us that we are living at a time of profound social and cultural crisis, when the erosion of the institution of marriage is eating away at society’s very foundations. They insist on one definition of marriage, the union of one man and one woman (hopefully for life) to the exclusion of all others: a definition represented as ancient, universal, and founded on “common sense.”
Behind such notions is a wistful nostalgia for an imaginary simpler time, when gender roles were firmly in place with the husband as family head and provider, and the wife as the dependent partner—obedient, unobtrusive, and submissive. According to Byfield, marriages used to be more stable because nearly every family depended on one income, so that the “rival interests of two competing careers did not constantly work to tear the marriage apart.” He also blamed women for the majority of divorces as he found they tended to be the ones to kick out their “astonished and utterly devastated husband[s]” simply because they are “disillusioned” or have “disappointed expectations.” Marriage has been a powerful tool for shaping the gender order; those who bemoan the erosion of marriage mainly regret the erosion of the powerful husband/dependent wife model.

A main point of this study is that the “traditional” definition of marriage is not as ancient and universal as conservative thinkers typified by Ted Byfield would have us believe. In *Public Vows: A History of Marriage and the Nation*, a 2000 study that focuses on the United States, Nancy Cott argues that the Christian model of lifelong monogamous marriage was not a dominant worldview until the late nineteenth century, that it took work to make monogamous marriage seem like a foregone conclusion, and that people had to choose to make marriage the foundation for the new nation.2 Even then, Cott argues, this dominant monogamous vision was contested, demonstrating how legislation, court cases, and community pressure curbed and contained alternative forms of marriage. By the late nineteenth century there was much less flexibility in the meaning of marriage, and far fewer alternatives to monogamy. Relations between a wife and husband were more starkly inequitable than ever before. Gender is at the heart of Cott’s analysis; marriage forged meanings of men and women, and the state shaped the gender order through the imposition of a particular model of marriage. Cott writes: “the whole system of attribution and meaning that we call gender relies on and to a great extent derives from the structuring provided by marriage. Turning men and women into husbands and wives, marriage has designated the way both sexes act in the world.”3 Cott also argues that to be interested in American identity is to be interested in marriage. Marriage served as a
metaphor for voluntary allegiance and permanent union, the foundation for national morality. This was contrasted with the evils of other models of marriage and governance such as polygamy and despotism.

My study shows that marriage was also part of the national agenda in Canada—the marriage “fortress” was established to guard our way of life. To be interested in Canadian identity is to be interested in marriage. In the late nineteenth century there was widespread anxiety about the state of marriage, family, and home: all perceived to be the cornerstones of the social order. The very foundation of the nation was thought to be under threat. The remedy was to shore up the fortress of marriage, permitting no deviations, no divorce, and no remarriage, thereby ensuring “the maintenance within Canada of the purity of the marriage state,” and protecting Canadians from the adoption of the “demoralizing and degrading” marriage and divorce laws of the United States. Indeed, it was considered vital to defend the “fortress” of Canadian marriage in North America against the pernicious, corrupt, and immoral influence of the United States, where it was understood that the marriage tie was loose and lax. Canada would not repeat the American mistake. Canada would protect its marital purity. Politicians, social reformers, and judges widely agreed that marriage was a sacred institution that supported the whole social fabric and was essential to peace, order, and good government in Canada. It would be a “deadly stab upon the constitution of the Dominion” to relax laws of marriage and divorce.

Western Canada presented particular challenges to the national agenda in the late nineteenth century, as the region was home to a diverse population with multiple definitions of marriage, divorce, and sexuality—the Christian, heterosexual, and monogamous ideal had to be made the sole option. Historian Adele Perry has suggested that the term “Christian conjugality—by which I mean lifelong, domestic, heterosexual unions sanctioned by colonial law and the Christian church” best describes the model of marriage that missionaries and others sought to impose on this diversity. Before the late nineteenth century, the predominance of this model was not a foregone conclusion, and many marriages departed from the often-quoted “classic” nineteenth-century definition of marriage presented by the English judge, Sir James O. Wilde (Lord
Penzance). He wrote, “Marriage, as understood in Christendom may... be defined as the voluntary union for life of one man and one woman, to the exclusion of all others.” In Western Canada, however, there existed diverse forms of marriage among Aboriginal people, including monogamy, polygamy, and same-sex marriage, and no marriage needed to be for life as divorce was easily obtained and remarriage was accepted and expected. There were varied types of marriages to be found in the interracial “fur-trade” society, and many Métis marriages drew on Aboriginal precedent and reflected the same flexibility, but some also drew on the informal means of gaining community sanction for divorce and remarriage that persisted in Europe to the mid-nineteenth century.

New arrivals to the west had marriage laws and domestic units that departed from the monogamous model. These multiple definitions of marriage and family formation posed a threat, endangering convictions about the naturalness of the monogamous and nuclear family model. Among these newcomers, the Mormons, who practiced polygamy, were the clearest example of those who challenged the monogamous ideal, but there were others with alternative views of marriage and divorce. Some groups wished to alter relations between men and women, providing more options and freedom for women than were permitted under the monogamous model. The preponderance of single men among the immigrants represented yet another threat to the heterosexual monogamous order as the foundation for the nation. Single women, although present in much smaller numbers, were also a menace to this foundation. Perceived as the most dangerous set of “others,” however, were the large numbers of Americans who poured north into Canada’s West, providing models of alternative approaches to marriage and divorce.

As in other British colonial settings, architects of this new region of Canada were determined to proclaim that their heritage was the most “civilized” and advanced. Claiming to have superior marriage laws that supposedly permitted women freedom and power was (and continues to be) a common boast of imperial powers. As historian Bettina Bradbury has shown in her study, “Colonial Comparisons: Rethinking Marriage, Civilization and Nation in Nineteenth-Century White Settler Societies,” colonial politicians distinguished the “civilized heritage” of their marriage
laws from that of “ancient barbarians, ‘heathens,’ and other peoples they characterized as uncivilized. They also took pains to dissociate their own future from what they represented as the dangerous results of marriage regimes in some other Western societies.” The United States was an example to be avoided. The politicians and other makers of Western Canada confronted and had to fight off alternative marriage laws on all fronts—from the ancient inhabitants, from the Métis who were the offspring of two hundred years of intermarriage, from newly arriving European immigrants and from the US. “Proper” marriage would help maintain the new settlers’ social and sexual distance from the Aboriginal population, and it would forge the new settler identity. Insisting on the superiority of British, Christian and common-law marriage played a critical role in the forging of a British Canadian identity in Western Canada, and it also played a critical role in the consolidation of state power in that region.

A variety of forces combined to contain and undermine alternative logics and to ensure the ascendancy of the monogamous, intra-racial model in Western Canada, seen as vital to the stability and prosperity of the newest region of the Dominion. As Sylvia Van Kirk has shown, hostility and prejudice toward the marriages of Aboriginal women and non-Aboriginal men grew from the mid-nineteenth century. These attitudes were exemplified in colonial discourses that denounced race-mixing, in the courts, and in missionary circles. Advice books and works of fiction, along with journal and newspaper articles, all further promoted the monogamous model as the key institution to ensure the status and happiness that white women enjoyed. Through sermons, missionary work, lay organizations, and publications, the dominant Christian churches also promoted this ideal. Single and divorced women were stigmatized while sympathy was expressed for the lonely, unkempt bachelors of the west who needed wives to transform their lives and farms.

Federal land laws deliberately fostered “family farms,” with the monogamous couple at the core of the vision. Single women were excluded

> The ideal building block for Western Canada: the monogamous couple. Mary and Robert Jamison’s wedding portrait, c. 1879, when the new Mrs. Jamison was sixteen. The Jamisons came from Ontario in 1884 and settled in the Pine Creek, Alberta area. (GAA NA-3571-13)
from qualifying for homestead land as this permitted women an opportunity to be free of marriage. Instead, single white women were imported into the region in large numbers, as domestics, but also as wives and mothers of the “race.” Federal legislation was introduced to prohibit alternative marriages, such as Mormon polygamy, while North-West Territories legislators moved to legalize Doukhobor and Quaker marriage in order to draw these groups into the obligations and responsibilities set by the state for married people. The enforcement of bigamy laws, and the near impossibility of divorce in Canada, also ensured the ascendancy of the monogamous model. The Canadian monogamous model of marriage, idealized as an institution that cherished and elevated women, left many people impoverished and alone, often with children to support. They were unable to get a divorce from a spouse who deserted them, or to remarry even after years of desertion or separation. There were many unhappily “attached” yet unattached people throughout the west, and the greater burden fell on deserted wives.

In the more heavily populated areas of Canada, this widespread anxiety about the state of marriage has been attributed to fears of a disintegrating social order in the wake of industrialization, rural depopulation, and urbanization. In Western Canada, however, there were different reasons for anxiety over marriage. It was a region undergoing colonization, and in most areas Aboriginal people outnumbered Euro-Canadian colonizers at the outset of the time period examined in this study. Before that there had been a period of over two hundred years when Aboriginal women had married European and Canadian men, and their offspring had married and mingled, creating a sizeable Métis population. Interracial marriage was deprecated in the post-1870 order, however, and a continual thread running through this study is the persistent calls for legislation that would prohibit and police such unions. The monogamous white husband-and-wife team was to be the basic economic and social building block of the west. They were to help produce not only crops, but also the future “race” of Canadians who would populate the west. The health and wealth of the new region, and that of the entire nation, was seen as dependent on the establishment of the Christian, monogamous, and lifelong model of marriage and family—the “white life for two.” Irregular domestic
arrangements imperilled progress, prosperity, and the health of the “race.” Much work was required to realize the monogamous vision.

These are the themes and arguments of chapters two and three of this book, which then turns to the complicated history of the imposition of the monogamous model on prairie First Nations with particular focus on women. The context provided in the first two chapters is vital to an understanding of this initiative, which was but one component of a much broader program to impose the monogamous model on the diverse people of Western Canada. The same cluster of laws, attitudes, and expectations deposited on First Nations were similarly applied to everyone else. Aboriginal people were compelled to conform to the laws, attitudes, and expectations that governed all married people in the rest of Canada. These expectations included the gender roles encoded in the monogamous model of the submissive, dependent wife and the powerful head-of-household husband. The broader context is important to understanding, for example, that both Aboriginal and non-Aboriginal women who “lost their virtue” before marriage, or who engaged in extramarital relations, were regarded as prostitutes “utterly destitute of moral principle.”

Marriage was virtually indissoluble in Canada, with divorce nearly impossible for all but a wealthy few, and this rigid attitude was imposed on the First Nations. Similarly the bigamy laws, also applied to the First Nations, meant that deserted wives or husbands, even if they never heard from a spouse again, might never be able to remarry if they knew the spouse to be alive. Under the new legal regime, many Aboriginal women joined the ranks of deserted women with children, who were unable to remarry.

Through the Department of Indian Affairs (DIA) and other associated arms of the federal government, the Canadian state was able to invade the domestic affairs of First Nations societies and impose these laws, attitudes, and expectations to a much greater extent than was possible with other communities. There were destructive consequences to this invasion, but the power of the state was also limited and contested. This study points to the persistence of Aboriginal marriage and divorce law, and to the determined insistence of Aboriginal people that they had the right to live under their own laws. This reflects another present-day
issue frequently in the news as I researched and wrote this book—the need to recognize Canada’s Aboriginal tradition of law and justice, a “third” legal tradition alongside the British common law and French civil law traditions according to Liberal Minister of Justice Irwin Cotler. Cotler stated in 2004: “We have to start thinking in terms of pluralistic legal traditions of this country. Having a bi-jural, civil law and common law [system] already makes us rather unique in the world. Enlarging that to also have an indigenous legal tradition and maybe being a world leader in mainstreaming that indigenous legal tradition, will mean that we can make a historic contribution—not only domestically, but internationally.”

Aboriginal marriage law continued to function throughout the period of this study and far into the twentieth century. The government, and to some extent the courts, upheld the validity of Aboriginal marriage law, but did not recognize their divorce law.

The marriage laws of Plains Aboriginal people were complex and flexible, permitting a variety of conjugal unions. There is debate among historians and anthropologists as to whether the various kinds of conjugal unions of Indigenous people can be called “marriage.” My position is that they can, and that there is no single definition of marriage, as it changes over time and not all cultures share the same definitions. Aboriginal family law also permitted divorce and remarriage. The ease with which divorce was acquired limited the extent of a husband’s power over a wife. The divorce of unhappy people, and their subsequent remarriage, was vital to the well-being of the family and the community. Virtually everyone had a spouse, except those who did not desire to be married. There were no single mothers, and concepts such as “illegitimate” children were unknown. Aboriginal marriage and divorce law was not well understood by non-Aboriginal outsiders, and it was widely presented as an institution that exploited and subordinated women. Polygamy was particularly singled out for criticism, as it allegedly left wives wretched and jealous as they were controlled, abused, and hoarded by a male elite. Because marriage did not appear to be a binding contract in the Euro-Canadian sense, wives were not seen as “true” wives, and they were labelled prostitutes if they had more than one marital or sexual partner.
Saving Aboriginal women from these marriages was one of the main justifications for colonial intervention in their domestic affairs—they too could enjoy the lofty and cherished status of white women. Similar justifications were frequently used for intervention in Afghanistan and Iraq as I wrote this book; as in earlier colonial times, the status of women continues to be manipulated as a political and rhetorical strategy to justify imperial expansion. The women themselves were not consulted, nor was any concern shown for the actual fate of either the women or their children as a result of the upheaval of this intervention.

Despite the colonial critique of Aboriginal marriage, an important 1867 legal decision in the case of *Connolly v. Woolrich* held that Aboriginal marriage law was valid, at least in Aboriginal territory. Using this case as the legal precedent, the dia adopted the policy in 1887 that Aboriginal marriages would be recognized as valid, while Aboriginal divorces would not be so recognized (even though the decision in *Connolly v. Woolrich* left open the possibility of validating Aboriginal divorce law). The dia was compelled to articulate a policy at this time in the light of sensational allegations from the west of a “traffic in Indian girls,” which was brought to the attention of the Canadian government by the London-based Aborigines Protection Society in England. The allegations were inspired by W.T. Stead’s revelations of girls being trafficked in London, a sensational claim that had repercussions throughout the British Empire. Conditions in Western Canada just at that time provided fertile soil in which to sow these hysterical allegations.

In the mid-1880s, new settlers to the west were calling for social and spatial segregation and for measures that would curb the power of the Métis, seen as a dangerous and subversive force. They had fomented two armed resistances, and they were also a drain on the public purse as they received land and money scrip from the government. Fear and anxiety was similarly generated about “Indian depredations,” and there were calls for “Indian removal” to more remote northern areas, as well as for the strict enforcement of the pass system to contain people on reserves.

Aboriginal women’s alleged promiscuity, their purported luring of white men to depravity, and their presence in the settlements were
central components of this hysteria. Authorities at the highest levels of government shared these views, and they were contained in the government position expressed in an 1887 order-in-council that was to become the foundation of Canada’s policy on Aboriginal marriage and divorce for decades. John Thompson, then the minister of justice, was instrumental in devising this policy. He had just returned from his first trip to the west in 1887, when the region was rife with alarming reports of “Blackfoot War,” defiance, and “lawlessness.” Thompson was utterly opposed to divorce under any circumstances. The policy reflected these concerns and attitudes. In recognizing Aboriginal marriage law but not divorce the policy was devised to enhance the control of Aboriginal husbands over their wives. Women had less opportunity to breach rules of conduct under this control. They were no longer able to desert, divorce, and remarry, and they had less freedom to visit towns and settlements. “Legal” divorce through an act of Parliament was out of the question, not only for financial reasons, but also because an application for divorce would not be entertained from those married according to Aboriginal law. Altogether the policy answered calls for greater social and spatial segregation. This policy had parallels in other realms of the British Empire where respect for “customary” law was partly strategic, employed as a means of harnessing male authority while restricting women and binding them to their husbands.

There were other compelling reasons for recognizing the validity of Aboriginal marriage law, including the fact that people were generally unwilling to be married except according to their own laws and ceremonies. Even those who might wish to comply with the new legal order found it impossible in the more remote regions where missionaries seldom visited. It thus became essential to recognize these marriages in order to extend the control of the state over married people. In particular it was vital to regard these as valid marriages in order to enforce the numerous clauses of the Indian Act that referred to marriage. In an 1889 legal decision it was found that the Indian Act constituted a statutory recognition of marriages according to Aboriginal law. Indian women who married white or non-status Indian men lost their “Indian” status under the Indian Act, and for the purposes of administering this clause,
marriage according to Aboriginal law was regarded as valid. This greatly expanded the numbers of women whose status was abrogated.

After the arrival of the Mormons in southern Alberta beginning in the late 1880s, attention was drawn to the persistence of polygamy in Aboriginal communities, particularly in that very district. The problem of how to discourage and eradicate polygamy among Indigenous people perplexed and divided missionaries of the British Empire, and their heated debates were reflected in the Western Canadian context. Many missionaries showed deep concern for the fate of abandoned wives and children, and there were those who believed that it was sanctioning divorce to encourage husbands to give up all but one of their wives. The dia, however, displayed no such concern as it began concerted efforts to abolish polygamy in the early 1890s. The campaign of the dia to prohibit polygamy in Western Canada clearly illustrates the limited power of the state—for nearly ten years their steps remained tentative and cautious. Officials of the dia continually threatened prosecution for polygamy, but they were highly reluctant to actually proceed for fear of losing face. There was little assurance that any prosecution for polygamy would hold up in court, as it had to be shown that there was a binding form of contract, and this was difficult in the case of Aboriginal marriage.

Another major reason for the tentative and cautious approach was the resistance of Aboriginal people to interference in their domestic affairs. Men with plural wives included the most influential leaders, and many of them had been the treaty negotiators for their people. In the Treaty 7 communities this resistance was concerted and determined. Young men and women continued to enter into plural marriages even when there were threats of prosecution and withholding annuities. Anger and frustration reached a peak in the mid-1890s when missionaries, working in concert with dia officials, placed girls in residential schools under new compulsory-attendance legislation to prevent them from being married, while parents betrothed girls at increasingly earlier ages to prevent them from being placed in the schools, where the death rate from tuberculosis soared among students. (A married or betrothed person was not eligible to be a pupil.) One conviction for polygamy, the case of a Kainai man named Bear’s Shin Bone, was secured in 1899, but when it had little
immediate effect, the authorities turned their attention to undermining the institution of “child marriage” in Treaty 7 communities. As in other localities of the British Empire, concern for child brides was a means of demonstrating the inferiority of Indigenous people, particularly their male leadership. The sensational Alberta charges were challenged and dismissed, as an investigation by Calgary lawyer James Short found no evidence of such marriages.

Aside from battling polygamy, the DIA pursued a vigorous program of extraordinary interference in the ordinary domestic lives of Aboriginal people on reserves, causing widespread instability and upheaval. Rather than upholding the institution of marriage, the program of intervention was actually destructive of it, particularly because people were not permitted their former ability to remarry after separation or divorce. They were informed that second marriages were not legitimate, and they were encouraged to abandon them or face bigamy charges. Agents told people that they were not free to remarry without “legal” divorce, even though they knew such divorces were impossible to acquire. The resident Indian agents wielded a great deal of power as they decided what constituted a family unit for the purposes of annuity payments, adjudicating which wives were “valid,” and which children were “legitimate.” The agents, often in consultation with their superiors and school principals, arranged marriages, approved of some, and refused to recognize the validity of others. They dispensed marriage counselling, sometimes holding tribunals or hearings, intervened to prevent couples from separating, brought back “runaway” wives, directed the annuities of husbands to deserted wives, and broke up second marriages they regarded as illegitimate. DIA officials decided which widows deserved to inherit from their late husbands—under the Indian Act a widow had to be of “good moral character,” and must have resided with her husband at the time of his death.

Despite this invasion of domestic affairs, the DIA had limited and tenuous ability to rigidly impose the monogamous model. Officials were constantly frustrated that Aboriginal family laws persisted, that people protested, that women and men refused to stay in bad marriages, and that some people continued to separate, divorce, and remarry according
to these laws. As mentioned above, they also married at an earlier age in order keep young people out of residential schools. Officials continually recommended that the marriage laws of the land be forced on Aboriginal people, but this never happened. To have any measure of control it was necessary to recognize the validity of Aboriginal marriage. Many DIA officials and even missionaries came to see that the refusal to recognize Aboriginal divorce resulted in unhappy couples, with couples living “in sin,” and with deserted women with children unable to remarry, and that altogether this destabilized domestic affairs, working directly against the policy of instilling a sense of the sanctity of marriage. There were widespread calls to permit some form of divorce or annulment of marriages, but the DIA consistently refused to permit any such deviation from the policy as outlined in the 1887 order-in-council.

There were consequences, however, for defiant behaviour; these included having children labelled “illegitimate.” Other tactics to enforce desirable behaviour included placing children of “immoral” women in residential schools, or threatening to do so. Women were labelled as “immoral” if they left unhappy marriages and formed new relationships that they were instructed to abandon. Another tactic was threatening to prosecute for bigamy, and warning that the penalty for this crime was seven years in the penitentiary. As with the enforcement of anti-polygamy laws, however, there was great hesitation to actually follow through with such threats for fear of losing in court. A case heard in the Supreme Court of British Columbia in 1906 realized these fears. The accused was charged with bigamy for having acquired a second wife according to Aboriginal law. The Canadian Criminal Code could only be applied if the marriage was recognized as valid, and the judge found this not to be the case. This was not marriage, in the judge’s opinion, but mere cohabitation. The prisoner was found not guilty and discharged. That the DIA was absolutely powerless to successfully prosecute for bigamy was further illustrated in a 1914 case of a Kainai man who allegedly had several wives, marrying once in a church and three times according to Aboriginal law, all in quick succession. The recommendation from the Department of Justice was that it would be pointless to proceed, that marriage according to Aboriginal law would not be enough to constitute
the offence. The wives of this man could not bring any action against him under the Criminal Code, it was further advised, because as wards of the government they were not technically in positions of necessity.

In 1908 the DIA proposed a major overhaul of their policy on Aboriginal marriage and divorce, including special legislation to permit prosecution for bigamy and to permit divorce. Social and moral reform organizations also called for various actions to address the issue of Aboriginal marriage, but no changes were made and the 1908 recommendations were never enacted. Well into the twentieth century the DIA soldiered on with the policy as established in the 1887 order-in-council, and a 1906 circular letter to all DIA employees that outlined the policy declared that people could be prosecuted for bigamy if they defied these directives.

By 1915, when the focus of this study concludes, the monogamous model of marriage had been successfully imposed on most of the diverse newcomers to Western Canada, although there remained individual dissenters. Efforts to impose monogamy on First Nations were damaging to domestic life, but far from entirely successful. Aboriginal family law proved enduring.

In 2003 a statement on marriage, published in the Globe and Mail and signed by prominent and eminent Canadians, asked that Canada resist any changes to the monogamous model of marriage, or to the “free consent of one man and one woman to join as husband and wife in a union of life together.” To do so would “undermine an institution so essential to the well-being of Canadians, past, present and future.” To admit change was “not in continuity with the history, tradition and values of Canadian society. It attempts to redesign an institution older and more fundamental to Canadian society than Parliament itself.” Marriage as defined in this statement “predates European colonization and reaches back into Canada’s aboriginal traditions.”

My hope is that this study establishes that the monogamous model is not ancient and universal. It does not reach back into Canada’s Aboriginal traditions, as the 2003 petitioners deposed. It is much more correct to say that the flexible and diverse models of marriage our society now permits, and the relative ease with which divorce can be acquired today, reach back to those traditions. In the late nineteenth to early twentieth
centuries it took much work, and even draconian measures, to impose this inflexible and indissoluble form of marriage on Canadians. And contrary to the claims of Ted Byfield and others, the monogamous model did not always enhance the well-being of all Canadians in the past.