The 1886 “Traffic in Indian Girls” Panic and the Foundation of the Federal Approach to Aboriginal Marriage and Divorce
“A very disastrous state of affairs.” These were the words of one Indian agent who urged in 1912 that “the marriage laws of the land should be forced on these people.” Many others in Western Canada shared this sentiment. What this agent and others found “disastrous” about the state of marriage was the freedom in Aboriginal communities to not necessarily regard marriage as monogamous. They could separate, divorce, and remarry. Agents requested with regularity that legislation be adopted that would prohibit and abolish Aboriginal marriage law, and that the “laws of the land” be imposed instead in the hope that this would instil an appreciation for the permanence of the marriage bond. But no such legal steps were ever taken. Aboriginal marriage law was recognized as valid well into the twentieth century, although there were concerted efforts to graft the monogamous Christian model onto Aboriginal marriage.
The government of Canada’s official stand on Aboriginal marriage was contained in an extraordinary 1887 Report of a Committee of the Privy Council respecting “the alleged sale of Indian girls to white men in the Canadian North West.” It was drawn up in response to the concerns of the Aborigines Protection Society (APS) of England about relations between white men and Aboriginal women in this far corner of the empire, southern Alberta in particular, and who should be held responsible for their children. Members of the APS had learned of an alarming letter published in The Toronto Mail of 2 July 1886 entitled, “A Foul Traffic: A Missionary’s Protest Against A Hideous System,” by Reverend H.T. Bourne of the Anglican Church Missionary Society, and resident on the Piikani Reserve near Fort Macleod. Bourne protested against the “state of immorality” in the district, including over “twenty cases of bargain and sale of young Indian girls to white men within the last three years.” In most of these cases, Bourne claimed, the man or woman proved unfaithful within six months, and either the woman returned to her parents “to be sold again at the first opportunity, or she becomes a common prostitute.” He asked that there be a law, “such as exists in the State of Montana...compelling a man to marry the woman with whom he cohabits, or whom he has purchased, and that under the severest penalty.” Bourne claimed that the white men of the Canadian West refused to marry their Aboriginal companions, saying the “Indian custom of marriage is quite good enough.” But to Bourne the “Indian custom is nothing more than a right of possession by purchasing—as a man would buy a horse or a slave.” It was rumoured, Bourne wrote, that if he and other missionaries did not cease to agitate, a league would be formed against them, and already the church at Fort Macleod had been destroyed by arson. Bourne concluded his letter with a call for legislation asking: “Is ours a land where such a thing can be done with impunity? Let the Government of Canada and the North-West answer by legislating on this serious question, and setting it at rest forever.”

As his letter indicated, Bourne was part of a much broader agitation over “immorality” in the Northwest, spearheaded by missionaries, widely publicized in Canadian newspapers, and debated in Parliament. White male government officials too were implicated, including the NWMP and
the agents and farm instructors on reserves. In April of 1886, Canadian Member of Parliament Malcolm Cameron stated in the House of Commons that he knew of a young Indian agent from England who was unfit to do anything there who was living on a reserve in “open adultery with two young squaws...revelling in the sensual enjoyments of a western harem, plentifully supplied with select cullings from the western prairie flowers.” Samuel Trivett, Church of England missionary to the Kainai, was also an outspoken critic of what he perceived as the vices of the district. Like Bourne, Trivett called for “a stop to white men living with Indian women unless they are lawfully married to them. Where are the young girls of 13 to 16 that have been partly taught in our schools and others before them? Sold to white men for from $10.00 to $20! Where are their children? Running around the reserves wearing rags! Where are the women themselves? They are prostitutes hanging around the towns. Stop the sale of Indian girls to white men and another great step is taken.” (These missionaries were active in the agitation to have only married Christian men employed on the reserves—the men who hastened to marry or lose their jobs, as presented in chapter three.) Trivett was always careful to say that he did not take issue with those “upright” men who showed “their manly action by keeping the Indian women by whom they had children.” His concern was with those who, after a few months or years, “rejected” their Aboriginal wives, who were then “thrown upon the mercy of the camp.” These women were not recognized as government wards, because they had married white men.

Helping to inspire the “traffic in Indian girls” scandal in Western Canada, and thereby assisting to generate indignant outrage, were the 1885 W.T. Stead revelations, published in instalments in London’s Pall Mall Gazette. Stead, the editor of the Pall Mall Gazette, and others spent four weeks investigating the traffic in girls in London, and his findings were published in a series entitled, “The Maiden Tribute of Modern Babylon,” described by historian Judith R. Walkowitz as “one of the most successful pieces of scandal journalism of the nineteenth century,” which had “repercussions...throughout the Empire in the form of age-of-consent (marriage) laws, efforts to abolish state-regulated prostitution, and eventually, official prohibitions against liaisons with ‘native’ women.”
“The Maiden Tribute” told the lurid story of how young girls were being snared and outraged by vicious aristocrats, and it included Stead’s account of his own purchase of a young girl for five pounds. Stead’s account drew on melodrama, fantasy, the Gothic fairy tale, and late-Victorian pornography to produce his narrative, which was exaggerated and distorted, but nevertheless compelling to a wide variety of social constituencies who took it up and reworked it. It generated great excitement and grassroots political activity dedicated to eradicating vice, and to imposing a single standard of chastity. Social purity groups, vigilance committees, and feminists combined in a loose but zealous network, constituting what Walkowitz described as a “massive political initiative against non-marital, non-reproductive sexuality.” In covering the allegations of immorality in the Canadian Northwest, Canadian papers made comparisons to the scandalous situation uncovered by Stead. In The Globe (Toronto) it was declared, “Let anyone read the worst part of the Stead revelations, and let him then understand that reliable men and Christian missionaries declare that similar things are going forward among the Indians of our North-west.” Samuel Trivett may have been directly influenced by the Stead revelations, as he was in England in 1885. He was accused in the Macleod Gazette of “seeking the glory of a Stead or a Pall Mall Gazette.”

The sensational Stead revelations, as translated into and grafted onto the situation in Western Canada, were of assistance to promoters of social and spatial segregation. The accusations of widespread immorality in the Canadian West were made at a critical time in that region’s history, and they served to justify policies that established boundaries between Aboriginal people and newcomers. In the spring of 1885, the “rebellion” of the Métis and a Plains Cree political campaign of resistance had been checked and repulsed through a massive military campaign along with the subsequent hangings and imprisonment of Aboriginal leaders, but tensions and uncertainties about the future remained. The authority of the Canadian government, of the NWMP, and the network of agents and inspectors assigned to the reserves, was far from secure in the mid-1880s. The Métis had fomented two rebellions and were seen as a nefarious and threatening influence; steps had to be taken to discredit them and
to ensure that a mixed-ancestry population did not increase through further marriages or informal unions. As in many other colonial settings, miscegenation was “Conceived as a dangerous source of subversion, it was seen as a threat to white prestige, as an embodiment of European degeneration and moral decay.”

Discourses of racial and social purity that warned of the decline and pollution of the “imperial race” characterized English-Canadian constructions of national identity in the 1880s. Race mixing also potentially jeopardized Euro-Canadian efforts to acquire Indigenous land. The Métis had successfully bargained for 1.4 million acres of land in Manitoba in 1870, and the North-West Rebellion Scrip Commissions allotted more land and money scrip. If the Métis became assimilated into the white population, they could potentially claim homesteading and other privileges, and if they assimilated into the Indian population they enhanced the numbers of government “wards” who were seen as a financial burden.

From the mid-1880s there were loud and persistent complaints from non-Aboriginal settlers about “Indian competition” in the marketplace, and calls that they not be permitted to compete with the “true” settlers by selling the hay, potatoes, and grain that they were producing on the reserves. In some localities reserve agriculturalists were beginning to produce marketable surpluses by the mid- and late 1880s, and this was not welcomed. In a Macleod Gazette letter to the editor in 1895 a white farmer claimed, “it is altogether unfair to allow these Indians to enter into competition with white men who, even with hard work, find it difficult to make both ends meet and provide for their families.”

Evidence of “unfair” competition, and the threat of “Indian depre-dations,” was kept before the public eye in the 1880s, and there was a campaign to have First Nations people removed from their reserves near the settlements and relocated in more remote locations in the north. At this time powerfully negative images of Aboriginal women emerged and became entrenched. They were cast as the complete opposite of idealized white women, as agents of the destruction of the moral health of the new non-Aboriginal community. A pass system, implemented as a temporary measure during the 1885 uprising, persisted and was particularly aimed at keeping Aboriginal women, defined as prostitutes, out of
the towns. The idea of a pass system was first raised in 1883 by Deputy Superintendent General of Indian Affairs L. Vankoughnet, who toured the west in 1883 and wrote to Prime Minister Sir John A. Macdonald that tents “pitched by Indians near towns and villages are occupied by women of abandoned character who were there for the worst purposes,” and that “all respectable parties in the North West complain of the nuisance.”

Aboriginal men were cast as a danger to the “honour” of white women during and after 1885 through sensational accounts of white women captives and “kidnapped” girls. Aboriginal people had to be kept on the reserves so that they could not continue, it was alleged, to steal cattle and horses, and destroy the wild fowl and game. Although an original concern of the missionaries in drawing attention to “immorality” was the treatment of Aboriginal women, the result was to entrench the representation of Aboriginal woman as immoral harlots and prostitutes who were a dangerous threat to the emerging settlements. Best to not only keep them on their reserves, as isolated as possible, but to keep them under the control of their husbands, as in the cherished colonial monogamous model of marriage.

The shrillest and most concerted reply to the Trivett and Bourne allegations, and the lasting legacy of the scandal, was the representation of Aboriginal women as prostitutes and as an immoral, corrupting influence. If there was immorality and depravity, these women were to blame, not white men, because, it was claimed, they were prostitutes before they went to live with white men. In nineteenth-century England, and it appears in Canada as well, the term “prostitute” was often used to refer to a woman cohabiting without matrimony. A woman “labelled a ‘prostitute’ might be guilty of no more than cohabitation.”

Women who had sexual relations outside of marriage, or who had more than one partner in her lifetime, could also be labelled prostitutes.

What upset the editor of the *Macleod Gazette* was that the honour and character of the white men of the region was besmirched by the Trivett allegations; they were being branded as “little better than beasts.” “The character of the men of this country has been assailed,” it was bemoaned. The accusations were first of all denied and mockery made of them. In the great majority of cases, the editor wrote on 16 March 1886, it was
claimed the “men have honourably clung to their bargain and have provided for their Indian wives.” Nevertheless, “According to Trivett’s statements one not acquainted with the facts might easily imagine a market for Indian women in full blast at Macleod. One might almost imagine the auctioneer introducing the various victims, dwelling upon their merits and extolling the article he offered for sale for the most grossly immoral purposes. We can imagine their horror struck faces as they listened in fancy to the going, going—third and last time—are you all done?—gone! Another pure minded Indian maiden sacrificed on the altar of human depravity for a small consideration of dollars and cents.”

And these were not “pure minded” maidens in the opinion of this newspaper. Trivett claimed that the women were taken from the camps by white men, kept for a time, and then abandoned to become prostitutes about the towns, but “Nothing is said about the fact that many of these women were prostitutes before they went to live with the white man, and that in the majority of cases the overtures for this so-called immorality comes from the women or Indians themselves.” However, Trivett had his supporters, particularly the Liberal newspapers that wished to find fault with Conservative management of the Northwest, and there was considerable debate in the press over the allegations. It was argued in the Toronto Globe that “it shows how low the standard of morality has fallen when in defence of white men the plea is set up that the women with whom they live are more immoral than themselves, or the still more infamous and revolting plea that Indians peddle their women.”

The question of “Indian marriage” was critical to the scandal and to the debate in the press. The editor of the Macleod Gazette argued that there was no ceremony, just a little “lively bartering” with the bride’s “old man,” and a wife could be secured for two or three horses. It was pointed out, “According to the law of the Indians—according to the law laid down by the government, this marriage is recognized, and is legal. A white man can ‘marry’ an Indian woman in the same way, and it has in the Northwest been held to be a legal marriage.” However, it was noted that this system of “barter” for a wife was fast becoming a thing of the past. The Globe indignantly replied: “Christians are not justified in adopting the customs of Pagans. White men can not excuse wrong-doing by
pleading that Indians have set them the example. Whites should always get married in such a manner that there could be no doubt as to the relations they bore to the women with whom they lived.” By February of 1886, *The Globe* called for a thorough and impartial investigation into the “abominations,” including the claim that government officials “are principals in the nefarious traffic.” It was necessary to immediately “crush out the brutal, heartless and ostentatious licentiousness which is making the QUEEN’s uniform and a white skin a hissing and a bye-word even among the not very supersensitive natives of our wide North-west.”

The Canadian government’s response to the brewing controversy over “Indian marriage” and alleged immorality in the Northwest was to order unmarried farm instructors and Indian agents to get married, and missionaries were instructed in May of 1886 not to communicate with the newspapers “even if allegations against public officials were true.” In 1886 the *dia* issued a pamphlet, *The Facts Respecting Indian Administration in the North-West*, in which all allegations of mismanagement and misconduct were denied, and any blame for the problems was placed on the Aboriginal mode of marriage. Malcolm Cameron’s charges of “incompetency and immorality against officials” rested “wholly on his bare assertion.” It was denied that a man employed by the *dia* revelled in a “western harem,” as Cameron had contended, and it was declared that: “Only two officials of the Government live with Indian women to whom they are not married under the Christian rite. These two took their wives as Indians take them, under the pagan rite, and in both cases the men have asked for the performance of the Christian ceremony.” It was admitted that some white men in the Northwest had “purchased” Indian wives, but these were not officials of the *dia* and, it was emphasized, “that is the Indian mode of acquiring wives. No young Indian ever dreams of letting his daughter leave his wigwam till he has received a valuable consideration for her…And doubtless if the Government should forbid the continuance of that custom the Indians would indulge in louder protests than any their ‘chronic habit of grumbling’ has yet induced them to raise.”

Similar views of Aboriginal marriage were reflected in an 1887 order-in-council. The deputy superintendent general of Indian Affairs, Lawrence
Vankoughnet, forwarded Rev. Bourne’s 2 July 1886 letter in *The Mail* to Prime Minister Macdonald (and superintendent general of Indian Affairs) on 7 July, writing that in his opinion the legislation Bourne requested was called for, and suggesting the matter be given serious consideration by the government. Little might have come of this but for the intervention of the APS, which brought a new level of international attention to the issue. The APS was founded in 1837 to “promote the interests of native races, especially those under British control, by providing correct information, by appealing to the Government and to Parliament when appeal is needed, and by bringing public opinion to exert its proper influence in advancing the cause of justice.” The organization had had a lengthy history of interest in the welfare of Canadian Aboriginal people. Prominent members of the Anglican Church Missionary Society were among the leaders of the APS. Just why Reverend Bourne’s letter galvanized the APS into action is not clear. Bourne worked in southern Alberta from at least 1884 when he was stationed on the Kainai Reserve. One of his 1884 letters, published in *The Evangelical Churchman* describing his “work amongst these worse than heathen savages” stressed the unhappy marriages of young girls. Bourne wrote that a girl of fourteen had taken refuge in their mission from her husband, a man old enough to be her father. Her husband demanded she return saying he had paid seven loads of wood for her. When the man threatened violence Bourne pushed him out the door, but “Not long after the man’s two other wives, one of whom was the girl’s aunt, appeared upon the scene, all of them in turn violently assaulting the poor creature and strapping her on a horse, carried the weeping child away.”

F.W. Chesson, the secretary of the APS located in Westminster, London, contacted Charles Tupper, Canada’s High Commissioner in London concerning Bourne’s 1886 allegations, and the matter was then referred to Canada’s Privy Council. The first draft response, dated 5 October 1886, was written to Vankoughnet by Deputy Minister of Justice George W. Burbridge. Burbridge had no acquaintance with the Aboriginal people of the Northwest, and it is not clear where he got his information, but his letter reflected the predominant misrepresentations of Aboriginal marriage as the sale of women, and of Aboriginal women as prostitutes.
The “evil complained of,” Burbridge wrote, was their custom of marriage, that permitted the sale of girls to white men “without lawful marriage.” He predicted that at an early date society in the territories would “protect itself...by the social ostracism of the offenders.” “So far as the Indian girls are themselves concerned it is probably that the evil is not so great as that resulting from their prostitution while yet remaining with the band to which they belong,” Burbridge wrote. “They look upon the sale as a marriage and the white man at least for the time being as their husbands. The latter are interested in keeping them free from uncleanness and disease.” He proposed several ways to deal with the difficulty, “no one of which is entirely free from objection.” A first proposal was to legalize such marriages in respect of past and in respect of future marriages. A second proposal was to prohibit white men from buying a woman or girl and living with her as his wife without being lawfully married. A third and more “radical” proposal was to “provide that no person not an Indian shall have sexual commerce with an Indian woman or girl without being lawfully married to her.” None of these proposals were enacted, although the same ideas were proposed on many other occasions well into the twentieth century.

A lengthier response, the draft of the 1887 Report of the Privy Council, was prepared under the direction of John Thompson, minister of justice (and prime minister from 1892–1894) in October 1887. The draft includes interlineations in Thompson’s own writing. Thompson was a Halifax lawyer, alderman, and judge, and John A. Macdonald recruited him in 1885 to bring “new blood” to the Conservative cabinet. According to his biographer P.B. Waite, Thompson had nothing to do with the Riel case or the decision to hang Riel, as his predecessor had already made this recommendation. However, he was not sympathetic to Riel, describing him as “a paltry hero who struggled so long and so hard for the privilege of hanging.”

Thompson’s views were imprinted on the 1887 document that was to guide the approach to Aboriginal marriage and divorce for decades thereafter. He was a convert to the Roman Catholic faith, and he was utterly opposed to divorce in all circumstances. As minister of justice he was called upon to explain the law, in some cases outlining why a certain
the importance of being monogamous
divorce was justified, but like other Catholics voted against it in every case, regardless of the legal merits. In June of 1887, for example, Thompson voted against granting a divorce to Susan Ash Manton of Kingston, whose husband had obtained a divorce in Massachusetts, remarried, and had children with a second wife.\(^3\) This despite the fact that he instructed the House that she was entitled to a divorce, as her husband had contracted a bigamous second marriage. As discussed in chapter three, in 1890 Thompson voted against granting a divorce to Emily Walker, the woman who was married, yet not married, but could never remarry.

In his draft that formed the 1887 report, Thompson drew on Burbridge’s letter of a year earlier, but his response was also likely influenced by his recent, first, and only visit to the west in August and September 1887. There are no detailed records of this visit, but it coincided with a time of excitement and alarm over reports of “lawless Indians”\(^3\) in southern Alberta. Headlines on the front pages of newspapers that Thompson likely read during this visit included the *Manitoba Free Press*, which declared on August 26 that “Gleichen Settlers Demand Police Protection—Redskins on the Rampage.” A similar headline in the *Macleod Gazette* spoke of “The Blackfoot War.”\(^3\) Other lurid allegations included one of a Blackfoot boy attempting to “outrage” a young white girl, the daughter of a CPR employee. The father, it was reported, gave the boy a “thrashing” and then shot at him twice with a revolver.\(^3\) There were reports of the looting of settlers’ houses, and of the theft of horses. One of the alleged looters of a home was Deerfoot, the famous runner, who stood off a corporal and five policemen with an axe, was taken into custody, and then escaped. A white settler in High River shot and killed a Blackfoot man he accused of looting his home, and another was badly wounded in the altercation. Agent Magnus Begg of the Blackfoot agency reported that “the whole tribe wanted to go in pursuit and kill the man.”\(^3\) Just at the time when Thompson would have been travelling through southern Alberta there

< John Thompson, minister of justice from 1885–1894, and Canada’s fourth prime minister (1892–1894). He was a Roman Catholic and was opposed to divorce in all circumstances. He crafted the 1887 policy on First Nations marriage and divorce that was pursued by the federal government well in the 20th century, and he was also the architect of the 1890 Criminal Code amendment on Mormon polygamy. While at Windsor Castle in 1894 he died of a heart attack at age 49. (LAC PA–025702)
were renewed calls for measures to forbid Aboriginal people from leaving their reserves. In the *Manitoba Free Press* of 31 August 1887, an article entitled “Depredations of the Bloods” endorsed calls for measures to confine people to their reserves and concluded, “Of late Indian squabbles have become far too frequent in the Territories, and the Government should be willing to receive any hint that may help it to maintain peaceful relations between the settlers and the redskins.”

With a few minor changes Thompson’s response became the 31 October 1887 Report of the Committee of the Privy Council. Many prominent men of the age were members of the Privy Council and present when the order-in-council was approved, including a future prime minister, Sir Mackenzie Bowell, and Minister of Finance George E. Foster, who was soon to be embroiled in a scandal concerning his marriage to a woman who obtained a divorce in the US from her previous husband. The report stated that, according to Superintendent General of Indian Affairs, Prime Minister John A. Macdonald:

> The evil complained of results from the habits and customs of the Indians themselves, with whom “marriage” requires only consent of the parties and of the father of the female without any rite and without the idea of continuing obligation. The assent of the father is generally procured by a gift, or is at least signified by the acceptance of such. Hence it is that that which is a mere marriage custom has come to be so frequently spoken of as the “sale” of women and girls. The Indian who accepts a gift for his daughter from a white man does not consider that in so doing he is dishonoring the girl. So long as she continues to live with the person by whom she has been chosen, she is to all intents and purposes his wife, and is so regarded by her tribe. When from any cause, she ceases to live with him, the female returns to her father’s wigwam, without any stain on her character, and may, and often does, again enter into the same relation with another man, Indian or White.

The document continued with the statement that among “nearly, if not quite all” of the tribes of North America from earliest recorded time,
“the practice of marriage by consent, and of divorce at the will of the husband has prevailed,” and that these have been held to be valid marriages and divorces in the United States. In Canada, it was noted, the Connolly case had established the validity of marriage according to Indian custom, but “the validity of such a divorce has never been affirmed.” This was followed by lengthy extracts from the Connolly decision regarding the existence of marriage law or custom, which included Justice Monk’s eloquent summary that “This law or custom of the Indian Nations is not found recorded in the solemn pages of human commentaries but is written in the great volume of nature as one of the social necessities, one of the moral obligations of our race, through all time and under all circumstances, binding, essential and inevitable; and without which neither man, nor even barbarism itself, could exist upon earth,” and that “it would be sheer legal pedantry and pretension, for any man, or for any tribunal to disregard this Indian custom of marriage inspired and taught, as it must have been, by the law and religion of nature among barbarians.”

It was deplored that “a higher conception of the dignity of marriage,” one that did not permit polygamy, divorce, and prostitution, was not held by these people. But the minister of Indian Affairs doubted whether it was “possible by legal means to bring about a better condition of affairs, or whether, if the customs referred to could be altogether prohibited, the object of the Aborigines Protection Society, which is the moral good of the Indians, would be at all advanced.” Reflecting Burbridge’s view of Aboriginal women as prostitutes, it was feared that to prohibit Aboriginal marriage customs would “convert women, now regarded as reputable, by themselves and the society in which they live, into prostitutes, and thus, by causing them to lose their own self-respect greatly to aggravate the evil which it is desired to cure.” The minister’s final opinion, to be quoted often in future years by dia officials to explain or in answer to critics of their policy was as follows:

That the true remedy of this lax state of things must come from the gradual civilization of the Indians, and more especially by the inculcation into their minds of the views which prevail in civilized communities as regards women’s true position in the family, and
of the christian [sic] doctrine respecting the sanctity and indis-
solubility of the marriage tie. When they come to grasp this higher
morality, it will no doubt be easy to bring about the desired change
in their social relations. 37

The same year as this Privy Council report was issued, the Department
of Justice advised the DIA that Aboriginal marriage was to be regarded as
legally valid, although the wording was cautious and even tormented.
Augustus Power of the Department of Justice wrote, “By direction of
the Minister of Justice, I am to state that he is of opinion that your
Department should not assume that marriages of Indians which have
been contracted in accordance with the customs of the tribe to which
such Indians belong are invalid, the presumption being rather in favour
of their validity.” 38 In 1888 the Department of Justice provided an opinion
that was aimed at further clarifying the policy with regard to marriage,
divorce, and the legitimacy of children. The document set out the policy
that the DIA would attempt to pursue for the next several decades:

Marriages of Pagan Indians which have been contracted in accord-
ance with tribal customs should be treated by your Department
as Prima facie valid and the issue of such marriage as legitimate. If,
however, an Indian so married deserts the woman who is recog-
nized or is entitled to recognition as his wife, and during her life
time lives with and has children by another woman, the Minister
does not think that such cohabitation should in any case be recog-
nized as marriage, unless there has been an actual divorce from
the first wife. The resulting issue should therefore be treated all
illegitimate and as having no right to share in the annuities of the
band. 39

The DIA sought the end of “tribal customs and pagan views,” and
wished to facilitate an understanding of the “true nature and obliga-
tions of the marriage tie.” 40 It was hoped that missionary work and
“growing contact with civilization” would have an impact, inducing
people to be married by clergy. 41 But in the meantime the policy to be
pursued was that Aboriginal marriages were to be recognized as valid, as long as these marriages conformed to the Euro-North American definition of marriage as the union of one man and one woman for life, to be dissolved only by legal divorce. Divorce according to Aboriginal law was not recognized. DIA official Frank Oliver outlined the policy followed by his department most succinctly in a report of 1907:

> With regard to marital relations, fundamental to the welfare of a people, the position of the aboriginal communities is distinct from that of other classes of communities. The law, with the laudable desire to protect the sanctity of the marriage tie, recognizes, at any rate under certain restrictions...the validity of aboriginal marriage customs, but with the same motive, refuses to recognize their separation or divorces...It would of course, be obviously improper to force upon the Indians either religious or civil ceremonies which might have no real significance to them nor binding force upon their consciences."

The legal position of the DIA as outlined in the 1887 Privy Council Report, along with the opinions of the Justice Department, was strengthened by the 1889 legal decision in the case of Regina vs. Nan-e-quis-a-ka. Justice Wetmore decided that it would be “monstrous” to hold that the laws of England relating to forms and ceremonies of marriage were applicable in the North-West Territories, and that the Indian Act, which included numerous references to marriage, wives, husbands, and widows, amounted to a “statutory recognition of these marriages according to Indian custom in the Territories.”

There were compelling reasons to devise and maintain this policy despite years of criticisms and doubts, vacillations and prevarications that continually emerged, and legal decisions that contradicted the policy. From the earliest years of settlement on reserves, officials wished to impose what they regarded as legal or Christian marriage, but they found this to be impossible. All of the marriages in existence at the time of the treaties of the 1870s, even those that were regarded as polygamous, were accepted as valid. Indian agents were obliged to recognize...
the post-treaty marriages of couples according to Aboriginal law because the vast majority of Aboriginal people were indifferent or opposed to marrying in any way other than their own. The insistence that their marriage laws were the valid marriage laws is best described by Aboriginal poet and fiction writer E. Pauline Johnson in her 1893 story “A Red Girl’s Reasoning.”

It is an eloquent, passionate defence of the sanctity of Aboriginal marriage law, expressed through the indignant outrage of her mixed-ancestry character Christie, when her white husband Charlie tells her that her parents were “never married, and that you are the child of—what shall we call it—love? Certainly not legality.”

She had explained that evening to a group at the lieutenant-governor’s dance that her parents were married according to “Indian rite,” and later at their home her husband accused her of disgracing and shaming him for informing the “whole city.” She left her husband that night and never returned to him, telling him that they were not married:

I tell you we are not married. Why should I recognize the rites of your nation when you do not acknowledge the rites of mine? According to your own words, my parents should have gone through your church ceremony as well as through an Indian contract; according to my words, we should go through an Indian contract as well as through a church marriage. If their union is illegal, so is ours. If you think my father is living in dishonour with my mother, my people will think I am living in dishonour with you. How do I know when another nation will come and conquer you as you white men conquered us?

She hurled her ring at him, saying “That thing is as empty to me as the Indian rites to you.” In the story Christie’s Aboriginal mother had equally insisted on the validity of their own marriage law and had refused pressure from a priest to be re-married in a church, saying “Never—never—I have never had but this one husband; he has had none but me for wife, and to have you re-marry us would be to say as much to the whole world as that we had never been married before. You go away; I do not ask that
As an indicator of the indifference and opposition of Aboriginal people to Christian marriage, it was not until 1895 that the first marriage of a Blackfoot couple, “conducted through the authorized channel of a marriage certificate,” took place in the Fort Macleod district, and the first marriage performed at the Catholic mission on the Siksika Reserve took place two years later, fifty-five years after the first Catholic missionaries arrived on the prairies. In his report for 1896, Reverend F. Swainson of the Diocese of Calgary reported that during the past year he married two couples among the Kainai, the first to be joined together in the Anglican Church, noting that “the majority of these Indians still cling to their old heathen superstitions.” In 1894 a frustrated Reverend E. Matheson of the Anglican Church at Onion Lake wrote to his bishop that in several locations he tried to induce Cree couples that professed Christianity to be “lawfully married according to the rites of the Church,” but had no luck, although they promised “faithfully to be lawfully married in the near future.”

In the aftermath of the 1870s treaties there was limited government interference in the leadership and laws of First Nations within their own reserve communities. The dia recognized existing chiefs, appointed by their own people before and during treaty negotiations, and many of these leading men had more than one wife. There was a need to preserve consent and not alienate the leading men. These chiefs and other spokesmen insisted on their right to make decisions for their people. They were determined to maintain their own legal system, to resolve disputes according to their own laws, and they insisted on their right to practice their own religious ceremonies. Chief Piapot of Treaty 4 stated in 1885 that the treaty to him meant that he was “not to interfere with the white man and the white man [was] not to interfere with me.” The government’s attempt to impose a new legal layer focused on the prohibition of inter-band warfare and horse raiding, particularly across the border. Canadian authorities approached the imposition of Canadian criminal law on Aboriginal people very cautiously. To a large degree Aboriginal
people continued to rely on their own legal structure, although historians R.C. Macleod and Heather Rollason argue that “eventually the debilitating environment of the reserves and the unrelenting assault on cultural practices by government agents and missionaries would sap the authority of traditional institutions.” Canadian authorities also approached the imposition of new marriage and family law with caution.

There was concern about the potential for “serious trouble” if authorities intervened in the domestic affairs of First Nations. In 1885, as Superintendent of Indian Affairs as well as Prime Minister, John A. Macdonald expressed his concern about the potential for trouble as a main reason for not enacting legislation to suppress the “evil of polygamy”:

Were legislation, having for its object the forcible suppression of the evil, to be introduced, I fear that, if it proved operative at all, it would only become so after very serious trouble had ensued, especially with the more populous tribes; and the enforcement of such a law would certainly be attended with difficulties of a most complicated character when it came to individual cases...the enforcement of any law that would interfere with their preconceived ideas as to marital rights would be so strongly resisted by heathen tribes generally as to render it inoperative.  

As discussed in the next chapter, this statement was used by the opposition during an 1885 debate in the House of Commons on Indian enfranchisement to argue that “heathenish” practices prevailed and were condoned in the west.  

In devising this approach to Aboriginal marriage and divorce, a policy never codified in the Indian Act or any other act of Parliament, government officials may have considered the precedent set in the United States, where “Indian marriage and divorce, offences between Indians, and sales of personal property between Indians are matters over which the state cannot exercise control, so long as the Indians concerned remained within the reservation.” The personal and domestic relations of US Indians were thus dealt with “according to their tribal customs
However, Canada deliberately took a different approach in 1887, as detailed in the Report of the Privy Council, which acknowledged that divorces according to Aboriginal law were held to be valid in the United States, but they were not to be regarded as valid in Canada.

Canada’s approach to Aboriginal marriage and divorce as embodied in the 1887 report also reflects a response to the outcry over the alleged “immorality” and “depravity” of Aboriginal women, who were widely regarded as prostitutes, even among officials at the highest level of government. The policy was intended to eradicate non-marital, non-reproductive sexuality, particularly among Aboriginal women. Even though Aboriginal marriage was seen to be at the heart of women’s alleged promiscuity and their treatment as chattels within their own communities, these laws were to be upheld as valid. It was contended in the 1887 document that to not recognize these as valid marriages would convert all Aboriginal wives into prostitutes. The policy of recognizing these marriages as valid also served to keep women under the control of their husbands, and they were now to have only one husband. The problem of women’s numerous partners, perceived to be at the heart of the 1886 “traffic in Indian girls” outcry, was thus solved. As Aboriginal divorce and remarriage was not to be recognized as valid, the control of husbands was enhanced, and the alleged promiscuity of Aboriginal women, their freedom to form new relationships, was significantly diminished. There was less likelihood of large numbers of unattached Aboriginal women in the urban centres of the west. The disease and uncleanliness of these women, as assumed by Burbridge, would be contained. The policy would assist to impose Euro-Canadian gender roles of submissive and subordinate wives under the control of their more powerful husbands. Aboriginal women would have less opportunity to breach rules of conduct and violate the normative framework of gender relations. Altogether the policy enhanced the social and spatial segregation that many in the non-Aboriginal community called for during the 1886 “traffic in Indian girls” panic, and during the 1887 outcry over the supposed “Indian depredations” that allegedly occurred when Thompson visited the west.
As with the legislation permitting Doukhobor and Quaker marriage in the North-West Territories, in recognizing Aboriginal marriage as valid the government enhanced, and did not diminish the power of the state, drawing the couple into the obligations set by the state for married people. In addition, those defined as “Indian” had to comply with all of the rules, regulations, and restrictions that applied to married people under the Indian Act. As Justice Wetmore noted in his 1889 decision, the act was full of references to marriage, although nowhere was there any effort to define marriage or to stipulate that marriage meant Christian, or civil common-law marriage. Until the mid-twentieth century, marriage with regard to the Indian Act was interpreted as including marriage according to Aboriginal law. It would have been impossible to enforce if there was insistence that “marriage” meant Euro-Canadian marriage. This act embodied and attempted to impose gender roles and identities drawn from Euro-Canadian society, and the Indian Act also reflected a range of stereotypes about Aboriginal women, particularly their alleged potential for “immorality.” Under the act, “Indian women” were not considered “persons” and they were also not considered “Indians,” except by virtue of their relationship to Indian males. The term “Indian” was defined as “First. Any male person of Indian blood reputed to belong to a particular band; Second. Any child of such person; Thirdly. Any woman who is or was lawfully married to such person.”

According to section 12 of the 1880 Indian Act, “the term ‘person’ means an individual other than an Indian, unless the context clearly requires another construction.”

The effects of certain marriages on women classified as “Indian” under the act were profound; a woman’s very identity was subsumed and defined by her husband. To some extent, however, they shared this disability with non-Aboriginal women because the citizenship of non-Aboriginal women was also determined and altered by marriage. Under the Indian Act, if an Indian woman married “any other than an Indian or a non-treaty Indian she shall cease to be an Indian in any respect within the meaning of this Act,” and if she married an Indian of another band, or a non-treaty Indian she “shall cease to be a member of the band to which she formerly belonged, and become[s] a member of the band or
irregular band of which her husband is a member.” Nevertheless, she could continue to collect her annuities and any other band monies (from a land surrender for example), or she could accept a lump sum “commutation” of her annuities, generally a payment of fifty dollars for ten years. If her husband became enfranchised, giving up his Indian status, she was automatically enfranchised as well. If widowed or separated, a woman who had “married out” was not permitted to return to her reserve (and her own family) and could be evicted if she attempted to do so. For the purposes of interpreting this act, the marriages could be according to Aboriginal law or “legal” Christian marriage, and this continued well into the twentieth century. To limit the application of the act to the latter would have greatly reduced the numbers of women who “ceased to be Indian.” Inquiries were generally not made into the nature of the marriage ceremony when women “married out,” although agents did ask those requesting commutation of annuities whether their husbands earned a living, and if they were able to provide support.

Under the Indian Act a white woman who married an Indian man automatically became an Indian in the eyes of the law, and she could partake of annuities and other benefits. She was an Indian for life, unless she remarried a non-Indian, and could not choose to withdraw from this status. If widowed, separated, or divorced her status did not alter; she could live on a reserve and not be evicted. Similarly, Métis women who married Indian men became Indian in the eyes of the law. In their case this meant forfeiting their right to Métis scrip, if they had not taken advantage of this right before their marriage. The history of Métis scrip is long and complicated but, in brief, both land scrip and money scrip was available to Métis men and women under the terms of the Manitoba Act of 1870, and through the work of the “Half-breed” scrip commissions initiated in the mid-1880s. An 1884 amendment to the Indian Act allowed “Half-breeds” who had taken treaty to withdraw from treaty in order to take scrip. Complicated questions immediately arose. For example, would a “Half-breed woman who ceases to be an Indian because her husband, a half-breed, on withdrawing from the Treaty ceases to be an Indian...[be] entitled to share in the annuities, interest, money and rents of the band or to have the same commuted, and also to have land
or scrip as a halfbreed?” If so, the deputy minister of justice wrote in May 1886, “she will be in a better position than an Indian woman married to a half-breed would be under the same circumstances, and that as a matter of fact the Indian title would be twice extinguished.”

The Department of Justice advised that “A Half breed woman married to an Indian is an Indian within the meaning of the Indian Act, and she cannot as a Half breed withdraw from the Treaty. Therefore she could not forfeit her right as an Indian by any attempted withdrawal.” Yet an Indian or Mêtis wife of a “Half-breed” man who withdrew from treaty to take scrip ceased to be an Indian. The daughter of parents who withdrew from treaty to take scrip would, if a minor, “cease to be an Indian,” but if she were of age, the withdrawal of her parents would not affect her status. (If it seems confusing, that’s because it was. Correspondence on these questions is full of statements that would have appeared very puzzling to the uninitiated; for example, “a half breed woman married to an Indian is an Indian and not a half breed.”)

Under an 1884 amendment to the Indian Act, a wife could inherit property from her deceased husband only if she proved to be of good moral character, and if she was living with her husband at the date of his death. And the widow had to continue to be of “good moral character” as the “Superintendent General may, at any time, remove the widow from such administration and charge, and confer the same upon some other person.” It was added in 1906 that “The Superintendent General shall be the sole and final judge as to the moral character of the widow of any intestate Indian,” and there was no definition provided of what was meant by “moral character,” giving white male officials considerable power and discretion to interpret the law. If the widow was “not of good moral character,” the whole inheritance devolved upon his children.

The Indian Act contained various clauses that were intended to help enforce the monogamous model of marriage. The payment of annuities and any interest money could be withheld from any Indian “who may be proved...to have been guilty of deserting his or her family and...[may be paid] towards the support of any family, woman or child so deserted.” Annuity and interest money payments could also be stopped “of any
woman having no children, who deserts her husband and lives immor-
ally with another man.” Any parent of an “illegitimate” child could
have their annuities directed toward the support of that child.

Officials of the DIA at the highest level found themselves defending
the validity of Aboriginal marriage. These marriages were to be regarded
as valid, as J.D. McLean wrote in 1911, “even though the ceremony may
have been of ever so simple or crude a character.” Officials had no
ability to compel people to marry otherwise, and they were reluctant in
any circumstance to give orders that could not be enforced. They hesi-
tated to take any steps that might allow married people to claim that
their marriage was not binding. DIA officials even advised missionaries
and school officials to take care in asserting the superiority of Christian
marriages, as it was feared that this could raise doubts in the minds of
reserve residents as to the validity, and especially the binding nature,
of Aboriginal marriage. Officials also argued that efforts to impose
Christian and English marriage law might encourage people to disre-
gard all marriage law, preferring to simply cohabit, as it was assumed
they would see this as a “loophole” that would free them from all poten-
tial legal penalties and constraints. In order to successfully prosecute
for bigamy or polygamy, marriages according to Aboriginal law had to
be recognized as valid, as it was necessary to prove a valid first marriage,
although this was not necessary with the second or bigamous marriage,
as a person needed only “to go through a form of marriage” with any
other person.

It also became clear that even when couples were married by clergy,
there was no guarantee that these would be viewed as more binding
than marriage according to their own laws; indeed, it may have had the
opposite effect. Cree Elder Glecia Bear stated in an interview that divorce
was much less common in earlier times, before the introduction of
marrying “in church”: “And this business of getting married in church…
in the old days there was none of that marrying business; when you
found someone, a man for yourself to marry, you straight away married
him, you never separated from him...As you had married him, so you
remained by virtue of that fact...there was no church marriage and thus
they lived together until one of them would depart this world.”
The problem of a lack of access to clergy or Justices of the Peace persisted into the twentieth century in some locales. In 1893, Manitoba Superintendent Inspector Ebenezer McColl wrote that in “remote” regions of his superintendency it was very difficult to have marriages “properly solemnized.” People did not have the means or opportunity to obtain licenses, and the visiting missionary seldom stayed long enough to enable him to publish the banns the requisite number of times to legalize a marriage. “Hence,” McColl wrote, “they have either to postpone indefinitely the regular consummation of their nuptials or live unlawfully together without having any authorized wedding ceremony performed.” “Legal” marriage was expensive. The 1878 North-West Territories “Ordinance Respecting Marriages” stipulated that three dollars had to be paid to the issuer of marriage licenses. Considering that each treaty person was paid five dollars per year under terms of the treaties, this was a considerable sum. No license was required and no fee paid when there was a proclamation of three banns, but this was not always possible, as McColl reported that “the Missionary, who occasionally happens to visit their reserves, seldom remains long enough there to enable him to publish the banns the requisite number of times to legalize their union.” In 1911 a missionary reported from the Wabasca district that he was unable to visit a couple that might consent to being married by him the previous winter because of the deep snow. He was going to try again the next winter but wrote that the man “is not at all anxious for me to do it. Now if I say to him I can only marry you if you buy a license for three dollars, he is very poor and will say he can not pay, never mind them being married they are all right as they are and I can not fairly read the banns as there will be only his father in law’s family there and I shall be only there a day or two at most. This is the sort of thing we [sic] constantly met with.”

The appointment of Justices of the Peace with authority to solemnize marriages addressed the problem to some extent. Officers commanding the NWMP posts were appointed Justices of the Peace and Notary Publics, or issuer of marriage licenses. In some localities the Indian agents were appointed Justices of the Peace. Under the Indian Act, Indian agents were, along with the Indian commissioner, assistant Indian commissioner,
Indian superintendents, and Indian inspectors, ex officio Justices of the Peace for the purpose of the act.\textsuperscript{79} In 1889 fourteen men and women of The Pas Band petitioned to have their Indian agent, Joseph Reader, permitted to solemnize marriages. They stated in their petition that they were “Christians known as Brethren,” and had no representatives of their denomination in their district and for that reason wished to nominate Reader to receive this authority.\textsuperscript{80}

As Aboriginal marriage law was recognized as valid, a case could well have been made that Aboriginal divorce law was also valid; indeed, the Connolly decision, as mentioned previously, had upheld the possibility of the validity of Cree divorce in Cree territory. There were officials who clearly felt that Aboriginal divorce might well be valid if their marriage law was valid. Indian Commissioner Hayter Reed asked in 1893 correspondence that if a marriage according to Indian custom was valid, could such a marriage then be dissolved according to Indian custom?\textsuperscript{81} In 1912 a Vancouver lawyer advised the DIA that Aboriginal divorce was likely legal if such marriages were valid. He further advised that the courts would likely not entertain an application for “legal” divorce from someone married according to Aboriginal law, “in view of the fact that it was possible to get a divorce by Indian custom without coming into the courts of the province.”\textsuperscript{82} However, the validity of Aboriginal divorce law was never tested, and DIA authorities would have been loath to do so. Officials remained insistent that only “legal” divorces would be regarded as valid, while recognizing that this was an impossibility for Aboriginal people.

There were compelling financial reasons for the government’s refusal to recognize the validity of Aboriginal divorce law and insistence that first marriages alone were valid. As a man on the Broken Head Reserve was advised in 1905, he could not collect the annuity payment for the wife of his “second so called marriage,” as the marriage was “illegal.”\textsuperscript{83} New families formed following such divorces would mean adding more children to the pay lists, so these children were to be regarded as “illegitimate.” A Department of Justice clerk advised in 1888, as quoted earlier, “the resulting issue should therefore be treated as illegitimate and as having no right to share in the annuities of the band.”\textsuperscript{84} Even if a couple married subsequent to the birth of children together,
these children were still not regarded as “legitimate,” according to a Department of Justice ruling in which it was noted that it was only in the Province of Quebec that “children born out of wedlock, other than the issue of incestuous or adulterous connection, are legitimatized [sic] by the subsequent marriage of their father and mother.”\(^{88}\) (Following entry into Confederation in 1871 the provincial legislature of British Columbia had passed a bill legitimising the children of unions between Aboriginal women and non-Aboriginal men whose parents subsequently married, but the bill was disallowed by the federal government.\(^{86}\)

Although there is no evidence of consultation with colonial officials in England or elsewhere in the British Empire, the policy pursued in Canada with regard to Aboriginal marriage shared consistent themes with the history of colonial administration and lawmaking in other settings, and gender issues were often at the heart of this lawmaking. Similar misunderstandings, obsessions, and perceptions of marital anarchy dominated the occupying community. There were similar conflicting understandings of marriage, divorce, adultery, and sexual identity among the colonized and colonizers. The thinking of colonial officials and missionaries was similar—Indigenous marriages were condemned for their alleged oppression of women and for their perversity, particularly polygamy and the “purchase” and “sale” of brides. Indigenous marriages were regarded as involving no true companionship or affection. The fragility of the marriage bond, especially the ease with which wives could leave husbands, was disturbing. Yet while Indigenous women were cast as the victims they were also perceived as perpetrators of perversity, originators of immoral influence, and as sexual predators. Single women in urban areas were almost everywhere viewed as undesirable. As mentioned earlier, Stead’s 1885 scandal-mongering and the moral reform campaign that followed in the United Kingdom reverberated throughout the empire. “Stereotypes from the other side of the world” influenced how Indigenous marriage, prostitution, and sexuality were observed and interpreted in diverse colonial settings.\(^{87}\) Colonial intervention in the marital, domestic affairs of Indigenous people was often initially non-existent, and then cautious and tentative, performed generally with the professed goal of enhancing the status of women, although these women were
seldom consulted. Indeed, they were manipulated as a political and rhetorical strategy, and an enhanced independence for Indigenous women was ultimately seen as undesirable in many colonial locales. Measures were then taken to restrict women’s autonomy and to bind them to their husbands, limiting their marriage choices and freedom to enter into new partnerships. Indigenous women could be kept under control through boosting patriarchal power in their own societies.

Drawing on imperial experience in India, British colonial officials from the late eighteenth century onward believed that their task was not to invent or import new laws for those they governed, but to co-opt Indigenous law and subsequently manipulate and administer it for hegemonic advantage. In 1848 Sir Theophilus Shepstone, a diplomatic agent in Natal, South Africa, described the principles of “indirect rule” when he wrote that the colonial state was prepared to accept “any law or custom or usage prevailing among the inhabitants...except so far as the same may be repugnant to the general principles of humanity recognized throughout the whole civilized world.” The “Imperial fiction,” according to historian Rosalind O’Hanlon, was that the British were the “benevolent guardians of local systems of law and justice and neutral arbiters between their diverse and often fractious subjects.” “Change and progress in this picture,” O’Hanlon writes, “were to come about less through the deliberate interference of the state, and more through the ‘natural’ forces of education, commerce, and contact with more advanced societies.” But, as O’Hanlon notes, the task of “discovering” law often meant profound innovation: “traditions” were invented with Indigenous laws arranged and rearranged and efforts made to graft Christian principles and British common law onto these laws. Officials intervened to both preserve and refashion Indigenous cultures. In many colonial locations there was an initial reluctance to intervene in marriage and domestic life for fear of provoking large-scale social and economic disruption, although this initial reluctance rarely persisted and interventions as well as changes in the economy led to gender and marital chaos.

But there were many variations on these themes, and localized variations emerged throughout the British Empire. There existed, at least
initially, many alternatives to monogamous marriage within Africa because people had diverse and complex marriage systems. The basic pattern among the Anaguta of central Nigeria, for example, was that a woman contracted a primary marriage and up to three or four secondary marriages, a system sometimes called serial polyandry. The mothers or grandmothers typically arranged the first or primary marriage at infancy, but such unions were only solemnized when the girl was pregnant. Women could acquire several secondary husbands and they were free to leave one and live with another. Women had a socially sanctioned variety of sexual partners. There was a lack of concern with identifying the biological father of children, and all children were welcomed. Colonial authorities and missionaries were uniformly hostile to serial polyandry, and this had a profound impact on Anaguta marriage laws. The system of primary and secondary marriage was eroded and has been replaced, since the 1950s, by marriage with “bridewealth.”

In Natal the history of African marriage and the colonial state is a lengthy saga. Colonial officials were wracked by divisions and conflicts, and the missionaries and new settlers did not always agree with British policy. There were officials who protested against the continuation of African law, arguing that it would be detrimental to their management, and would give Africans the belief that “Her Majesty intends to acknowledge their entire independence from all our laws.” But Diplomatic Agent Shepstone did not believe that a multiracial society was viable, and his policy that Africans should remain separate, in their own communities, and governed by their own laws became the antecedent of apartheid in South Africa. The policy of separate African reserves or locations was pioneered in Natal. Africans could be brought before the colonial courts in Natal only if they had committed crimes “repugnant to the general principles of humanity recognized throughout the whole civilized world.” But it was only in Natal and the Transkeian Territories that African marriages were regarded as legal. In the rest of South Africa no legal recognition was given, even if Indigenous marriage was broadly tolerated. In the Cape Colony, African marriage was not recognized on the grounds that it was “contrary to natural justice.” In 1869 Shepstone initiated an official compulsory register of Zulu marriages in Natal and
declared conditions governing the registration: these were the consent of the bride’s father, the presence of an officially approved witness, and the free and public consent of the bride. Shepstone’s goal was to permit the state and the courts a role in adjudicating marital, inheritance, and property disputes, and to gradually alter what he considered the tendency within Zulu society to “treat the women as chattel.” He sought to establish control, but also to preserve popular consent and not seriously alienate the Zulu chiefs. The system Shepstone created gave him enormous power to administer African law, to appoint chiefs where none existed, and he had direct control over these groups.

The need for Indigenous labour could have a significant influence on the way Indigenous marriage and related domestic institutions were conceptualised by colonizers. In mid-nineteenth-century Natal the white population was a small minority; the colony struggled economically and a shortage of labour was a constant complaint. African domestic institutions along with Shepstone’s policies were blamed by colonists for a host of problems that beset the colony. In Natal in the 1860s and 1870s, “rape scares,” the alleged threat to white women from African men, gripped the colonial imagination. At a time of economic downturn in the colony, whites resented the relative autonomy and prosperity of African communities that enabled them to compete with colonists. They competed with white farmers instead of being the source of agricultural labour. Whites wanted Africans drawn into the new economy, and they wanted their labour, but they wished to regulate and channel their labour, removing Africans’ choices in the kinds of employment they entered. Shepstone’s policy of keeping Africans separate on their own land and governed by their own laws did not assist colonists to acquire land and labour. Colonists claimed that granting Africans extensive autonomous locations allowed them to enjoy independence, thus hindering the ambitions of white colonists. African male migrant workers were consistently blamed for “outrages” on white women in urban centres such as Durban and Pietermaritzburg. Colonists asserted that “the barbarous domestic condition of African society produced wandering unmanly idlers who lived off the labour of women, had no respect for women, lacked discipline and who therefore presented a
sexual danger to female settlers. As to be discussed at great length in chapter six, the great “social evil” of polygamy was in particular to blame as colonists alleged that only wealthy older men could afford to marry, absorbing all the young women into their large families, thereby leaving young African men sexually frustrated. It was further alleged that polygamy and other African domestic arrangements fostered idle vagabonds. Vagrancy laws were passed in Natal to facilitate the control of independent African men in the settlements.

“The battle for Christian marriage, monogamous and indissoluble, was fought all over Africa,” writes historian Martin Charnock. If there is one discernable pattern it is that missionaries and colonial offices interved first to ostensibly protect and assist women, and these efforts, combined with other changes introduced through the new economies and demands for labour, resulted in strains on African households and marriage systems. Matrimony and family were crucial to the African world, and when missionaries and others intervened they had, as Jean and John Comaroff have written, “scant idea what was at issue…none were aware quite how profoundly they were tampering with the invisible scaffolding of the sociocultural order.” As historian Rosalind O’Hanlon writes, “gender could not be remade without unravelling much wider aspects of social organization.” As in Natal, colonial officials in Malawi and Zambia enacted legislation that made women’s consent necessary for a legally recognizable marriage, and elsewhere there was legislation to prohibit the “forced” marriages of African women. But as O’Hanlon writes, “the same officials came increasingly to dislike the uses to which African women put their new independence.” The mobility of African women and their presence in the towns and cities was of particular concern not only to colonial administrators and missionaries, but to traditional male African elders and chiefs as well. There was discomfort with their assertiveness and independence. Women took their complaints to courts and to colonial administrators and used a variety of strategies including divorce and adultery to attain greater autonomy and security.

African men, sometimes in alliance with colonial officials and missionaries, became fierce defenders of “customary ways,” as they shared concerns about the increasing loss of control over women. As a result measures
were taken in many localities to restrict women’s mobility, limit their marriage choices, punish adultery, and bind women to their husbands. Marriage certificates, issued by colonial authorities, became requisite for being in urban areas, and stringent laws against divorce and adultery were introduced. Women faced the concerted action of missionaries, colonial officials, and African men to turn them into dutiful wives and mothers. It was in the interest of the colonial administrators to boost and reha-bilitate patriarchal traditions. In South Africa beginning in the 1920s, politicians and administrators saw the erosion of male authority as a cause of the growing numbers of single African women in the townships, and their efforts to address this were “premised, in part, on a declared commitment to rehabilitating patriarchal ‘traditions’ of male dominance as the basis for restoring ‘family life.’” Respect for “customary” marriage law was partly strategic, as it was seen as a means of preserving and harnessing existing forms of male authority.

In Southern Rhodesia colonial administrators initially made little effort to interfere in the marriage laws of the local people “so far as that law is not repugnant to natural justice or morality.” African marriage law, even polygamy and bridewealth, was officially recognized. It was hoped that the influence of “civilization” would erode these, but as historian Diana Jeater has written, settlers paid little serious attention at first, seeing “their role as raising forced labour rather than reporting on the marriage arrangements of their victims.” A Southern Rhodesian order-in-council of 1898 stated, “if in any civil case between natives a question arises as to the effect of a marriage contracted, according to native law or custom, the court may treat such a marriage as valid for all civil purposes, in so far as polygamous marriages are recognised by the said native law or custom.” State regulation and monitoring began with the 1901 Native Marriages Ordinance, which was an effort to both preserve and refashion African marriage. Under this ordinance African women had the right to choose their own partners regardless of lineage obligations. Marriages were to be registered, a policy based on the notion that a marriage would carry greater social force if given official sanction, and that Africans would be more likely to respect marriage if it carried a stamp of state approval. The ordinance policy enhanced the
independence of women from family and lineage control, and they as well as young men found work in mining compounds, missions, and towns. The new options for women reduced the degree of control family heads had over them, and reduced the severity of the sanctions they could apply. The policy contained in the ordinance also encouraged rather than discouraged more “informal” unions by limiting what would be regarded as a “formal” unions. Very few complied with the requirement to register their marriages as this brought them under new scrutiny and regulation.

Colonial authorities as well as African leaders became concerned about the autonomy of young women who made independent occupational and sexual choices, which was equated with criminality and prostitution. Husbands and fathers sought to curb this behaviour. The 1916 Natives Adultery Punishment Ordinance, premised on the allegedly inherent “immorality” of independent African women, was a response to the lobby from rural African patriarchs. It permitted communities to punish unfaithful wives and pulled women back under the control of husbands and fathers.

An alliance of government officials, missionaries, and Aboriginal male leaders determined to keep women at home, to tame their sexuality, and ensure they married only Aboriginal men also emerged in British Columbia. Historian Jean Barman has argued that this alliance of men combined there to “tame the wild represented by Aboriginal sexuality,” and thereby refashion Aboriginal women to ensure they remained dutiful wives and mothers. She argues that Aboriginal men were concerned about a scarcity of wives, and that they “made deals to behave in accord with missionary aspirations for them in exchange for getting wives.” Women left their home communities to work in the hop fields and canneries, and sometimes they also made money by prostitution. Petitions to have women returned to their reserves, signed by Aboriginal men, were orchestrated by missionaries. An 1885 petition circulated by the Oblate missionaries contained the marks of 962 Aboriginal men, including eighteen chiefs. The men sought permission to “bring back the erring ones by force if necessary.” An even bolder petition, again with Oblate direction, was sent to the governor general in 1890 from the chiefs of fifty-eight bands.
They were “much aggrieved and annoyed at the fact that our wives, sisters and daughters are frequently decoyed away from our Reserves by ill designing persons.” The petitioners sought “a law authorising the infliction of corporal punishment by the lash.”116 In the spring of 1892 an Oblate missionary and five Aboriginal men, including a chief at Lillooet, were convicted and given jail sentences for “flogging a young girl...on the report only of a fourth party.” The priest who ordered fifteen lashes without investigating the charges pleaded that this was an “ancient custom” of the people and also that it was a necessary punishment in order to suppress immorality. The Indian agent doubted that flogging women was an “ancient custom” among Aboriginal people.

Many ideas to address the mobility and alleged immorality of Aboriginal women in British Columbia were floated by government officials and expressed through petitions. The advisability of “legislation, making it an offence for a white man to have sexual intercourse with an Indian woman or girl without Christian marriage,” was referred to the federal Department of Justice. As one Indian agent wrote in 1890, “Every white-man who takes to himself an Indian concubine should either be made to marry her or be severely punished for his profligacy.”117 The reply from the federal government was that such legislation was unnecessary, as “laws relating to the protection of females and for the punishment of persons who seduce or abduct them, apply to Indian women as well as to white women.”118 Other suggestions included the idea of an Indian agent in 1891 that the police be empowered to “return to their Agents all Indian women found living in towns. [An act] might also give the Agent power to grant leave of absence, if he was sure the object was a legitimate one, and every woman found off her Agency should be required to produce, under pain of some penalty, her certificate of leave of absence.”119 It was suggested that the provisions of the Vagrant Act be applied to Aboriginal women to “check them from practising open prostitution in the cities, towns and settlements of the whiteman.”120

Most of the proposals involved legislation that would keep Aboriginal women in their own communities. In 1891 the superintendent general of Indian Affairs provided a comprehensive reply to these calls, and this included the opinions of the Indian superintendent at Victoria. Legislation
confining women to their reserves and villages would be “practically inoperative and the cause of much disquietude to all the Indians in the Province, who would make a general grievance were their women deprived of freedom.” If such a law were passed it would likely be ignored, and “then the condition of things would be much worse, as not only would the primary object not be attained, but in addition the Indians...would be forced to disregard what they would be given to understand was ‘the law of the land.’” Through the passage of time, and through example and teaching, women would be “induced to eschew the barbarous habits and customs which are generally the outcome of a savage condition and are naturally surrounded by an atmosphere pregnant with superstition and ignorance generating in its course creations bordering upon the bestial and lowest order of sensuousness.”  

The federal response to an 1895 petition from central Vancouver asking that legislation be enacted to prevent “our wives and daughters and sisters” from being “carried to Victoria for illegitimate purposes,” was that women already had their travel restricted by the Indian agents “when requested by the husband or brother or anyone having proper authority, to stop a woman from going away, and so the men have the prevention of that of which they complain almost entirely in their own hands.”

In the United States it became the policy of Congress to “permit the personal and domestic relations of the Indians with each other to be regulated...according to their tribal customs and laws.” Thus the state did not exercise control over Indian marriage and divorce “so long as the Indians concerned remained within the reservation.” “Indian custom marriage” was recognized by federal statute, and both state and federal courts also recognized “Indian custom divorce.” In numerous cases it was held that marriages and divorces according to tribal law were valid, having “exactly the same validity that marriage by state license has among non-Indians.” Legal recognition even included cases of polygamy. An example of this was outlined in the decision handed down in the 1889 case of *Kobogum v. Jackson Iron Co.*:

Among these Indians polygamous marriages have always been recognized as valid, and have never been confounded with such
promiscuous or informal temporary intercourse as is not reckoned as marriage. While most civilized nations in our day very wisely discard polygamy, and it is not probably lawful anywhere among English speaking nations, yet it is a recognized and valid institution among many nations, and in no way universally unlawful. We must either hold that there can be no valid Indian marriage, or we must hold that all marriages are valid which by Indian usage are so regarded. There is no middle ground which can be taken, so long as our own laws are not binding on the tribes. They did not occupy their territory by our grace and permission, but by a right beyond our control. They were placed by the constitution of the United States beyond our jurisdiction, and we had no more right to control their domestic usages than those of Turkey or India.¹²⁵

A critical test of the doctrine of self-government in domestic relations was a 1916 decision involving two Lakota alleged to have committed adultery on one of the Sioux reservations of South Dakota. In United States v. Quiver the prosecution argued that an 1887 act of Congress had terminated tribal control over their own domestic relations and that they were liable under the section providing that adulterers faced up to three years in the penitentiary. However, the Supreme Court held that this statute did not apply to Indians on Indian reservations. The judge emphatically held that “the relations of the Indians, among themselves—the conduct of one toward another—is to be controlled by the customs and laws of the tribe, save when Congress expressly or clearly directs otherwise.” The judge found nothing in the relevant statutes that dealt with bigamy, polygamy, incest, or adultery, “these matters always having been left to the tribal customs and laws.”¹²⁶ This affirmation of self-government in domestic affairs did not diminish in the twentieth century. In 1935 the recognition of the validity of “Indian custom marriage and divorce” was reaffirmed through Law and Order Regulations of the Indian Service.¹²⁷ The tribes also had the power to prescribe how property would descend and be distributed, in contrast to Canada’s laws under the Indian Act. This is not to suggest that there was no pressure on US Indian reservations to confine sexual activity to
permanent, monogamous marriages, and preferably those of a state-sanctioned nature. As Katherine Osburn’s study of Southern Ute women confirms, there was just such pressure from the Office of Indian Affairs aimed at containing the independent behaviour of women. Agents employed a wide variety of punitive tactics including the institution of corporal punishment against recalcitrant women, removing women who continued to have “illegitimate” children to insane asylums, and returning “runaway” wives to their husbands.  

Marriages between non-Aboriginal males and Aboriginal women in North America were increasingly discouraged, discredited, and even in some cases prohibited by the late nineteenth century. By that time new models of bourgeois morality and respectability, along with calls for a sharpening of racial and spatial boundaries, permeated much of the British Empire. Indeed, there was heightened public scrutiny and censure of these relationships resulting in official prohibitions of marriage and/or “concubinage” in many colonial locations. However, this was not the case everywhere, and tactics and goals of colonizers shifted. Fourteen US states prohibited marriages between Aboriginal and white people. For example, in 1866 Oregon passed legislation that prohibited “any white person, male or female, to intermarry with any Negro, Chinese, or any person having one-fourth or more Negro, Chinese or Kanaka blood, or any person having more than one-half Indian blood.” This remained the law for eighty-five years. Some states also prohibited cohabitation. In Nevada an act passed in 1861 prohibited “Marriages and Cohabitation of Whites with Indians, Chinese and persons of African descent.”

But legal prohibitions against intermarriage did not prevail everywhere. No such action was ever taken in Canada despite continual requests from missionaries, Indian agents and moral reform organizations, dating from the 1886 allegations of “immorality” that began this chapter. One such request was made to the dia in 1912, from Rev. T. Albert Moore of the Toronto “Department of Temperance and Moral Reform,” who forwarded a copy of Oregon’s miscegenation legislation, including the clause “forbidding any white person to marry any person having more than one half Indian blood.” The reply from J.D. McLean, assistant deputy and secretary of the dia, was that the legislation “is very little
guide to us in Canada. Here we do not object to such marriages, the
trouble with us is how to prevent white men having connection with
Indian women without marriage. If they are lawfully married, they can
at least be prosecuted for bigamy if they desert their wedded partners
and marry again.”

There were colonial settings where marriages between Indigenous
women and white men were encouraged. In South Australia between
1848 and 1911, sections of Aboriginal reserve land were granted to
Aboriginal women who married non-Aboriginal men, and there were
similar experiments with such land grants in New South Wales and
Western Australia. The land was granted to the woman, who could
subsequently occupy the section for the term of her life and bequeath
the licence to the land to her children. The intention was to encourage
these marriages, and to provide a “dowry” for women while ensuring
that the land did not become the property of her husband, and thus
deter men whose sole intention of marrying such women might be to
acquire land. The policy allowed administrators to encourage “legal”
mariage rather than concubinage, and they could control marriages by
refusing applications if the man was of “bad character.” “Legal”
mariage was seen as a basic requirement of “civilisation,” and land was
seen as an appropriate inducement to marriage. In 1901 in the State of
Queensland, however, marriage between Aboriginal women and non-
Aboriginal men was restricted, allegedly to “protect” Indigenous women
from sexual exploitation and to prevent the birth of “half-castes.” Two “Chief Protectors,” white men, adjudicated the requests of white
men to marry Aboriginal women under Queensland law. Aboriginal
marriage law was not recognized as legitimate; the introduction of
British law “unilaterally quashed” Indigenous law. The children born of
such marriages were “illegitimate.” One outcome of this situation was
Aboriginal women who had two husbands—one white and one Aboriginal.
A state-endorsed marriage to a white man meant women gained freedom
from many restrictions of the Aboriginal Act that affected her freedom
of movement, employment and wages, but women might already be
married to Indigenous men, and they viewed their own marriage laws as
more important, as less dispensable. As historian Ann McGrath writes,
“Australian Indigenous People saw their own highly regulated marriage laws as a marker of a truly civil society...marriage was a key ordering principle to a gendered system of law and order.”

The validity of marriages according to Indigenous laws, when these marriages involved a white man and an Indigenous woman, was increasingly denied in Canadian courts as in other British colonial settings of the late nineteenth century. The 1888 case of *Bethell v. Hildyard* was particularly important, and those who wanted to alter the approach to Aboriginal marriage outlined in the 1887 report often referred it to in Canada. In *Bethell v. Hildyard* it was decided that an Indigenous African marriage was not marriage in the Christian or English sense. The case involved Christopher Bethell, who went to South Africa in 1878 and died there in 1884, having been killed fighting with the Boers of Bechuanaland. Bethell’s younger brother William claimed the right to their father’s estate on the grounds that his brother had died “without leaving any issue.” But in 1883 Christopher had married Teepoo, a woman of the Barolong tribe, according to the customs of her people, and she gave birth to their daughter about ten days after Christopher’s death. The chief of the tribe gave evidence that Bethell “really married Teepoo, and that she was his wife and not his paramour,” having observed the customs involved in the marriage, including the slaughter of an ox, and ploughing the mother-in-law’s garden. Bethell had stated to the chief that he was a Barolong, and would marry according to their customs. The chief also gave evidence that each male was allowed one principal wife, and several concubines, in the Barolong tribe, and that there were those who had two or three wives. Before his death Bethell signed a document providing for Teepoo and any child they might have in the event of his death. The document stipulated, “In case Teepoo remarried or has any more children or conducts herself in an improper way,” she would not be entitled and would have to give up the guardianship of their child.

The lawyer for the infant argued the marriage was valid, that “it is the established principle that every marriage is to be universally recognized, which is valid according to the law of the place where it was had, whatever that law may be.” The Connolly case was cited in support of the argument that Bethell intended to, and did, enter into a contract of
marriage. The document that he signed was critical evidence for this side, as it had stipulated, “In case Teepoo remarried.” It was argued that the fact that polygamy was practiced among the Barolong did not mean this marriage was invalid. “It would be a startling proposition to make that in a country where polygamous marriages are allowed a domiciled Englishman cannot marry without the marriage involving polygamy.”

However, Justice Stirling decided that this was not a valid marriage according to the laws of England. It was not a marriage in the Christian sense, but in that of the Barolong, which “is essentially different from that which bears the same name [marriage] in Christendom, for the Baralong [sic] husband is at liberty to take more than one wife.” The potential for the marriage to have been polygamous, even though this did not occur, was critical to the decision. (Justice Monk had dismissed the same argument in the Connolly case.) “Marriage,” Stirling wrote, “is one and the same thing substantially all the Christian world over. Our whole law of marriage assumes...that we regard it as a wholly different thing, a different status from Turkish or other marriages among infidel nations, because we clearly never should recognize the plurality of wives, and consequent validity of second marriages.” Stirling wrote that he would have willingly listened to testimony from Teepoo herself, but no application was made, so there was “nothing to show that Teepoo regarded herself as entering into any other union than such as prevails among the tribe to which she belongs.” To convince the judge that this was a marriage in any sense other than the Barolong sense, Teepoo would need to have been “aggrieved if Christopher Bethell had availed himself of the Baralong [sic] custom and introduced a second or third wife into his household.”

Other arguments for this successful side included that there was no evidence of consents having been interchanged, and that there had to be mutual consent to the union. Teepoo had agreed to become the wife of Christopher Bethell, but she had not agreed to a Christian marriage, and “there was no contract to be his wife exclusive of every other woman.” However, it was argued that Bethell refused to marry in a church, did not intend to remain in the colony, and had no intention of bringing Teepoo back to England as his wife. Evidence was produced...
that he never wrote to relatives in England about his marriage, and that he did not introduce Teepoo as his wife; rather, he called her “that girl of mine.” The Connolly case was dismissed as an authority as in that case there was no minister nearer than three-thousand miles away.

The case of Bethell vs. Hildyard was brought to the attention of officials of the Department of Indian Affairs on occasion by those who argued that the decision in the Connolly case was overturned, and that marriage according to Indigenous law was no longer valid where there were ministers and Justices of the Peace nearby. But this advice and other Canadian cases such as Fraser vs. Pouliot were disregarded. The approach outlined in the 1887 order-in-council of recognizing the legality of Aboriginal marriage but not divorce, and asserting that “the true remedy of this lax state of things must come from the gradual civilization of the Indians,” prevailed well into the twentieth century.

This chapter has explored when, how and why a position on Aboriginal marriage was devised in 1887, when it was decided that Aboriginal marriage would be regarded as valid, while Aboriginal divorce would not. This policy, which prevailed well into the twentieth century, was generated as a result of an 1886 moral panic over allegations that young Aboriginal girls were being sold to white men. The clamour drew on the 1885 W.T. Stead scandal journalism in England that had repercussions throughout the British Empire. In Western Canada the sensational reports assisted promoters of social and spatial segregation at a critical point in the region’s history. A Métis resistance as well as a major Cree political protest had been checked in 1885 with the arrival of the North West Field Force, the imprisonment of leaders, and hangings of Aboriginal men. Discourses of racial and social purity helped justify measures establishing boundaries between Aboriginal and non-Aboriginal people. Intermarriage was increasingly cast as an abomination. These unions not only produced the menacing Métis, they also jeopardized Euro-Canadian acquisition of wealth as the Métis had claims to land. The most lasting legacy of the 1886 “traffic in Indian girls” panic was the perception of Aboriginal women as prostitutes, accustomed to being bought and sold within their own societies, who were unwelcome in the new
towns and settlements. It was the honour and character of white men that was tainted by the scandalous allegations.

The Canadian government response, prepared by minister of justice and later prime minister John Thompson, was contained in an 1887 order-in-council. Thompson was a devout Catholic, completely opposed to divorce. He visited the west in 1887 just before he completed the order-in-council, at a time when there were alarming reports of “lawless Indian” and renewed calls that Aboriginal people be confined to their reserves. He decided that the validity of Aboriginal marriage law was to be recognized, but not their divorce law. This policy was affirmed in later department of justice opinions and legal decisions, including an 1889 ruling that the Indian Act amounted to statutory recognition of marriages according to Aboriginal law.

There were compelling reasons to maintain this policy despite criticisms, uncertainties and frustrations. The vast majority of Aboriginal people refused to be married in any other way, believing firmly in the sanctity of their own laws. Canadian authorities, including prime minister John A. Macdonald, expressed fear that any imposition of Canadian marital law could alienate leading men and cause serious trouble. This approach was intended to create dutiful and obedient wives, and to keep women in their place by enhancing the control of husbands as divorce was not to be recognized. In order to enforce the many clauses of the Indian Act that referred to “marriage,” “wives,” and “husbands,” marriage according to Aboriginal law had to be recognized as legal. The Indian Act was designed to create husbands and wives in accordance with the monogamous model of marriage, a function evident for example in the stipulation that a widow had to be “moral” and to have been living with her husband at the time of his death to inherit his estate. For all of these reasons officials found themselves defending Aboriginal marriage law against critics, including missionaries who were advised not to assert the superiority of Christian marriage as it was feared that couples, married according to Aboriginal law, might not regard themselves as married. The also maintained the 1887 policy on Aboriginal divorce law well into the twentieth century, and from their point of view there
were compelling financial reasons to do so. If divorces and remarriages were to be viewed as valid, many more children would have to be added to the annuity pay lists.

Similar approaches were pursued elsewhere in the British Empire and in the United States. Colonizers shared assumptions about the anarchical domestic lives of Indigenous people, especially the supposed “slavery” of Indigenous women. As colonial regimes became more entrenched anxieties emerged about the very opposite—that Indigenous women were becoming too assertive, independent and too visible in the white settlements. Colonial policies were directed toward restricting and refashioning women, to moulding them into dutiful wives, and in some locales this meant securing collaborative male elites. The “outsider” marriages of Indigenous women were discouraged and discredited in some colonial settings including Canada, but no legislative measures were ever enacted in this country, although there were many requests that such action be taken. But the validity of marriage according to Aboriginal law was increasingly denied in Canadian courts toward the end of the nineteenth century, when these marriages involved an Aboriginal woman and a non-Aboriginal man. That this was the case throughout the British Empire is illustrated by the case of *Bethell v. Hildyard*, described here at some length because it is represents a dramatic departure from the 1867 Connolly case, and because the case was cited in Canada by those who were opposed to the 1887 order-in-council policy. They argued that no marriages according to Aboriginal law should be regarded as valid. This advice was disregarded however, and the policy articulated in 1887 prevailed. Aboriginal marriage law was to be respected, but these marriages were to resemble the monogamous model as closely as possible. Divorce, remarriage, plural wives, and serial spouses were not to be tolerated. A concerted effort to intervene in the domestic affairs of Aboriginal reserve residents began in the early 1890s. Just as the sensational allegations of the moral panic of 1886 led to the articulation of a policy, external pressures and factors prompted the DIA to tackle polygamy among Aboriginal communities. In the case of polygamy Aboriginal marriage law was not regarded as valid.