

CHILDREN OF POLYAMOROUS FAMILIES: A FIRST EMPIRICAL LOOK

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I. INTRODUCTION

In November 2011, the British Columbia Supreme Court actively reconsidered plural marriage as a legitimate familial option.² The case involved the polygamous community of Bountiful, B.C., whose members belong to the Fundamentalist

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² *Reference re:* Section 293 of the Criminal Code of Canada, 2011 BCSC 1588 (last visited May 17, 2013 <http://www.courts.gov.bc.ca/jdb-txt/SC/11/15/2011BCSC1588.htm#SCJTITLE>).

Church of Jesus Christ of Latter-Day Saints. In 2007, two successive special prosecutors recommended that the court consider the question of whether the ban on polygamy would stand up to a constitutional challenge through a reference question to the B.C. Court of Appeal.³ In 2008, however, a third special prosecutor proceeded with a criminal prosecution and charged both Bountiful leaders Winston Blackmore and James Oler with one count of polygamy.⁴ Mr. Blackmore and Mr. Oler petitioned the court, arguing that the province had engaged in “special prosecutor shopping,” and the court dismissed the charges against the two men.⁵ In October 2009, however, the province decided to pursue a reference through the B.C.

³ Wendy Stueck, ‘B.C. Supreme Court judge to rule on landmark polygamy case,’ *The Globe and Mail*, Nov 22, 2011, *available at* <http://www.theglobeandmail.com/news/national/bc-supreme-court-judge-to-rule-on-landmark-polygamy-case/article4184093/>. In Canadian law, a reference question is a submission by the federal or a provincial government to the courts asking for an advisory opinion on a major legal issue. Reference questions typically concern the constitutionality of the legislation in question.

⁴ *Id.*; See also Matthew Hennigar, *The Unlikely Union of Same-Sex Marriage, Polygamy and the Charter in Court*, 16 *Constitutional Forum/Forum constitutionnel*, No. 1-3 (2011).

⁵ *Id.*

Supreme Court.⁶ The governments of Canada and B.C. argued that the court should uphold the ban on polygamy, while a court-appointed *amicus curiae*, George Macintosh, argued that the ban is unconstitutional and the court should strike it down.⁷

In his introduction to his now famous “Canadian Polygamy Decision,”⁸ upholding the long-standing Canadian ban on plural marriage, Chief Justice Robert Bauman framed the issue as a matter of harm:

I have concluded that this case is essentially about harm; more specifically, Parliament’s reasoned apprehension of harm arising out of the practice of polygamy. This includes harm to women, to children, to society and to the institution of monogamous marriage.⁹

Later in that decision, he enumerated some of those alleged harms:

⁶ *Id.*

⁷ *See Stueck, id.*

⁸ *Reference re: Section 293 of the Criminal Code of Canada*, 2011 BCSC 1588.

⁹ *Id.* at 1.

The harms against children include: the negative impacts on their development caused by discord, violence and exploitation in the marital home; competition between mothers and siblings for the limited attention of the father; diminishment of the democratic citizenship capabilities of children as a result of being raised by mothers deprived of their basic rights; impoverishment; and, violation of their fundamental dignity.¹⁰

While that case has garnered significant interest in both the United States of America,¹¹ where the issue of plural marriage is slowly garnering attention, and abroad,¹² its meaning must be contextualized within the broader discussion of legalizing plural marriage.¹³ First, as described in the case, the

¹⁰ *Id.* at 228.

¹¹ See, e.g. Mae Kuykendall, *Equality Federalism: A Solution to the Marriage Wars*, 15 U. PA. J. CONST. L. 377 (2012), and Marie Ashe, *Women's Wrongs, Religions' Rights: Women, Free Exercise, and Establishment in American Law*, 21 TEMP. POL. & CIV. RTS. L. REV. 163, 214 (2011).

¹² See Angela Campbell, *Chapter 12 Wives' Tales on Research in Bountiful*, 17 IUS GENTIUM 247 (2012).

¹³ See e.g. Mark Goldfeder, 'Polygamy and DOMA,' Salt Lake City Tribune, May 11, 2013 (last visited May 17, 2013) <http://www.sltrib.com/sltrib/opinion/56282277-82/marriage-plural-polygamy-court.html.csp>).

province accused the Bountiful polygamous community of engaging in exploitative relationships, sometimes with underage girls.¹⁴ No one, certainly not here, is arguing that should be legal.

Second, this B.C. case differs from the somewhat similar United States Supreme Court case *Reynolds v. United States*,¹⁵ in which the U.S. Supreme Court also upheld the relevant anti-polygamy law against the claim of religious liberty.¹⁶ The British Columbia opinion is replete with open acknowledgments of the findings' tentative nature on which the court's judgment would rely.¹⁷ As opposed to *Reynolds*'¹⁸ overly confident assertions, the B.C. Court addresses the "harms" that stem from polygamous communities

¹⁴ Stueck, *id.*

¹⁵ 98 U.S. 145 (1878).

¹⁶ *Id.* at 163.

¹⁷ See e.g. 2011 BCSC 1588, section F.1.a.iv of the decision, 'More Speculative Predictions,' paragraphs 534-539. "Dr. Henrich also predicted additional consequences of polygyny that he acknowledged were more speculative and could not be as thoroughly supported by empirical evidence...I am alive to this issue."

¹⁸ "These are to be the sufferers; and as jurors fail to do their duty, and as these cases come up in the Territory of Utah, just so do these victims multiply and spread themselves over the land." *Reynolds v. United States*, 98 U.S. 145, 168 (1878).

not as a given, but as a question to be explored.¹⁹
For this reason, this article responds to this case.

Third, a number of factual indicators suggest that the arguments in both *Reynolds* and the more recent Canadian cases -- at least as applied to polyamory and other forms of non-monogamy more generally as opposed to strict polygyny -- are either inapplicable or built on false assumptions.²⁰

To avoid misunderstanding, some clarification of terminology is necessary. Scholars and lawyers routinely conflate polygamy, polygyny, and polyamory, and mistakenly collapse them into a single relationship category. While all of these terms comprise non-monogamy, they differ profoundly.²¹ Polygamy is the practice of marriage among groups of people larger than two, and its

¹⁹ See e.g. 2011 BCSC 1588 paragraph 1185, noting just a “reasonable apprehension” of harm.

²⁰ See generally Jillian Keenan, ‘Legalize Polygamy!’ Slate, Apr. 15, 2013 (last visited May 15, 2013) http://www.slate.com/articles/double_x/doublex/2013/04/legalize_polygamy_marriage_equality_for_all.html.

²¹ See generally Lisa M. Kelly, *Bringing International Human Rights Law Home: An Evaluation of Canada’s Family Law Treatment of Polygamy*, 65 U. T. FAC. L. REV. 1 (2007). Polygamy stands in sharp contrast to polyamory, as evidenced in Elisabeth Sheff, *PolyHegemonic Masculinities*, 9 SEXUALITIES 621 (2006); see also Barker and Langdrige *Understanding Non-Monogamies* (2010).

most popular form is polygyny, in which one man is married to multiple women.²² Polygyny's gender correlate, polyandry, is quite rare, and few societies today, or historically, base its marriages on one wife to multiple husbands.²³ Historically, and cross culturally, societies have more commonly accepted polygyny as a legally-recognized familial option than a pure monogamy regime.²⁴ In contrast to the more conventional gender limited versions of polygamy, polyandry, and polygyny, polyamory allows both men and women to engage in concurrent sexual or romantic relationships with multiple people, with the knowledge and consent of everyone involved.²⁵ Polygamy, polyandry, and polygyny are all hetero-centric because they require

²² Bobbi Low, *Marriage Systems and Pathogen Stress in Human Societies*, 30 INTEGRATIVE & COMP. BIOLOGY 325 (2000).

²³ Alan Trevithick, *On a Panhuman Preference for Monandry: Is Polyandry an Exception?*, 28 J. COMP. FAM. STUD. 154 (1997).

²⁴ John Hartung, *Polygyny and Inheritance of Wealth*, 12 CURRENT ANTHROPOLOGY 1 (1982). *See also* Theodore C. Bergstrom, *On the Economics of Polygyny*, Working Papers, Univ. Mich., Dep't. Econ (1994) (last visited May 17, 2013 <http://escholarship.org/uc/item/6kr536bv>). "Of the 1170 societies recorded in Murdock's *Ethnographic Atlas*, polygyny is prevalent in 850." *Id.* p. 2

²⁵ Elisabeth Sheff, *Polyamorous Women, Sexual Subjectivity, and Power*, 34 J. CONTEMP. ETHNOGRAPHY 251 (2005).

relationships to occur between women and men. Polyamory differs from these other forms of non-monogamy because it allows participants to have same-sex relationships too.²⁶

Plural marriage is a hot topic in the United States right now.²⁷ TV shows such as TLC's *Sister Wives*, HBO's *Big Love*, and Showtime's *Polyamory: Married and Dating* have brought the concept into the nation's collective living room.²⁸ Polyamory has even been called "the next Civil Rights Movement."²⁹ Scholars of plural marriage

²⁶ *Id.*

²⁷ See e.g. M.S., "And Now on to Polygamy," *THE ECONOMIST*, Apr. 8, 2013 (last visited May 17, 2013 <http://www.economist.com/blogs/democracyinamerica/2013/04/gay-marriage?fsrc=nlw|newe|4-8-2013|5491313|35734098|NA>). See also Nigel Barber, "The Three Reasons for Polygamy," *PSYCHOLOGY TODAY*, Oct. 23, 2012 (last visited May 17, 2013 www.psychologytoday.com/blog/the.../the-three-reasons-polygamy).

²⁸ Kody Brown, et al., *BECOMING SISTER WIVES: THE STORY OF AN UNCONVENTIONAL MARRIAGE*, (2012). See also, Steve Deace, "A Modest Proposal for Polygamy," *USA TODAY*, Mar. 28, 2013 (last visited May 17, 2013, <http://www.usatoday.com/story/opinion/2013/03/30/gay-marriage-equality/2028619/>).

²⁹ See Kirsten Andersen, *Polyamory; The Next Civil Rights Movement?*, LIFESITENEWS.COM, Oct. 29, 2012 (last visited May 17, 2013 <http://www.lifesitenews.com/news/polyamory-the-next-civil-rights-movement>). See also Stanley Kurtz, *Beyond Gay Marriage*, 8.45 *THE WEEKLY STANDARD* 26(2003); Jaime M. Gher, *Polyamory and Same-Sex Marriage-Allies or Adversaries Within the*

have begun to address the interesting and legitimate constitutional questions raised by the practice's continued criminalization, specifically, concerns about the free exercise of religion, and the limits of individual rights, especially for slippery-slope arguments.³⁰

In a world moving rapidly towards legalized same-sex marriage,³¹ forms of plural marriage cannot logically remain solely heterosexual.³² Additionally, some of the harms traditionally linked

Same-Sex Marriage Movement, 14 WM. & MARY J. WOMEN & L. 559 (2008).

³⁰ See Judith Stacey & Tey Meadow, *New Slants on the Slippery Slope: The Politics of Polygamy and Gay Family Rights in South Africa and the United States*, 37 *POLITICS & SOCIETY* 167 (2009). See also Edward Ashbee, *Polyamory, Social Conservatism and the Same-Sex Marriage Debate in the US*, 27 *POLITICS* 101 (2007); Ann E. Tweedy, *Polyamory as a Sexual Orientation*, 79 U. CIN. L. REV. 1461 (2011).

³¹ As of the writing of this article, nine states and the District of Columbia have legalized same-sex marriage, while both politicians and the public opinion seems to support same-sex marriage. See Jonathan Capeheart, 'Sorry' Bill Clinton Didn't Say More About DOMA, WASHINGTON POST, Mar. 8, 2013 (last visited Mar. 8, 2013 <http://www.washingtonpost.com/blogs/post-partisan/wp/2013/03/08/sorry-bill-clinton-didnt-say-more-about-doma/>).

³² See Full Marriage Equality (last visited May 17, 2013 <http://marriage-equality.blogspot.com/2012/09/a-perspective-on-heterosexual-polygamy.html>); See also Elizabeth F. Emens, *Monogamy's Law: Compulsory Monogamy and Polyamorous Existence*, 29 N.Y.U. REV. L. & SOC. CHANGE 277, 336 (2004); Martha M. Ertman, *Marriage as a Trade: Bridging the Private/Private Distinction*, 79 HARV. CR-CLL REV. 35, 36 (2001).

to plural marriage, such as the abuse, commodification, exploitation, and social isolation of women, as well as the concept of the impoverished “lost boys” who cannot find any spouses, no longer cause problems in polyamorous relationships founded on greater gender equity.³³ This article addresses the fallacious conceptions concerning *polyamorous* families in order to demonstrate *their* legal and social viability.³⁴

Some scholarly articles address and respond to the claim that polyamory can lead to a diminishment of the democratic citizenship capabilities of children who grow up in those households.³⁵ Polyamory poses no such threats; while some practitioners may value communal living on a small scale, these practitioners are not ideologically homogeneous and show little

³³ Elisabeth Sheff, *Polyamorous Women, Sexual Subjectivity, and Power*, 34 J. CONTEMP. ETHNOGRAPHY 251 (2005). See also Elisabeth Sheff, *Poly-Hegemonic Masculinities*, 9 SEXUALITIES 621 (2006).

³⁴ Elisabeth Sheff, *THE POLYAMORISTS NEXT DOOR: INSIDE MULTIPLE PARTNER FAMILIES AND RELATIONSHIPS* (2013).

³⁵ See, e.g. Maura I. Strassberg, *The Challenge of Post-Modern Polygamy: Considering Polyamory*, 31 CAP. U. L. REV. 439, 483-86 (2003).

tendency to band together to create exclusive and truly independent polities.³⁶

Statistics pertaining to children in polyamorous, polygynous, or polygamous families are quite difficult to attain; aside from the generic difficulties in gaining access to and interviewing willing parents and children, plural marriage remains a crime in all fifty states.³⁷ Still, this article presents the first attempt at constructing an actual data set for both legal and social scientific reference, as opposed to allowing courts and counselors to continue to rely on hearsay or outdated assumptions. This article begins by reviewing some of the classical and theoretically applicable arguments for why plural marriage is allegedly bad for children, and it offers some logical and legal responses. Then, we use interview data to

³⁶ Maura I. Strassberg, *Distinguishing Polygamy and Polyamory Under the Criminal Law*, EXPLODING THE NUCLEAR FAMILY IDEAL (Daniela Cutas & Sarah Chan, eds., 2012) (last visited May 10, 2013 <http://www.bloomsburyacademic.com/view/Families-Beyond-the-Nuclear-Ideal/chapter-ba-9781780930114-chapter-011.xml>).

³⁷ For a history and discussion of polygamy's criminalization in the United States, see Shayna M. Sigman, *Everything Lawyers Know about Polygamy Is Wrong*, 16 CORNELL J.L. & PUB. POL'Y 101 (2006).

allow children of polyamorous unions to speak for themselves, before we conclude with our arguments for the future.

Towards the end of the British Columbia case, Tim Dickson, a lawyer for the *amicus curiae* appointed by Chief Justice Bauman to argue that the court strike down the Canadian ban against plural marriage, asked Professor John Witte Jr., Director of the Center for the Study of Law and Religion at Emory University, if Witte based his arguments against plural marriage—in this case polygamy—on objective truth, i.e. if plural marriage was inherently harmful, or if he based his arguments on only his understanding of the known facts at the time.³⁸ “No,” said Witte. “Not every case exhibits harms.” In this article, the authors respectfully present the

³⁸ See Daphne Bramham, “Tradition of Monogamous Marriage Traced in Polygamy Hearing,” VANCOUVER SUN, Jan. 11, 2011 (last visited May 10, 2013 <http://stoppolygamyincanada.wordpress.com/2011/01/11/tradition-of-monogamous-marriage-traced-in-polygamy-hearing-by-daphne-bramham/>). While polygamy does not include all of polyamory, polyamory does include polygamous lifestyles, including those lifestyles based on consenting adults without abuse or exploitation. Thus, the polyamorous movement has many bedfellows that see themselves as polygamous.

heretofore-unknown cases that do not exhibit the harms Professor Witte and others expected.

II. ASSUMPTIONS AND RESPONSES

As Professor Witte noted in his testimony, and as the court accepted, much of the discussion revolving around the harms associated with plural marriage, both for spouses and for children, assume “negative impacts on [children’s] development caused by discord, violence and exploitation in the marital home,” along with deprivation of basic rights, impoverishment, and violation of fundamental dignity.³⁹

Far from assuming that plural marriage weakens the family unit, modern polyamorous, and even more traditional polygamist movements, demonstrate the opposite effect.⁴⁰ Even without the

³⁹ Reference re: Section 293 of the Criminal Code of Canada, 2011 BCSC 1588, at 357.

⁴⁰ See Elisabeth Sheff, *The Polyamorists Next Door: Inside Multiple-Partner Relationships and Families* (2013). See also Barbara Bradley Hagerty, “Philly’s Black Muslims Increasingly Turn toward Polygamy,” NPR, May 28, 2008 (last visited May 10, 2013 at <http://www.npr.org/templates/story/story.php?storyId=90886407>). See, Nina Bernstein, “In Secret, Polygamy Follows Africans to

fundamental Mormon sects, some other groups in the United States have urged polygamy as a way of actually preserving the family.⁴¹ In the African American community in Philadelphia, for instance, “distorted gender ratios, lack of economic options, and sexual norms have reduced black marriage to a statistical oddity. The result: 67.1% of black children are born outside of marriage and 34.5% grow up in poverty.”⁴² Therefore, rising numbers of people in Philadelphia’s African American community have embraced polygamy in recent

N.Y.,” NEW YORK TIMES, Mar. 23, 2007 (last visited May 18, 2013 <http://www.nytimes.com/2007/03/23/nyregion/23polygamy.html?pagewanted=all>).

⁴¹ See Empress Tsahai, “Polygamy as a Choice for the Black Family,” Rastafari Speaks (2002) (last visited on May 10, 2013 <http://www.rastafarispeaks.com/newspapers/articles/polygamy2002.html>). See also William Jankowiak and Emilie Allen, *Adoring the Father: Religion and Charisma in an American Polygamous Community* in *ANTHROPOLOGY AND THEOLOGY: GOD, ICONS, AND GOD-TALK*, 293–313, 301 (Walter Randolph Adams and Frank Salamone, eds. 2000).

⁴² Adrienne Davis, *Regulating Polygamy: Intimacy, Default Rules, and Bargaining for Equality*, 110 COLUM. L. REV. 1970 (2010) (citing U.S. Census Bureau, 2007 American Community Survey tbl. B13002B (2007) (last visited on May 10, 2013 https://www.socialexplorer.com/pub/ReportData/metabrowser.aspx?survey=ACS2010_5yr&ds=ACS10_5yr&header=True).

years.⁴³ Zaki, a polygamous man, describes his situation:

There are a lot of blessings in it because you're helping legitimize and build a family that's rooted in values and commitment. And the children that come out of those types of relationships only become a benefit to society at large.⁴⁴

Meanwhile, some radical feminists advocate polygamy as a potential weapon in dyadic marriage's ongoing battle of the sexes.⁴⁵ Decades after Betty Friedan's *The Feminine Mystique* and substantial shifts in gender roles, many women continue to complain that conventional marriage leaves them craving deeper emotional intimacy and more equitable divisions of household labor.⁴⁶ For

⁴³ Barbara Bradley Hagerty, "Philly's Black Muslims Increasingly Turn toward Polygamy," NPR, May 28, 2008 (last visited May 10, 2013) at <http://www.npr.org/templates/story/story.php?storyId=90886407>.

⁴⁴ Hagerty, *id.*

⁴⁵ Victoria Robinson, *My Baby Just Cares For Me: Feminism, Heterosexuality and Non-Monogamy*, 62 J. GENDER STUD. 143 (1997).

⁴⁶ See e.g. Joan Williams, *UNBENDING GENDER: WHY FAMILY AND WORK CONFLICT AND WHAT TO DO ABOUT IT* 57, 47-48, 66-72, 272 (2001) (describing studies and statistics on "the leisure gap"). See also Shelly Lundberg & Robert A. Pollak, *The American Family and*

now, frustrated wives have three options: surrender and consign themselves to gender inequity and personal exhaustion; remain locked in battle with their husbands; or divorce their husbands.⁴⁷ Polyamory presents another option.⁴⁸ Polyamory can generate stronger partnership models with greater role specification within marriage and more adults committed to balancing work/family obligations, and it can allow more leisure time for each spouse.⁴⁹ In this view, arguably, polygamy may “queer” marriage.⁵⁰ Moreover, the feminist and black-nationalist endorsements of polygamy share a fascinating combination of pragmatism and identitarian idealism.⁵¹

Family Economics, 21 J. ECON. PERSP. 3, 7–8 (2007) [hereinafter Lundberg & Pollak, *American Family*] (describing 2005 survey showing sixteen hours per week of housework for women versus less than eleven hours for men—a thirty percent gap).

⁴⁷ See generally Joan Williams, *UNBENDING GENDER: WHY FAMILY AND WORK CONFLICT AND WHAT TO DO ABOUT IT* (2001).

⁴⁸ Elisabeth Sheff, *Strategies in Polyamorous Parenting* in *UNDERSTANDING NON-MONOGAMIES* (Meg Barker and Darren Langdrige, eds., 2010). See also Elisabeth Sheff, *Polyamorous Women, Sexual Subjectivity, and Power*, 34 J. CONTEMPORARY ETHNOGRAPHY 251-283 (2005).

⁴⁹ Elisabeth Sheff, *Polyamorous Families, Same-sex Marriage, and the Slippery Slope*, 40 J. CONTEMP. ETHNOGRAPHY 487 (2011).

⁵⁰ Davis, at 1973.

⁵¹ *Id.*

Regarding how marital multiplicity affects economic and emotional child support, research is unclear that polygamy generates more costs for children than the standard alternatives.⁵² In 2006, the Centers for Disease Control & Prevention reported that thirty-eight and a half percent of children were born to unmarried women.⁵³ While some of these mothers will subsequently marry, many other mothers, particularly poor women, will not marry.⁵⁴ Instead, some of their children's fathers will subsequently father children with other women, leading to multiple (nonmarital) families, or so called "*de facto* polygamy."⁵⁵

⁵² *Id.* at 2028.

⁵³ Joyce A. Martin et al., Ctrs. for Disease Control & Prevention, Births: Final Data for 2006, 57 Nat'l Vital Stat. Rep. 2 (2009), (last visited May 13, 2013 http://www.cdc.gov/nchs/data/nvsr/nvsr57/nvsr57_07.pdf).

⁵⁴ See Stephanie Coontz and Nancy Folbre, "Marriage, Poverty, and Public Policy. A Discussion Paper from the Council on Contemporary Families" (2002), (last visited May 13, 2013 <http://www.pbs.org/wgbh/pages/frontline/shows/marriage/etc/poverty.html>).

⁵⁵ *Id.* The term "*de facto* polygamy" does not mean that these relationships are, in fact, like polygamy or polyamory. These relationships are missing the key distinction: the model of a loving, supportive, and committed family structure. The term is used simply to highlight the similarities of potential harms.

In addition, a substantial percentage of married couples divorce and remarry, starting new families.⁵⁶ A recent study showed that for Americans ages twenty-five and older, fifty-two percent of men and forty-four percent of women remarried.⁵⁷ These successive divorces and remarriages led to “serial polygamy,”⁵⁸ nineteenth-century activists derided these acts as “polygamy on

⁵⁶ See Andrew J. Cherlin, *THE MARRIAGE-GO-ROUND: THE STATE OF MARRIAGE AND THE FAMILY IN AMERICA TODAY* (2010); See also, Pat Wingert, “Americans Marry Too Much,” *DAILY BEAST*, Aug. 14, 2009 (last visited May 10, 2013 <http://www.thedailybeast.com/newsweek/2009/08/14/americans-marry-too-much.html>), noting that Americans have the highest divorce and remarriage rates.

⁵⁷ U.S. Census Bureau, Summary of Statistics on Marriage, Divorce and Remarriage after Divorce (2007) (last visited May 10, 2013 <http://www.remarriage.com/Remarriage-Facts/remarriage-after-divorce.html>).

Additional interesting numbers include: forty-two percent of adults have a step-relationship—either a stepparent, a step- or half-sibling, or a stepchild. This percent translates to ninety-five and a half million adults. Thirteen percent of adults are stepparents (between twenty-nine and thirty million); fifteen percent of men are stepdads (sixteen and a half million) and twelve percent of women are stepmoms (fourteen million). Ten percent of women in the U.S. have had three or more marriages, divorces, or cohabiting partners by age of thirty-five—the next highest industrialized nation is Sweden at four and a half percent. See Kim Parker, *A Portrait of Stepfamilies*, Pew Research Center Report, Jan. 13, 2011, (last visited on May 10, 2013 <http://pewsocialtrends.org/2011/01/13/a-portrait-of-stepfamilies/>).

⁵⁸ Davis, at 2028. See *supra* note 31.

the installment plan.”⁵⁹ In classical monogamy, women and men meet early in their lives, marry as virgins, forego all other sexual relationships, and remain sexually fidelitous until either or both of them die.⁶⁰ Serial marriage differs from classical monogamy because most contemporary serial monogamists do not expect to have a sole sexual partner during their lifespans, or to be virgins at marriage, and they consider divorce as an option to end unbearable relationships⁶¹. This cultural dynamic can, and often does, leave children from prior families economically and emotionally disadvantaged in favor of subsequent children,⁶²

⁵⁹ *Id.*

⁶⁰ See Maura I. Strassberg, *Distinctions of Form or Substance: Monogamy, Polygamy and Same-Sex Marriage*, 75 NCL REV. 1501 (1996).

⁶¹ See David H. Olson, *Marriage of the Future: Revolutionary or Evolutionary Change?*, 12 FAMILY COORDINATOR 383-393 (1972).

⁶² When the Family Research Council’s Marriage & Religion Research Institute (“MARRI”) released its second Annual Index of Family Belonging and Rejection in 2011, they found that “States with higher scores on the Index have lower child poverty rates, and states that score low have high child poverty rates. . . . A father is motivated to work harder to support a child when he is the biological parent of the child and lives with the child and mother.” Jennifer LecLaire, *Survey Pinpoints Root of Broken Families, Childhood Poverty*, CHARISMA NEWS, 11/18/2011, available at <http://www.charismanews.com/culture/32380-survey-pinpoints-root-of-broken-families-childhood-poverty>.

and, because men (more so than women) tend to procreate with each new marriage, serial marriage has generated dynamics similar to relationships feared from its contemporaneous plural variation.⁶³ The current child welfare arguments against polyamory were also directed against no-fault divorce half a century ago,⁶⁴ and, now, pro-polygamists use no-fault divorce to argue for more rights and more legal recognition and protection.⁶⁵ The “harms” of plural marriage are not uniquely generated by, or even demonstrably more prevalent in, contemporaneous plural marriages.⁶⁶ Research has found competition among families for emotional and economic resources in both the *de facto* and serial versions of plural relationships.

⁶³ *Id.* at 2028-2029.

⁶⁴ See Nancy Rosenblum, *Democratic Sex: Reynolds v. U.S., Sexual Relations, and Community*, in *SEX, PREFERENCE & FAMILY: ESSAYS ON LAW AND NATURE* 63, 78 (David M. Estlund & Martha C. Nussbaum eds., 1997).

⁶⁵ R. Scott Lloyd, “BYU Professor Speaks on LDS Polygamy,” *DESERET NEWS*, May 24 2009, (last visited May 10, 2013 <http://www.deseretnews.com/article/705306225/BYU-professor-speaks-on-LDS-polygamy.html?pg=all>).

⁶⁶ See Michèle Alexandre, *Lessons from Islamic Polygamy: A Case for Expanding the American Concept of Surviving Spouse So As to Include De Facto Polygamous Spouses*, 64 *WASH. & LEE L. REV.* 1461, 1476-77 (2007). Quoted in Davis at 2028.

Despite the potential emotional and economic costs to children, *de facto* polyamory and serial marriage both enjoy strong legal protection.⁶⁷ Since *Lawrence v. Texas* in 2003,⁶⁸ which made legal adults' consensual private sexual activity, most states have purged their codes of laws regulating cohabitation, sodomy, and fornication between unmarried adults.⁶⁹ People may live in committed sexual relationships with as many or as few people as desired.⁷⁰ Even for married individuals, while adultery is still a crime in twenty-three states—in most states, adultery is a misdemeanor, while in Idaho, Massachusetts, Michigan, Oklahoma, and Wisconsin, it is a

⁶⁷ See *Zablocki v. Redhail*, 434 U.S. 375, 375–77 (1978) (holding unconstitutional a statute forbidding individuals with child custody obligations from marrying without court approval). See also *State v. Oakley*, 629 N.W.2d 200, 201 (Wis. 2001) and Devon A. Corneal, *Limiting the Right to Procreate: State v. Oakley and the Need for Strict Scrutiny of Probation Conditions*, 33 Seton Hall L. Rev. 5, available at <http://erepository.law.shu.edu/shlr/vol33/iss2/5> (discussing the possible exception in probation conditions).

⁶⁸ *Lawrence v. Texas*, 539 U.S. 558 (2003).

⁶⁹ Ethan Bronner, *Adultery, an Ancient Crime That Remains on Many Books*, NY TIMES, Nov. 14, 2012, available at http://www.nytimes.com/2012/11/15/us/adultery-an-ancient-crime-still-on-many-books.html?_r=0.

⁷⁰ See Kristin Fasullo, *Beyond Lawrence v. Texas: Crafting A Fundamental Right to Sexual Privacy*, 77 FORDHAM L. REV. (2009).

felony—in the wake of *Lawrence*, most courts have decided to give adultery a wide berth.⁷¹ Serial marriage is not even questionable; it is perfectly legal.⁷² Individuals have a constitutional right to divorce and remarry as many times as they desire, regardless of whether they are supporting prior families.⁷³ The state also cannot limit people’s right to reproduce outside of marriage, based on mere burdens to the welfare system.⁷⁴ Hence, apart from the question of “affordability,”⁷⁵ both serial marriage and *de facto* polygamy have already undermined the issue of child support, rendering it a

⁷¹ See Lisa Keen, *Petraeus Scandal Conjured Recent LGBT Legal Skirmishes*, WINDY CITY TIMES, Nov. 21 2012, at p. 4, available at <http://www.windycitymediagroup.com/images/publications/wct/2012-11-21/current.pdf>.

⁷² See *Zablocki v. Redhail*, 434 U.S. 375, 375-77 (1978); see also *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942)(finding constitutional right to procreate); cf. *State v. Oakley*, 629 N.W.2d 200, 201 (Wis. 2001) (holding where father is not supporting existing children, state may bar him from having more children as condition of his probation). Kenneth Karst’s classic article, *The Freedom of Intimate Association*, 89 YALE L.J. 624, 667 (1980), found there is a constitutional right to remarry implied in *Zablocki*. Davis at 2046.

⁷³ See *Zablocki*, *supra* note 39.

⁷⁴ See Rebekah J. Smith, *Family Caps in Welfare Reform: Their Coercive Effects and Damaging Consequences*, 29 HARV. J.L. & GENDER 151 (2006).

⁷⁵ While some states do have “family cap laws” for welfare reform, the issues of monogamous marriage, plural marriage, or no marriage at all, is irrelevant. See Smith, *supra* note 44.

red herring. While these family issues are clearly important, they are not restricted or even idiosyncratic to polygamy. Upon close examination, the harms associated with polyamory are generic *familial* harms, while the benefits are distinctly polyamorous in nature.⁷⁶

Another related concern about the polyamorous family's children involves the possibility of dissolution, i.e. how courts would determine custody upon divorce with multiple adults having legitimate claims.⁷⁷ Family law is already grappling with parental multiplicity;⁷⁸ dyadic parenthood has been in the process of splintering along several axes for quite some time already.⁷⁹ First, no-fault divorce, non-marital childbearing, and changing cultural norms have combined to drastically increase the number of

⁷⁶ Davis, at 2031

⁷⁷ See Michael Otto, "Wait 'Til Your Mothers Get Home": Assessing the Rights of Polygamists As Custodial and Adoptive Parents, 1991 UTAH L. REV. (1991).

⁷⁸ See e.g., Naomi R. Cahn, Reframing Child Custody Decisionmaking, 58 Ohio St. L.J. 1 (1997); see also Gupta-Kagan, Josh. "Children, Kin and Court: Designing Third Party Custody Policy to Protect Children, Third Parties and Parents." NYU J. LEGIS. & PUB. POL'Y 12.1 (2008): 43-113.

⁷⁹ See Davis at 2030.

remarriages and blended families.⁸⁰ After any of the roughly 46,523 divorces in America in an average week,⁸¹ the custodial parent may then remarry, and the child may form strong ties to the new stepparent.⁸² A third marriage and second stepparent may also follow.⁸³ Thus, in serial monogamy, several adults may “parent” a child who does not share a biological relationship, any of whom may legitimately seek custody or visitation rights at the marriage’s dissolution.⁸⁴

A second situation that creates multiple-parenthood stems from the rise in assisted reproduction among both gay and heterosexual

⁸⁰ *Id.*

⁸¹ McKinley Irvin ‘32 Shocking Divorce Statistics’ McKinley Irvin, October 30, 2012, available online at <http://www.mckinleyirvin.com/blog/divorce/32-shocking-divorce-statistics/> (basing their data on statistics from the U.S. Census Bureau)

⁸² See Andrew J. Cherlin and Frank F. Furstenberg Jr., *Stepfamilies in the United States: A Reconsideration*, 20 ANNUAL REV. SOC. 359-381 (1994) (describing some of the characteristics of strong stepfamily units).

⁸³ See Mary F. Whiteside, *Remarriage: A Family Developmental Process*, 8 J. MARITAL & FAM. THERAPY 59 (1982). See also Marilyn Coleman, Lawrence Ganong & Mark Fine, *Reinvestigating Remarriage: Another Decade of Progress*, 62 J. MARITAL & FAM. THERAPY 1288 (2000).

⁸⁴ Davis, at 2030. See also ; Carter v. Brodrick, 644 P.2d 850, 853–56 (Alaska 1983) (construing statute broadly to enable stepparent visitation rights).

couples.⁸⁵ Contributors of genetic material—i.e., sperm and egg donors and surrogate mothers – may sometimes seek parental rights.⁸⁶ These claims have been an issue for heterosexual consumers of “repro-tech” resources for some time, and courts are increasingly confronting them for lesbian couples and sperm donors, and gay men and surrogates or egg donors.⁸⁷ In *LaChapelle v. Mitten*,⁸⁸ for instance, a Minnesota court recognized the parental

⁸⁵ Will Boggs, “Reproduction Rates Increasing Worldwide,” *Reuter’s Health*, Jun. 4, 2009 (last visited May 10, 2013) <http://www.reuters.com/article/2009/06/04/us-assisted-reproduction-idUSTRE5536KG20090604>).

⁸⁶ See Mark Strasser, *Parental Rights Terminations: On Surrogate Reasons and Surrogacy Policies*, 60 TENN. L. REV. 135 (1992); see also Jerald V. Hale, *From Baby M. to Jaycee B.: Fathers, Mothers, and Children in the Brave New World*, 24 J. CONTEMP. L. 335 (1998), and Kermit Roosevelt III, *The Newest Property: Reproductive Technologies and the Concept of Parenthood*, 39 SANTA CLARA L. REV. 79 (1998).

⁸⁷ Davis at 2030. See also Elizabeth A. Delaney, *Statutory Protection of the Other Mother: Legally Recognizing the Relationship Between the Nonbiological Lesbian Parent and Her Child*, 43 HASTINGS L.J. 177 (1991)

⁸⁸ 607 N.W.2d 151 (Minn. Ct. App. 2000). See also *C. v. G. & E.*, 225 N.Y.L.J., No. 9, at 29 (col. 4) (N.Y. Cnty. Sup. Ct. Jan 12, 2001) (finding that a gay couple who contracted with a surrogate could petition for a second-parent adoption of the child by the non-biological father, presumably without necessarily terminating the biological mother’s rights to the child; *Thomas S. v. Robin Y.*, 618 N.Y.S.2d 356 (App. Div. 1994); See also, Kevin Gray, “Florida Judge Approves Birth Certificate Listing Three Parents,” *Reuters*, Feb. 7, 2013, (last visited May 10, 2013) <http://ca.news.yahoo.com/florida-judge-approves-birth-certificate-listing-three-parents-233555185.html>).

rights of a biological mother, her lesbian partner, and the sperm donor.⁸⁹ Grandparents and other extended family members have also increasingly made claims for visitation, if not outright parenthood.⁹⁰ Finally, adoption has generated parental complexity, particularly in states with open adoption.⁹¹

⁸⁹ *Id.* at 168.

⁹⁰ See e.g. Linda D. Elrod & Robert G. Spector, *A Review of the Year in Family Law: Redefining Families, Reforming Custody Jurisdiction, and Refining Support Issues*, 34 FAM. L.Q. 607, 608 (2001) (citing *Troxel v. Granville*, 530 U.S. 57, 63-64 (2000)), where Justice O'Connor drew from the U.S. Dept. of Commerce, Bureau of Census, Current Population Reports, Marital Status and Living Arrangements: March 1998, remarking that five and six-tenth percent of children in America live with their grandparents rather than their parents) (quoted in Jami L. Crews, *When Mommy's A Minor: Balancing the Rights of Grandparents Raising Grandchildren Against Minors' Parental Rights*, 28 L. & PSYCHOL. REV. 133, 148 (2004)). By the 2000 Census, that number had gone up to seven percent. *Id.* at 134.

⁹¹ Naomi Cahn, *Perfect Substitutes or the Real Things?*, 52 DUKE L. J. 1077 (2003) (tracing and contextualizing the social and legal history of adoption law). See also e.g. *Spencer v. Franks*, 195 A. 306, 308 (Md. 1937) (issuing an adoption decree giving birth parents permission to "occasionally see the child"); *In re F.*, 406 A.2d 986, 989 (N.J. Sup. Ct. Ch. Div. 1979) (granting two children the right to visit their birth father after adoption); *In re McDevitt*, 162 N.Y.S. 1032, 1033 (Sup. Ct. 1917) (describing post-adoption visitation agreement between birth mother and paternal aunt); *Rodgers v. Williamson*, 489 S.W.2d 558, 560 (Tex. 1973) (discussing adoption decree permitting a father's visitation with his son after stepparent adoption). See also William Meezan & Joan F. Shireman, *Care and Commitment 220* (asserting that such open adoptions will become more frequent as foster parents continue to adopt older children); Amadio & Deutsch, *supra* note 31, at 83-85 (describing established

Thus, a variety of contemporary scenarios introduced the question of parental multiplicity into the law. Child custody and welfare issues upon dissolution of plural marital associations are not meaningfully different from issues in *de facto* polygamy or the various scenarios that generate “third party” parental claims, including serial polygamy, repro-tech families, grandparents, and adoption. Family law is in transition, and courts are already developing precedents by which to allocate parental rights among multiple claimants.⁹² These

procedures in Illinois for open adoptions of foster children) (*cited in* Annette Ruth Appell, *Blending Families Through Adoption: Implications for Collaborative Adoption Law and Practice*, 75 B.U. L. REV. 997, 1061 fn.77 (1995).

⁹² See e.g. Stacy Furukawa, U.S. Dept. of Commerce, Series P70, No. 38, *The Diverse Living Arrangements of Children: Summer 1991*, 3-4 (1994) (reporting that only fifty and eight-tenth percent of all children live in nuclear families composed of only two parents and their biological children, twenty-two percent live with two-parent families in which one or both parents are not their biological parents, twenty-four percent live in one-parent families, and one and seven-tenth percent live with their grandparents rather than their parents). See also Katharine T. Barlett, *Rethinking Parenthood as an Exclusive Status: The Need for Legal Alternatives When the Premise of the Nuclear Family Has Failed*, 70 VA. L. REV. 879 (1984) (quoted in Appell, *Blending Families Through Adoption: Implications for Collaborative Adoption Law and Practice*, 75 B.U. L. REV. 997, 1061, fn.69 (1995)). See also Martha L. Minow, *Redefining Families: Who's in and Who's Out?*, 62 U. COLO. L. REV. 269 (1991).

harms are not polyamorous in nature; they are just those of the modern family.

In sum, family law has already disaggregated marriage from parenting.⁹³ States

⁹³ See John Lawrence Hill, *What Does It Mean to Be A "Parent"? The Claims of Biology As the Basis for Parental Rights*, 66 N.Y.U. L. REV. 353, 376 (1991);

See also *Stanley v. Illionis*, 405 U.S. 645 (1972) (addressing the right of an unmarried father to establish or maintain a legally recognized relationship with his child, involving a challenge to the constitutionality of an Illinois statute that conclusively presumed every unwed father unfit to care for his children). Appellant Stanley had lived with his children and their mother for eighteen years without benefit of marriage. *Id.* Upon the mother's death, the State declared the children its wards and assumed responsibility for their care and custody without affording Stanley a hearing or establishing his unfitness. *Id.* The effect of the state rule denied Stanley status as the legally recognized parent of the children. *Id.* The Supreme Court rejected this statutory scheme because it violated both procedural due process and equal protection guarantees. *Id.* Implicit in the Court's decision was the view that Stanley was indeed a "parent" for constitutional purposes, notwithstanding the State's more restrictive legislative definition. According to the Court, therefore, under the Constitution, a state may not make marriage a sine qua non for ascription of paternal rights." *Id.*;

See also Katharine T. Bartlett, *Rethinking Parenthood as an Exclusive Status: The Need for Legal Alternatives When the Premise of the Nuclear Family Has Failed*, 70 VA. L. REV. 879 (1984). See also Candace M. Zierdt, *Make New Parents but Keep the Old*, 69 N.D. L. REV. 497 (1993). See also Kris Franklin, *A Family Like Any Other Family: Alternative Methods of Defining Family Law*, 18 N.Y.U. REV. L. & SOC. CHANGE 1027 (1990-1991) (examining the differences between the nuclear family and its alternatives, and asserting that the nuclear family does not accurately reflect the realities of our society and what constitutes "the family" has become a hotly contested political issue). See also Katharine K. Baker, *Bionormativity and the Construction of Parenthood*, 42 GA. L. REV. 649, 651 (2008) [hereinafter Baker, *Bionormativity*] (footnote omitted); cf. Annette R. Appell, *Controlling for Kin: Ghosts in The*

have a separate law of parenthood, and this law generates norms to grapple with parental multiplicity, both during and after the duration of the parental relationship.⁹⁴ Open-ended intimate multiplicity already exists.⁹⁵ Even if critics argue about its harms, costs, and regulatory challenges, plural marriage is not a necessary condition for

Postmodern Family, 25 WIS. J.L. GENDER & SOC'Y 73, 78 (2010) (discussing persistence of biological connections in adoptive, reprotect, and stepfamilies, and suggesting law take lessons from contact norms utilized in adoption law).

⁹⁴ See Kristine L. Burks, *Redefining Parenthood: Child Custody and Visitation When Nontraditional Families Dissolve*, 24 GOLDEN GATE U. L. REV. 223, 230 (1994). See also Teresa Stanton Collett, *Benefits, Nonmarital Status, and the Homosexual Agenda*, 11 WIDENER J. PUB. L. 379, 380-97 (2002) (listing marital benefits and obligations); Michael S. Wald, *Same-Sex Couples: Marriage, Families, and Children*, available at <http://www.buddybuddy.com/wald-1.html> (Dec. 1999). See also Naomi R. Cahn, *The Moral Complexities of Family Law*, 50 STAN. L. REV. 225, 228 (1997). Supporters of pluralistic family configurations maintain that moral discourse about the family has not disappeared. *Id.* Rather, it has diverged from a focus on “fault, sexuality, and patriarchal privileges” within families comprising of two married parents of opposite sex and their biological offspring, shifting to a consideration of “fairness, equity, and caregiving” within “kinships of responsibility.” *Id.* at 228-29. See Barbara Bennett Woodhouse, *It All Depends on What You Mean by Home: Toward a Communitarian Theory of the “Nontraditional” Family*, 1996 UTAH L. REV. 569, 587. See also Katharine T. Bartlett, *Saving the Family from the Reformers*, 31 U.C. DAVIS L. REV. 809, 816 (1998) (favoring “respect or moral accommodation for a broad range of family forms that are capable of providing nurturing environments to its members”) (quoted in James Herbie DiFonzo, *Unbundling Marriage*, 32 HOFSTRA L. REV. 31, 70, fn.71 (2003)).

⁹⁵ See Goldfeder, *supra* note 13.

these already occurring concerns. Formal, contemporaneous polygamy, serial monogamy, and *de facto* polygamy all share some of the vulnerabilities and uncertainties with regard to struggles for financial, and particularly emotional, resources among families.⁹⁶ Despite ongoing controversy, society does not ban *de facto* polygamy.⁹⁷ With the advent of no-fault divorce, serial monogamy is the norm.⁹⁸ Family law has

⁹⁶ Davis, at 2028.

⁹⁷ Michele Alexandre, *Lessons from Islamic Polygamy: A Case for Expanding the American Concept of Surviving Spouse So As to Include De Facto Polygamous Spouses*, 64 WASH. & LEE L. REV. 1461, 1464 (2007) [hereinafter Alexandre, Lessons] (advocating “that a redefinition of the concept of the surviving spouse in American estate distribution will help to legally protect de facto spouses in the inheritance context”). See also generally Susan Frelich Appleton, *Parents by the Numbers*, 37 HOFSTRA L. REV. 11 (2008) (distinguishing biological, functional, and estoppel approaches to parental multiplicity); Melanie B. Jacobs, *Micah Has One Mommy and One Legal Stranger: Adjudicating Maternity for Nonbiological Lesbian Coparents*, 50 BUFF. L. REV. 341 (2002) (describing courts’ use of equitable doctrines to determine legal relationship of lesbian coparents and children); Melanie B. Jacobs, *Why Just Two? Disaggregating Traditional Parental Rights and Responsibilities to Recognize Multiple Parents*, 9 J.L. & FAM. STUD. 309, 310 (2007) (“[D]octrines such as intentional and functional parenthood have been applied by courts to legalize the coparentage of a child by a nonbiological gay or lesbian partner . . .”).

⁹⁸ See e.g. *Potter v. Murray City*, 585 F. Supp. 1126, 1142 n.7 (D. Utah 1984) (noting that plaintiff, fired from his job as a police officer for practicing polygamy, had sought the admission during discovery that “the high rate of divorce in the United States has often turned today’s American familial relationships into a form of serial

already developed robust norms to grapple with the implications and effects of “serial” open-ended multiplicity with regard to children.⁹⁹

As previously mentioned, child endangerment concerns often surround the practice of plural marriage, and advocates advance those concerns in order to justify criminalizing the practice.¹⁰⁰ Nevertheless, bigamy is a separate and

polygamy”), aff’d, 760 F.2d 1065 (10th Cir. 1985) (affirming district court’s rejection of plaintiff’s free exercise and privacy-based challenge to his termination); David G. Maillu, *The Whiteman’s Polygamy*, in OUR KIND OF POLYGAMY 29 (1988) (quoted in Elizabeth F. Emens, *Monogamy’s Law: Compulsory Monogamy and Polyamorous Existence*, 29 N.Y.U. REV. L. & SOC. CHANGE 277, 376 (2004)). See also *Rock-Salting the Slippery Slope: Why Same-Sex Marriage Is Not A Commitment to Polygamous Marriage*, 29 N. KY. L. REV. 521, 544 (2002)

⁹⁹ See generally J. Thomas Oldham, *Ali Principles of Family Dissolution: Some Comments*, 1997 U. ILL. L. REV. 801, 831 (1997). See also Marvin M. Moore, *The Significance of A Divorced Father’s Remarriage in Adjudicating A Motion to Modify His Child Support Obligations*, 18 CAP. U. L. REV. 483 (1989); Jennifer E. Horne, *The Brady Bunch and Other Fictions: How Courts Decide Child Custody Disputes Involving Remarried Parents*, 45 STAN. L. REV. 2073, 2074 (1993); Edward R. Anderson & Shannon M. Greene, *Beyond Divorce: Research on Children in Repartnered and Remarried Families*, 51 FAM. CT. REV. 119 (2013).

¹⁰⁰ See e.g. Joanna L. Grossman & Lawrence M. Friedman, “*Sister Wives*”: Will Reality Show Stars Face Prosecution for Polygamy in Utah?, FINDLAW (Oct. 4, 2010), <http://writ.news.findlaw.com/grossman/20101004.html> (stating Brown family does not appear to violate other criminal laws often violated by polygamists, such as child marriage, rape, or sex with minors, meaning state will have to determine whether to prosecute Brown family for polygamy “in its purest form”); “*Sister Wives*”

distinct offense from child endangerment crimes, as bigamy only requires being simultaneously “married” to multiple people.¹⁰¹ Bigamy is seldom prosecuted in the absence of a child endangerment charge, which suggests that polyamory is not a crime that law enforcement officials typically consider to be sufficiently important to waste

Bigamy Prosecution Would Be Rare, FOX NEWS (Oct. 8, 2010), <http://www.foxnews.com/entertainment/2010/10/08/sister-wives-bigamy-case-stats-dont-lie/> (stating review of Utah bigamy prosecutions revealed no recent prosecutions for bigamy that were unaccompanied by some form of child endangerment crime because of lack of resources to prosecute all polygamists solely for crime of bigamy); Ben Winslow, *Utah Co. Prosecutors Want to See ‘Big Picture’ of Prosecuting Reality TV Polygamists*, FOX 13 NEWS (Sept. 28, 2010), http://www.fox13now.com/news/local/kstu-sister-wives-stars-investigated-bigamy_06323096.story (citing information from Utah Attorney General’s Office indicating that Office does not typically prosecute polygamy alone because of lack of resources and instead opt to prosecute polygamy only when accompanied by other crimes such as underage marriages) (quoted in Kaitlin R. McGinnis, “*Sister Wives: A New Beginning for United States Polygamist Families on the Eve of Polygamy Prosecution?*,” 19 VILL. SPORTS & ENT. L.J. 249, 280 (2012). See also Martin Guggenheim, *Texas Polygamy and Child Welfare*, 46 HOUS. L. REV. 759, 810 (2009); Julie Cart, *Utah Paying a High Price for Polygamy*, LOS ANGELES TIMES, September 9, 2001, available at <http://www.rickross.com/reference/polygamy/polygamy69.html>.

¹⁰¹ ‘The crime of bigamy is committed by the act of marrying while the spouse by a former marriage is still alive and the former marriage is still in force. At common law, entering into a second marriage while the first remained undissolved was designated as polygamy, and statutes may still employ that term.’ 22 A.L.R.6th 1 (Originally published in 2007).

resources investigating and prosecuting.¹⁰² Furthermore, as our research illustrates, polygamy and child welfare concerns do not always occur simultaneously.¹⁰³ This article is not, however, the first to recognize this phenomenon; one recent study of twenty-seven polygamous families concluded that these abuses are caused by “particularly dysfunctional” polygynist families rather than problems inherent to polygyny.¹⁰⁴ Condemning every practicing polygynist to prevent the abuses of some polygynists may be counterintuitive.¹⁰⁵ Some law enforcement officials agree; one Federal Bureau

¹⁰² See, e.g., Timothy Egan, *The Persistence of Polygamy*, N.Y. TIMES (Feb. 28, 1999), <http://www.nytimes.com/1999/02/28/magazine/the-persistence-of-polygamy.html> (providing that no one has been prosecuted for polygamy alone in Utah in almost fifty years).

¹⁰³ See Janet Bennion, ‘Women of Principle: Female Networking in Contemporary Mormon Polygamy.’ (New York: Oxford University Press, 1998).

¹⁰⁴ Irwin Altman & Joseph Ginat, *Polygamous Families in Contemporary Society*, Cambridge University Press (1996) (quoted in Maura Strassberg, *The Crime of Polygamy*, 12 TEMP. POL. & CIV. RTS. L. REV. 353, 398 (2003)).

¹⁰⁵ See Jessie L. Embry, *Mormon Polygamous Families: Life in the Principle* (1987), noting, after years of studying polygamous communities, that it is neither polygamy nor monogamy that dictates harmonious marital relationships. Rather, individual personalities have much more influence. The abilities of the participants to get along and treat one another fairly are far more crucial to marital satisfaction than the form the marriage takes.

of Investigations agent familiar with polygynous sects recently stated, “At least 99% of all polygamists are peaceful, law-abiding people, no threat to anybody. It’s unfortunate that they’re stigmatized by a band of renegades.”¹⁰⁶

Consequently, the state must advance some other legitimate interest in order to justify criminalizing bigamy post-*Lawrence* because, like homosexual conduct, the practice of polygamy is arguably a “personal relationship that . . . is within the liberty of persons to choose without being punished as criminal.”¹⁰⁷ Until then, though, if a

¹⁰⁶ Bella Stumbo, *No Tidy Stereotype; Polygamists: Tale of Two Families*, L.A. TIMES, May 13, 1988, Part 1, at 1 (quoted in Emily J. Duncan, *The Positive Effects of Legalizing Polygamy: “Love Is A Many Splendored Thing”*, 15 DUKE J. GENDER L. & POL’Y 315, 337 (2008)).

¹⁰⁷ See *Lawrence v. Texas*, 539 U.S. 558, 567 (2003); Kaitlin R. McGinnis, “*Sister Wives*”: *A New Beginning for United States Polygamist Families on the Eve of Polygamy Prosecution?*, 19 VILL. SPORTS & ENT. L.J. 249 (2012). See also generally *Moore v. City of E. Cleveland, Ohio*, 431 U.S. 494 (1977). *Moore* involved a zoning ordinance that limited occupancy of dwellings to members of a single family. *Id.* Appellant *Moore* was charged with violating the ordinance because she lived in a home with her son and two grandsons, an arrangement which did not meet the ordinance’s definition of “family.” *Id.* *Moore* argued that the ordinance violated her substantive due process rights under the Fourteenth Amendment, and a plurality of the Court agreed. *Id.* Specifically, the Court stated, “the Constitution prevents East Cleveland from standardizing its children and its adults by forcing all to live in certain narrowly

rational policy exists in this area, it should consider the legalization of polygamy, thereby allowing greater regulation of the practice, compelling polygynous families to emerge from the shadows, and openly assisting the women and children who live in them.¹⁰⁸

Some courts are starting to agree.¹⁰⁹ In a recent important shift, some courts have held that participation in polygamous arrangements does not bar adoption or child custody.¹¹⁰ In 1955, the Utah Supreme Court upheld a finding of child neglect and the removal of several children from their parents' home, based solely on the parents'

defined family patterns." *Id.* at 506. Consequently, although not as on point as *Lawrence*, *Moore* is another opinion that suggests that family and other personal relationships should be free from government intrusion absent a state interest sufficient to meet the Court's level of scrutiny. *See generally Moore* at 279.

¹⁰⁸ Emily J. Duncan, *The Positive Effects of Legalizing Polygamy: "Love Is A Many Splendored Thing"*, 15 DUKE J. GENDER L. & POL'Y 315, 316 (2008).

¹⁰⁹ *See* Lauren C. Miele, *Big Love or Big Problem: Should Polygamous Relationships Be A Factor in Determining Child Custody?*, 43 NEW ENG. L. REV. 105 (2008).

¹¹⁰ *See* Amy Fry, *Polygamy in America: How the Varying Legal Standards Fail to Protect Mothers and Children from Its Abuses*, 54 ST. LOUIS U. L.J. 967, 992 (2010).

unlawful polygamous marriage.¹¹¹ In 1987, however, that same court ruled that a divorced mother's polygamous re-marriage could not be used as the primary ground for granting her ex-husband's request for custody of the couple's children.¹¹² Most recently, in 1991, the Utah Supreme Court held that polygamy, standing alone, is insufficient automatically to disqualify polygamists as adoptive parents.¹¹³ These developments suggest that, while

¹¹¹ *In re Black, State in Interest of*, 283 P.2d 887, 912-13 (Utah 1955). The court commits enough harm by removing children based solely on the fact that polygamy was practiced in their presence and that they were encouraged to believe and engage in plural marriage. *See id.* at 901.

¹¹² *Sanderson v. Tryon*, 739 P.2d 623, 627 (Utah 1987) (holding that "a parent's extra-marital sexual relationship alone is insufficient to justify a change in custody", and therefore, evidence the mother is practicing polygamy is insufficient on its own to support the lower court's finding) Instead, the court found "polygamous practices should only be considered as one among many other factors regarding [a child's] best interests." *Id.*

¹¹³ *See Matter of Adoption of W.A.T.*, 808 P.2d 1083 (Utah 1991).

"The fact that our constitution requires the state to prohibit polygamy does not necessarily mean that the state must deny any or all civil rights and privileges to polygamists. It is true that bigamy is a crime in Utah and that one of the petitioners here is concededly a bigamist. The same portion of the criminal code ("Offenses Against the Family") which makes bigamy a crime, however, also criminalizes adultery, fornication, nonsupport of children, surrogate parenthood contracts, and unauthorized abortions. *See generally* UTAH CODE ANN. §§ 76-7-101 to -325 (2013). Innumerable other acts are of course defined as crimes by other portions of the criminal code. It is not the role of trial courts to make threshold exclusions dismissing without consideration, for example, the adoption petitions of all

polygamy is still socially and legally marginalized, polygamy does not bear so much of its former stigma, particularly relating to the welfare of children.¹¹⁴

The polyamorous movement argues that “multiple parenting” is actually potentially beneficial to children in a number of ways.¹¹⁵ Children of the unions are guaranteed to have care and supervision provided by multiple adults, and with so many spouses, spouses participate in a

convicted felons, all persons engaging in fornication or adultery, or other persons engaged in other illegal activities. There is likewise no legitimate basis for the courts to disqualify all bigamists (polygamists) as potential adopters.’

Id. at 1085.

¹¹⁴ See *In re Texas Dept. of Family & Protective Services*, 255 S.W.3d 613 (Tex. 2008) (agreeing with the appellate court finding that the Texas statute required a showing of “imminent” harm to determine whether children were in danger and needed to be removed, and that the mothers were practicing polygamy did not constitute that kind of harm).

¹¹⁵ See e.g. Elaine S. Cook, *Commitment in Polyamorous Relationships*, Diss., Regis University, 2005, at 58. “All of those who commented on children thought that polyamory was beneficial for the children. Other adults can help raise the kids. If the other adults are local, “The kids are never on the shorts for somebody who can pay attention to them.” The kids have more role models. The parents suggested I interview both the child and her older stepsister, but I told them that that would have to wait for a different study.’ This is that study.

specialized division of labor.¹¹⁶ Polyamory creates a new form of extended family that can allow some parents to care for children at home while other parents pursue a career or simply support the family financially.¹¹⁷ Whereas a single adult or even two adults with little or no time to themselves can “burn out,” multiple adults can meet the endless needs of children without becoming frustrated or insensitive.¹¹⁸ Children can benefit from having multiple loving parents who can offer not only more quality time, but a greater range of interests and energy levels to match the child’s own unique and growing personality.¹¹⁹ In addition, because of the polyamorous focus on openness and honesty in

¹¹⁶ See Scott Anderson, *The Polygamists: An Exclusive Look Inside the FLDS*, NAT’L GEOGRAPHIC, Feb. 2010, at 50.

¹¹⁷ See Ryam Nearing, *Do You Want to a Date or a Mate?*, THE BEST OF LOVING MORE MAGAZINE VOL. NO. 1, at 72(1997), quoted in Maura I. Strassberg, *The Challenge of Post-Modern Polygamy: Considering Polyamory*, 31 CAP. U. L. REV. 439, 464 (2003).

¹¹⁸ See Deborah Anapol, *The Upside of Polyamory*, PSYCHOLOGY TODAY, Dec. 22, 2010 (last visited May 10, 2013) <http://www.psychologytoday.com/blog/love-without-limits/201012/the-upside-polyamory>).

¹¹⁹ T.L. Williams, *Polyamory vs. Swinging. What’s the Difference?*, LALA LAND, Jun. 27, 2011 (last visited May 10, 2013) <http://ladaewilliams.blogspot.com/2011/06/polyamory-vs-swinging-whats-difference.html>.

regard to feelings,¹²⁰ children in polyamorous homes can develop a greater than usual propensity for emotional intimacy.¹²¹ As this article demonstrates, Sheff's research supports these polyamorous community contentions.¹²²

III. CHILDREN IN POLYAMOROUS FAMILIES SPEAK OUT

The academic and legal custody discussions about children in polyamorous relationships have relied almost exclusively on evidence from a few potentially anachronistic polygynous relationships and scholarly speculation regarding the experiences of children in polyamorous families.¹²³ While work

¹²⁰ Kenneth R. Haslam, *The 12 Pillars of Polyamory*, POLYAMOROUS PERCOLATIONS, May 15, 2008 (adapted from a lecture given to Polyamorous NYC on March, 19 2008), *available at* <http://www.polyamoryonline.org/articles/12pillars.html>.

¹²¹ Maria Pallotta-Chiarolli, *These Are Our Children: Polyamorous Parenting*, *LGBT-PARENT FAMILIES* 117-31 (2013).

¹²² Elisabeth Sheff. 2013. *The Polyamorists Next Door: Inside Multiple Partner Relationships and Families*. Lanham, MD: Rowman and Littlefield.

¹²³ See Alicia Potter, *Free Love Grows Up*, THE BOSTON PHOENIX, Oct. 15-22, 1998 (last visited May 10, 2013 [http://www.bostonphoenix.com/archive/features/98/10/15/POLYAMORIS TS.html](http://www.bostonphoenix.com/archive/features/98/10/15/POLYAMORIS%20TS.html)). See also Antaffy, Nikó, *Polyamory and the Media*, 8 SCAN| J. MEDIA ARTS CULTURE _ (2011), and Woodruff-Diaz and Sarah Kay. *Polyamory as "Ethical Nonmonogamy": A Viable*

needs to be done on parenting in poly-relationships more generally,¹²⁴ as of yet, no one has published anything that directly speaks to the harms that children may experience based on their parents being polyamorous.¹²⁵

IV. THE POLYAMOROUS FAMILIES STUDY

In this section, the article explores the experiences that twenty-two children in polyamorous families who participated in the “Polyamorous Family Study,” a fifteen-year longitudinal, ethnographic study of polyamorous people and their children¹²⁶. Sheff collected data

Alternative to Infidelity: A Project Based upon an Independent Investigation, Thesis, Smith College School for Social Work (2010).

¹²⁴ See e.g. Maria Pallotta-Chiarolli, *Polyparents Having Children, Raising Children, Schooling Children*, 7 LESBIAN & GAY PSYCHOL. REV. 48 (2012); Meg Barker & Darren Langdridge, *Understanding Non-Monogamies*, ROUTLEDGE (2010).

¹²⁵ See W. C. Duncan, "The More the Merrier?," THE AMERICAN SPECTATOR, Sept. 2, 2010 (last visited May 10, 2013 <http://spectator.org/archives/2010/09/02/the-more-the-merrier>).

¹²⁶ Elisabeth Sheff, *Relationship Innovations among Polyamorists: Family, Sexuality, and Gender*, Unpublished Dissertation, Dep't Soc., Univ. Colo. (2005); Elisabeth Sheff, *Polyamorous Women, Sexual Subjectivity, and Power*, 34 J. CONTEMP. ETHNOGRAPHY 251 (2005); Elisabeth Sheff, *Poly-Hegemonic Masculinities*, 9 SEXUALITIES 621 (2006); Elisabeth Sheff, *Strategies in Polyamorous Parenting in UNDERSTANDING NON-MONOGAMIES* (Meg Barker and Darren

through three waves of in-depth interviews and participant observation with polyamorists.¹²⁷ The initial wave of data collection (1996 - 2003) focused on adults in polyamorous relationships, some of whom had children.¹²⁸ The second wave of data collection (2007 - 2008) concentrated on polyamorous adults who were members of families with children, and the third wave of data collection (2009 - 2012) focused on children in polyamorous families and their relevant adults. The total sample for all three waves of data collection came to 131 interviewees—twenty-two of whom were children between the ages of five and seventeen—and roughly 500 people involved in participant observation.

Interviews were semi-structured and lasted from one-and-one-half to two hours, and followed a pattern in which respondents answered an initial

Langdrige, eds., 2010). Elisabeth Sheff and Corie Hammers, *The Privilege of Perversities: Race, Class, and Education among Polyamorists and Kinksters*, *SEXUALITY & PSYCHOL.* (2011).

¹²⁷ Elisabeth Sheff, *Relationship Innovations among Polyamorists: Family, Sexuality, and Gender*, Unpublished Dissertation, Dep't Soc., Univ. Colo. (2005).

¹²⁸ *Id.*

series of questions regarding demographic characteristics, entry into polyamory, and current relationships. The second and third rounds of interviews focused more pointedly on familial experiences, social interactions, parenting, relationships with partners and bio-legal kin, definitions of family, and interactions with institutions (i.e. children's schools). Participants selected their own pseudonyms.

Data analysis involved a modified form of grounded theory,¹²⁹ a method that has proven particularly useful in other family studies.¹³⁰ Employing inductive data gathering methods¹³¹ and constant comparative methods,¹³² Sheff analyzed the interview data and her field notes using a process that included: a) reading transcripts and generating initial coding categories; b) identifying

¹²⁹ Kathy Charmaz, *Grounded Theory: Objectivist and Constructivist Methods* in *HANDBOOK OF QUALITATIVE RESEARCH*, 509-535 (N. K. Denzin & Y. S. Lincoln, eds., 2000).

¹³⁰ Ralph LaRossa, *Grounded Theory Methods and Qualitative Family Research*, 67 *J. MARRIAGE & FAM.* 837 (2005).

¹³¹ John Lofland & Lynn Lofland, *ANALYZING SOCIAL SETTINGS: A GUIDE TO QUALITATIVE OBSERVATION AND ANALYSIS* (1995).

¹³² Barney Glaser & Anselm Strauss, *THE DISCOVERY OF GROUNDED THEORY: STRATEGIES FOR QUALITATIVE RESEARCH* (1967).

and relating similar ideas and the relationships between and among categories; c) adjusting these analytical categories to fit emergent theoretical concepts; d) collecting additional data to verify and/or challenge the validity of those concepts; and e) probing these data for the boundaries and variations of common themes.¹³³

The data in this article comes primarily from the third wave of data collection. Because the initial study was not designed to be a longitudinal research project and the Institutional Research Board¹³⁴ required that Sheff destroy all identifying information, she was only able to locate those members of the original sample who retained enough contact with mainstream polyamorous communities to receive the calls for participation in the follow-up study. Thus, the current data do not include the perspectives of individuals who may

¹³³ Barney Glaser & Rosalind Hertz, *QUALITATIVE SOCIOLOGY AS EVERYDAY LIFE* (1999).

¹³⁴ Institutional Research Boards, or IRBs, are bodies that are associated with universities in the United States and oversee the ethical and legal implications of all research conducted under the auspices of the university. One of their most important purposes is to protect human subjects from harms resulting from research.

have stopped participating in these poly-communities.

Contrary to the image that many people may have of the typical plural marriage family as rural denizens living isolated and impoverished lives, respondents of the “Polyamorous Family Study” tended to be white, very highly educated, middle or upper middle class people living in urban or suburban areas of large cities and working in professional occupations, such as information technology, mental and physical health care services, and education. The social privileges that the population enjoys contribute to the positive outcomes that many of the children from polyamorous families experience.

While the results of this study are not statistically generalizable to the entire population of polyamorists in North America, Sheff believes that they accurately portray polyamorous families in the United States. Sheff’s findings also correlate with others’ findings on children in polyamorous or

open-marriage families in the United States¹³⁵ and Australia.¹³⁶ Similar to others' research on other families of sexual minorities,¹³⁷ there was no way to draw a statistically representative sample of an unknown universe populated by closeted figures bent on avoiding the potential impacts of stigma. Respondent bias similarly affects the generalizability of the results, in that the people who are most functional and feel that they have nothing to hide are most likely to volunteer for research in general, and family research in particular is weighted towards families that see themselves as healthy and are not abusing their spouses or molesting their children. Given the sampling limitations, it is possible that Sheff's findings tend to emphasize the more optimistic elements of polyamorous families because they are

¹³⁵ Larry Constantine & Joan Constantine, *GROUP MARRIAGE: A STUDY OF CONTEMPORARY MULTILATERAL MARRIAGE* (1973).

¹³⁶ Maria Pallotta-Chiarolli, *BORDER SEXUALITIES, BORDER FAMILIES IN SCHOOLS* (2010); Damien Riggs, *Developing a 'Responsible' Foster Care Praxis: Poly as a Framework for Examining Power and Propriety in Family Contexts* in *UNDERSTANDING NON-MONOGAMIES* (Meg Barker & Darren Langdridge, eds., 2010).

¹³⁷ Christopher Carrington, *NO PLACE LIKE HOME: RELATIONSHIPS AND FAMILY LIFE AMONG LESBIANS AND GAY MEN* (1999); Kath Weston, *FAMILIES WE CHOOSE: LESBIANS, GAYS, AND KINSHIP* (1991).

where respondents have chosen to focus their comments. This would support Pallotta-Chiarolli's findings that some of her respondents were invested in portraying their polyamorous families as "perfect." She elaborated:

This strategy of parodying or mimicking 'perfect parenting' was also utilized by many polyfamilies in order to prevent any perceived deficit or dysfunction in their family being used to justify, explain, or exaggerate" negative assumptions about their families, instead ensuring that they would appear "not only 'normal' . . . but beyond normal, beyond fault."¹³⁸

However, even with this potentially optimistic tone to responses, it is abundantly clear that some polyamorous families can and in fact do provide positive and enriching environments for children. At minimum they are not definitionally pathological, or at least no more pathological than families with monogamous, serially monogamous,

¹³⁸ Maria Palotta-Chiarolli, *BORDER SEXUALITIES, BORDER FAMILIES IN SCHOOLS*, 214 (2010).

de facto polygamous, or polygamous members.¹³⁹ Sheff's study indicates that many of the assumptions underlying legal decisions regarding how children in families centered around a plural marriage might fare are actually erroneous, based on false assumptions or projections rather than empirical data.¹⁴⁰ Having explored some of those erroneous assumptions, this article will now investigate the vastly different picture that children in polyamorous families create. What follows is a brief summary of Sheff's findings concerning children, more detailed data regarding what children in polyamorous families perceived to be the advantages and disadvantages of these families, and some conclusions regarding these findings.

¹³⁹ For more on these other populations, see Donna K. Ginther and Robert A. Pollak, *Family Structure and Children's Educational Outcomes: Blended Families, Stylized Facts, and Descriptive Regressions*, 41 DEMOGRAPHY 671 (2004). See also Judith S. Wallerstein and Joan B. Kelly, *SURVIVING THE BREAKUP: HOW CHILDREN AND PARENTS COPE WITH DIVORCE* (1996); Barbara Bilge and Gladis Kaufman, *Children of Divorce and One-parent Families: Cross-cultural Perspectives*, FAMILY RELATIONS 59-71 (1983).

¹⁴⁰ See e.g. Reynolds v. United States, 98 U.S. 145, 150 (1878), and Reference re: Section 293 of the Criminal Code of Canada, 2011 BCSC 1588, Introduction.

V. FINDINGS REGARDING CHILDREN IN POLYAMOROUS FAMILIES

A. Introduction

Respondents of the Polyamorous Family Study who were between 5 and 17 years old had a wide range of experiences. These experiences varied primarily by age of respondent, with three groups emerging as most relevant: 1) “kids” between 5 and 8, 2) “tweens” from nine to 12, and 3) “teens” from 13 to 17. Some experiences were common across all age groups, though most took on a tone specific to that developmental stage.

B. Commonalities

For the most part, respondents did not have to manage coming out to strangers, classmates, coaches, or teachers. As far as sexual minority families go, poly families are not nearly as visible or recognizable as the far better known lesbian or

gay families.¹⁴¹ The contemporary popularity of divorce in the United States makes it commonplace for children to have multiple parents, which helps children from poly families with several parental figures to blend in because step-parents and step-siblings are standard social fare.¹⁴² Unless poly family members intentionally highlight and explain their family structure, they are rarely called upon to provide an explanation for their multiple adults. If they choose to come out, they do so selectively, revealing family details only to those they know and trust, or those who ask politely in low risk or need-to-know situations.

While some children in poly families view the multiple adults in their lives as parents, more of them see these adults as a chosen family member akin to an aunt, uncle, cousin, or older sibling. Two things make it more likely for kids in poly families

¹⁴¹ For a closer look at those communities, see Victoria Clarke, “*Kids Are Just Cruel Anyway*”: *Lesbian and Gay Parents’ Talk about Homophobic Bullying*, 43 BRITISH J. SOC. PSYCHOL. 531 (2004). See also Robert Oscar Lopez, *Growing up with Two Moms; The Untold Children’s View*, The Witherspoon Institute, Aug. 6 2012 (last visited Aug. 6, 2012 <http://www.thepublicdiscourse.com/2012/08/6065/>).

¹⁴² See *supra* note 32 and accompanying text.

to see additional adults as parental figures: 1) if those adults have been in the children's lives since they were babies or toddlers, and 2) the adults and children share the same residence. Long-term, cohabitational family members were the most likely to take on parental roles, and children tended to cast the people who lived elsewhere or shorter-term partners as chosen kin and friends, but not as parents.

Overall the children seemed remarkably well adjusted, articulate, intelligent, and self-confident. While they dealt with the usual issues of childhood – from the frustration of having to share toys to the adolescent awkwardness of middle-school social machinations – these respondents appeared to be thriving with the abundant resources and adult attention their families provided. This finding echoes the results of Hunt's sub-study of children in the Constantine's 1973 larger study of group-marriage households. Hunt described the children in the sub-study as "very much in contact with themselves, with a highly positive image of

themselves as valuable persons combined with a realistic perception of their own abilities. They accepted and valued differences in other people. In short, most of them are confident, healthy, in-touch kids.”¹⁴³

C. Kids

Sheff was able to observe very young children under five years old, but did not interview them. Younger children between five and eight years old tended to view all adults through a similar lens of the adult’s utility in the child’s life. Ideas of partners and partners’ partners were reserved for adult understanding, and the kids defined adults by how they interacted with and attended to the child. Rebecca, a seven-year-old white female elementary school student living in the Pacific Northwest with her polyamorous mother Emerald and her nine-year-old sister Clarabelle, was quite focused on the fun she had with her mother’s ex-boyfriend Greg

¹⁴³ Larry Constantine and Joan Constantine, *GROUP MARRIAGE: MARRIAGES OF THREE OR MORE PEOPLE, HOW AND WHY THEY WORK*, 155 (1973).

and she was oblivious to her mother's romantic break-up. In response to Sheff's question regarding who was in Rebecca's family, Rebecca reported:

Oh yeah, Greg comes over all the time, we play Legos. He is King of the Legos, he can make the best stuff. Mom doesn't like Legos, she thinks they're boring, but Greg will always play with me. Clarabelle says she's too old for Legos now. See this over here, he made that too! Every time he comes we work on it for a while, and it stays there [on a table in the corner of the playroom] until next time. He and me are the only ones allowed to touch it.

Emerald, Rebecca's thirty-seven-year-old white mother, reported in her own interview that she and Greg had "broken up romantically about six months ago but are still good friends," and that her daughters did not seem to notice the end of the romantic relationship: "I guess things for them are pretty much the same, he still hangs out and we go to the park." Rebecca defined Greg as "King of the Legos," rather than "Mom's boyfriend." True to the developmental stage in which children of this age

are self-centered,¹⁴⁴ kids in this category were not very aware of adult relationships, and they tended instead to view and interact with adults on the basis of what the adult brought to their lives.

While most parents did not attempt to conceal their polyamorous relationships, they also did not intentionally display or especially emphasize their romantic relationships. Kids tended to be relatively oblivious to their families' idiosyncracies during this stage, taking their own status quo for granted rather than questioning the composition or membership of their families. As they neared the "tween" stage, however, they began to notice how their families and parents differed from some of their peers around them.

D. Tweens

Developmentally, the task of the tween is to begin to establish a more distinct self from their other family members.¹⁴⁵ Coming out of the closer

¹⁴⁴ See generally Erik Erikson, CHILDHOOD AND SOCIETY (1950).

¹⁴⁵ *Id.*

embrace of small childhood at home and becoming more exposed to other children at school, on sports teams, and in the community, tweens in polyamorous families become increasingly aware of their family's differences during these years, often asking their parents directly about their relationships. Marcus Roan, a seventeen-year-old Asian-American and white male high school student, remembered realizing he was in a poly-family when he was about nine years old. He had previously assumed he lived in a monogamous family and, though he had grown up around polyamorous relationships, he had not identified them as such because his parents:

[N]ever tried to actually hide it from us, they never paraded their partners around in front of us. They never tried to hide it but they never threw it in our faces. They kept it private. ...and then this one time, we were in the car, and they were talking about their other partners. I questioned them on this. They simply explained that they were polyamorous. I don't remember the exact words but it was all simple enough. They were patient

enough and helped me to understand it.

As he became more sophisticated, Marcus began to take more notice of elements of his family that he had previously taken for granted. True to polyamorous parental patterns Marcus's parents were honest with him and gave him age-appropriate information when he broached the topic.¹⁴⁶

With this understanding comes a greater need to navigate this information with peers. Young children rarely notice each other's families enough to question others on the adults in their household, so kids from polyamorous families rarely had to manage information regarding their families. In contrast, tweens are more aware of each other's families, and they are more likely to ask each other about unexplained household members. Tweens reported being aware of their family differences but refraining from highlighting them, and, as a result, they rarely had to explain

¹⁴⁶ Elisabeth Sheff, *Strategies in Polyamorous Parenting* in UNDERSTANDING NON-MONOGAMIES 169-181, (Meg Barker and Darren Langdrige eds., 2010).

their families. If circumstances required that they explain apparently “surplus family members,” the tweens from polyamorous families had a number of strategies to mitigate any potentially uncomfortable situations.

E. Teens

Like other teens, respondents between the ages of thirteen and seventeen were quite focused on self differentiation, both from their families and from society at large. Some teens judged their families negatively, despairing at the complexities and drama of a polyamorous life. Jocelyn, a seventeen-year-old white female high school student, asserted in her interview that:

There is no way I would ever be poly. No way. It's too much drama, too much work. Its fine for them, I don't think it hurt me at all. But I don't think it was good for my mom, and in her place I never would've done it. If I'm with somebody, I want all of his attention, I don't want to share. So yeah, not gonna happen.

In this case, Jocelyn strongly distinguished herself from her family, establishing a self that was independent of her family's lifestyle. Thus, Jocelyn mirrors the many other teens who work to establish selves separate from their families.

Conversely, other teen respondents distinguished themselves from society, affirming an identity outside conventional social norms much like other rebellious young people (punks, goths, straight edge, etc.). Mina Roan, a fourteen-year-old Asian-American home-schooled high school student and Marcus's younger sister, saw herself as creating an identity securely outside the mainstream:

I guess I'm not necessarily what you would call normal, but who cares? Normal is boring. Some of my friends who seem really normal are actually super cool. My best friend, she's not normal either cause she's a real Christian and her whole family really live like Christians, follow *all* of the rules that lots of people who call themselves Christian don't really follow. And we're Pagans, but she doesn't care. Her mom and Grandpa would *freak* if they knew about the

whole pagan poly thing – I mean *lose it!* But she doesn't care at all. We just do our own thing and are cool with each other. We're really different [from each other], but we don't care what other people think so we are kinda the same too.

For Mina and many other teens in poly families, normalcy appears to be overrated. Even things that may appear to be the norm, like Christianity, can become unconventional when practiced with fervor. In a social context then, being a member of a polyamorous family is just one facet of a diverse life.

VI. CHILDREN'S PERCEIVED ADVANTAGES

Children who participated in the “Polyamorous Family Study” identified a number of advantages to living in a poly-family, including practical, emotional, and personal benefits.

A. Practical Advantages

The most common practical advantage that children in polyamorous families mentioned was the all-important “ride availability.” Tweens and younger teens were especially likely to mention being able to call multiple different people for rides as one of the primary advantages to living in a poly family. Other important practical advantages, as expected,¹⁴⁷ included more money for everyone as a result of pooled resources and help with homework from a wide range of people with a diverse skill set. Practical advantages were so intertwined with emotional and personal advantages that many respondents’ discussions blurred the distinctions among these categories.

B. Emotional and Personal Advantages

In general, polyamorists emphasize honesty and communication,¹⁴⁸ and the adults extend this

¹⁴⁷ See *supra* footnote 72 and accompanying text.

¹⁴⁸ Christian Klesse, *Polyamory and its ‘Others’: Contesting the Terms of Non-Monogamy*,” 9 *SEXUALITIES* 565 (2006). See also Jin

emphasis into their parenting as well.¹⁴⁹ Some children of polyamorous families appreciated parental honesty and cast it as an advantage. Marcus linked honesty and choice to significant personal advantages associated with poly-families:

One of the main advantages is knowing you have choices. Understanding that I have a choice and that I do not have to conform to society, being able to decide for myself. . . . The freedom of choice is in many ways the definition of being human in my opinion. So because I've always been presented with the freedom of choice rather than anything about trying to follow a societal norm – and this was open to me because of [my parents'] honesty – I feel that I have had the freedom and as such, all those choices led to a positive life for me.

Throughout his interview, Marcus elaborated on why he felt lucky to have grown up in a polyamorous family, listing a relaxed atmosphere

Haritaworn, et. al, *Poly/logue: A Critical Introduction to Polyamory*, 9 *SEXUALITIES* 515 (2006).

¹⁴⁹ Elisabeth Sheff, *Strategies in Polyamorous Parenting in UNDERSTANDING NON-MONOGAMIES*, 169-181 (Meg Barker and Darren Langdridge, eds., 2010).

without the tension of trying to hide anything, the freedom to think anything without any topics being off limits, and his ability to “make some very good friends, and very true friends who do not abandon me just because I'm different or anything like that.” Most importantly, he expressed a deep conviction that freedom, honesty, and choice pervade the true human condition, and he felt that being in a polyamorous family allowed him unique access to this compelling humanity:

In my opinion, this is what sets humans apart from many other species on the planet. Not our advanced technology, not our "superiority" over them. Frankly, it's our freedom. Unfortunately, I feel that it's also a major lack of that. Not so much in appearance as it is in mentality. That is causing a lot of our problems. The people who have done the most for the world, have been very free thinkers. So, I believe that the freedom of choice, the freedom of thought are the best things about being human. Unfortunately, I feel that that's absent in a lot of people who simply try to conform to society. So I feel

like that's the advantage. That's what I enjoy about my family.

Similarly, Kethry Wyss, a fifteen-year-old Japanese American female high school student, thought that she was closer to her parents because of their acceptance of and engagement with her—something she saw in sharp contrast with her peers' parents:

My parents are aware of my life. We have a good dialogue, there is nothing I would keep from them. We are just very open people there is no need to hide anything. There is nothing I could do that would cause my parents to freak out and ground me. They might be worried about me, but they would not freak and send me to a mental institution like one of my friends' parents did. They did not understand what she was doing so they sent her to an institution in Nevada and did not tell her. Some of my friends, things are bad for them at home, they can't and don't want to talk to their parents. It is kinda sad, they don't think they can trust their parents. In a lot of cases they are right to not trust their parents, that they can't tell their

parents things is legitimate, they should not tell their parents stuff. I can tell my parents things, there is really nothing I should hide from my parents.

Kethry thought that her poly-family was far more advantageous to teenagers than a conventional monogamous family because it encouraged parents and children to be honest with each other. In that same interview, Kethry elaborated on her parents' involvement and investment in her life:

My friends all want my parents to be their parents because my parents are cool, they go to concerts and stuff, they take me cool places and do cool things with me. I am always taken aback when my friends say they have never even been to a concert, and I have been going since I was a wee one. Lots of steam punk, goth, industrial. My mom (Loretta) took me to *The Rocky Horror Picture Show*, for goodness sake. I have the rockstar parents! My friends are Facebook friends with my parents. My parents don't control what I say on Facebook, and my mom posted a picture of us going to *Rocky Horror* - it was fun. . . . [Good parenting] is

being willing to listen to your children, to really listen, and to not shun them for being interested in something. I got into anime, and my mama (Kiyowara) has helped me sew costumes and takes me thrift shipping for costume pieces. My other friends' mom just does not understand it and it keeps my friend from being as involved. My mama also helps me dye my hair – pink, red, blue, black, maybe purple next. She also helped my friend dye his hair green cause his mom wouldn't. She was ok with him dying his hair but had never dyed hair before so mom helped him dye his hair green.

Kethry and Marcus both saw their family lives and relationships with their parents as fostering positive, authentic connections. Polyamory, with its emphasis on communication and honesty, helped them to feel connected to their parents in a way they did not witness among their peers. Therefore, poly-families seem especially advantageous for children who value emotional intimacy with their parents.

C. More Resources, Attention, and Presents

Adults and children alike identified the increase in resources that resulted from multiple adults pooling their time, money, and energy as advantageous to the entire family.¹⁵⁰ Zane Lobo, a fifteen-year-old white male high-school student, and youngest of three children raised in a triad, reminisced about the glee of having a large extended family when receiving gifts as a child:

When I was young I guess more presents at Christmas. More people. Just more people in general, I liked as a little kid, 'cause I liked having people around. And great loot for birthdays and Christmas, with three parents and so many grandparents.

D. Greater Diversity

Some of the interviewed children explained how more numerous authority figures provided them with a greater diversity of parental options,

¹⁵⁰ Elisabeth Sheff, *Strategies in Polyamorous Parenting* in UNDERSTANDING NON-MONOGAMIES, 169-181 (Meg Barker and Darren Langdridge, eds., 2010).

avenues for support, and a profusion of role models. Cole Berg, a fifteen-year-old Jewish and white male high school student, reported that he was a “wild thing” when he was in sixth and seventh grade, and while his parents would “scream bloody murder at me,” he appreciated how his parent’s girlfriend, Bettina,

had a different way of going about her business with me. She would react very calmly and know exactly what to do and the exact right punishment. And it would still be really hard for me, but it helped me learn my lesson better. And it felt more fair.

Cole elaborated on an incident in which he got in trouble at school, and Bettina created a creative punishment for him:

There was one incident where I took, well, part of it was an accident and part of it kind of wasn’t. I accidentally forgot two pocket-knives in my backpack. But the fact that didn’t make it an accident was that I started kinda showing them off, but then I got caught with them,

and I got punished for it. At school they took the knives away and gave me a very strict warning, which was pretty traditional at the private school. And my parents heard about it and they of course were very upset. But Bettina of course had a different way of punishing me . . . she made me build a dog house using only the pocket-knives. And after about three days of that she made me stop because I was injuring my hands because the knives kept slipping. But I never used a pocket-knife after that. And of course my parents wanted to ground me for a month and take away all of my privileges and stuff like that. But Bettina would always step in and calm them down and say this stuff really politely and quietly.

Cole felt that he had benefitted from Bettina's alternate way of handling both family conflict and discipline, as well as gaining greater social interaction and diversity of role models.

They got me out of a lot of situations, and I learned a lot from the kids too. Because I've always been an only child, I've always wanted a brother. It was always an older brother or a younger sister, but

I ended up getting two older sisters and an older brother, Caz. Caz, we got pretty close at one point. He was always more athletic than me, and he ended up taking me to the gym and showing me the ropes. And Salem, the oldest daughter, she was the perfect role model, always got straight As. And I admired her, but I was never really close with her because she was older. I wish I had gotten to know her better. I could always rely on her, she was always the trust worthy one. You could trust her with your life or your favorite penny and always know they would be safe. I could ask, I mean I knew I could always ask her or her mother [Bettina] to pick me up from anywhere. They always said if you get into, if you ever go to a party and then bad stuff happens and you are in an uncomfortable place and you need to get picked up, you can always call me.

Cole found the trusting relationships he was able to develop with Bettina, Caz, and Salem both useful and fulfilling, enriching his life in ways he had not anticipated.

E. Parents' Ability to Remain Friendly

In this study, some children whose families experienced divorce but retained social contact report valuing their parents' ability to remain friends even after a divorce. Speaking of her parents' divorce, Kethry Wyss expressed mixed feelings, but ultimately felt that the divorce had not changed things much for her:

It was a bit of a change now that there are two houses instead of one, but not really that big of a deal. The first thing I said when they told me they were getting divorced was, "now the shouting will stop." It got better immediately after they decided to divorce. By the time everything was through the court system they were back to being friends, Mama (Kiyowara) and Poppa (Patrick) were friends again. . . . In terms of being a kid of a divorce, I was dealt a really good deal in terms of being with Mama and Poppa – even when they were fighting they weren't out of control. They would take a deep breath and even walk away for a bit if they needed to cool down. They were really rational about their

fights, as rational as you can be in that situation. Dealing with the courts and everything they became friends again and they can still hang out in the same room. Watching as Anna has struggled with her ex-husband, about their son Elias and that whole debacle, as well as some of Nicole and Peter's issues with their kids and their ex-spouses— I was dealt a very very good hand with parents who were able to become friends again afterwards. They are still friends. The other divorces, just, some, like, these kids I know with their step-mother and their dad, their stepmother is not a very nice person. . . . it was hard to watch from the sidelines to see how the daughters and the mom were taking it.

While children in other families who divorce may experience cooperative parenting after a divorce,¹⁵¹ Kethry saw her peers and their parents struggling far more than her parents.

¹⁵¹ See Edward Kruk, *Promoting Co-Operative Parenting After Separation: A Therapeutic/Interventionist Model Of Family Mediation*, 15 J. Fam. Therapy 235 (1993). See also Lawrence A. Kurdek, *A 1-year Follow-up Study of Children's Divorce Adjustment, Custodial Mothers' Divorce Adjustment, and Postdivorce Parenting*, 9 J. APPLIED DEV. PSYCHOL. 315 (1988).

VII. CHILDREN'S PERCEIVED DISADVANTAGES

While children in polyamorous families identified numerous advantages to their family life, they also recognized some significant disadvantages to life with polyamorous parents.

A. The Loss of Treasured Relationships

Some children in polyamorous families experience tremendous distress at the loss of beloved people who exit the family once their relationships with the children's parents' become problematic. Cole related his pain at missing his parent's former girlfriend Bettina:

The only thing I really regret is that, now that Bettina's gone, and her kids, that was the hard part. Just having them leave. Because they were such a huge influence in my life. I wasn't always regretting them, a lot of times they were really helpful. They got me out of a lot of situations, and I learned a lot from the kids. . . I miss her [Bettina] a great deal. And I wish I could see her

more but she's moved away. I wish I could just take her out to lunch, see how she's doing. . . I always thought she would be here to help me through high school, but she's not. I made it through my first year without her, and, well, um, but I think about her a lot. I really miss her.

Cole found it especially painful when Bettina did not attend his Bar Mitzvah, an important rite of passage for young Jewish men who spend years preparing to be called to recite portions of the Torah and are then ushered into religious adulthood:

Cole: She wanted to come to my Bar Mitzvah. I always knew I would have one, and I always knew she would be there. I thought my parents had sent an invite, but it turns out they didn't. And I never confronted my parents, they never found out I was angry. I asked her what happened and she said I never got an invite, when was it, how was it kind of thing, you know, a few days after my Bar Mitzvah. And I realized she wasn't there, and after that, I never really talked to her, pretty much after that.

Dr. Sheff: Why did you stop talking to her after that?

Cole: I guess maybe part of it was that I got a cue from my parents that, maybe it was a false cue, but again I got a feeling from my parents that they didn't want me talking to her. That they didn't want me as part of her, as part of my life any more. I don't think that's what happened, I just think that they honestly forgot or that, you know, maybe there was some harsh break-up feelings but I don't think they have them now.

Two years later, Cole asked his parents about failing to invite Bettina to the Bar Mitzvah and they assured him it had been an oversight, that if he had wanted her to come he should have told them.

Like Cole, children from polyamorous families reported missing parent's former partners and their children—as well as other people who had left their lives. Youthful respondents mentioned missing not only the poly members of their families, but other adults and children who had moved away, died, or become estranged from their families. While some of the children Sheff interviewed

keenly missed beloved adults who had exited their parents' lives, many of them did not. For instance, Zane did not feel damaged by his parent's partners leaving:

I mean, I liked a lot of them, I was friends with them, but I was so used to them not being permanent that it was fine. I was glad I met them and I was happy to spend time with them but it was never like, I never thought too much about it. It was not a big deal. One specifically I remember, I was in sixth grade or something, I'd do a bunch with them. I'd skateboard with them, I'd ski with them, it was kind of just like an older friend. It wasn't that big of a deal that he left, I wasn't too bummed out. Just someone to hang out with, I guess. They were on and off again for a really long time, I can't even remember the time span. It was like pretty long, but it was always on and off. And he's still a friend, he's still around sometimes. He's cool, I like him. It wasn't like I avoided being friends with them or anything, I just kind of eventually warmed up to him. Like I said, it never was really that big of a deal. I don't know why,

it never really crossed my mind as a bad thing that they were leaving.

Like Zane, many others did not see their parent's partners exit on a permanent basis, but rather retained friendly contact with the family over time. It is important here to note that these responses were not unlike those seen children in more typical blended family structures.¹⁵²

B. Social Stigma

Some children in poly-families felt hampered by social stigma, but it was usually rather minimal. Race, class, and educational privileges shield many of the children who took part in the Polyamorous Families Study from some of the pernicious effects of social stigma, so they might not be representative of children in all polyamorous families. For instance, Kethry Wyss felt out of place at her local high school among “girls who wear

¹⁵² See, Constance Ahrons, *WE'RE STILL FAMILY: WHAT GROWN CHILDREN HAVE TO SAY ABOUT THEIR PARENTS' DIVORCE* (2004). See also, Michael J. Markoff, *Stepfamily Law: Review and Proposals for Change*, 18 SUFFOLK U. L. REV. 701 (1984); Alison Harvison Young, *This Child Does Have 2 (Or More) Fathers--Step-Parents and Support Obligations*, 45 MCGILL L. J. 107 (2000).

waaaaaaay too much makeup” and imagined that many things about her were on the verge of becoming extremely problematic to her peers.

I had issues with, when I started high school, at the local high school I just did not fit in. Being that I am a very goth/industrial/punk kinda kid, I didn't fit in with the student body archetype of that school -- girls who like to talk about makeup and stuff. I was only there for eight weeks, not long, and then started going to the other school that was so much better and I was best-friends with two people. We [Kethry and her four parents] started looking for another school at like six weeks, and I moved to the new school at like eight weeks into my first year. I like it much better, it is such a small school that I know everyone. People say hi to you in the hall, and the other school was really big. Everyone else knew each other, had already gone to schools together, so I did not know anyone and just did not fit. . . . [at my new school] no one judges me. Now at my high school there are several kids who are adopted, so their families are just as complicated as mine so I blend right in. Also some of my

classmates' parents are divorced, but it does not stand out. Some of the other kids at my school have two moms and two dads as well, people of all family types and all sexual orientations as well. It is a very welcoming and open place, there is no weirdness with me having four parents.

When Kethry's high school experience became apparently potentially painful on many levels, including, but not limited to, the differences from being in a polyamorous family, the Wyss's chose to deal with the potential stigma by moving Kethry to a different school populated by more diverse students among whom Kethry would feel more accepted. The mostly white and Asian-American, educated, upper-middle-class student body allowed the Wyss's to enjoy the racial and class privileges in a private school. Numerous children in the study attended private schools, and other respondents with less financial means often home-schooled their children.¹⁵³

¹⁵³ Private schools are often more friendly for LGBT families as well. See, Gabrielle Birkner, "What Makes a Private School 'Gay

C. Household Crowding

In some families, children experienced some disadvantages from the crowded nature of their family lives. Zane remembered feeling crowded when growing up with his “triadic” poly-family:

It was overwhelming sometimes, six people in a three-bedroom house. The adults shared a room, me and my brother shared a room, and my sister got her own room. Physically, I just wanted my own room and more privacy.

Fifteen-year-old Melissa Opal felt a similar distress over a lack of privacy, living with her four parents and nine siblings in a large home that was still not quite big enough. Each adult couple had a large bedroom on the third floor, and the younger children shared rooms on the second floor, which left the large, semi-finished basement for the older children—half of the space for the girls, and the other half for the boys. While her younger sister

Friendly?,” *NY SUN*, Nov. 15, 2006 (last visited May 18, 2013 <http://www.nysun.com/new-york/what-makes-a-private-school-gay-friendly/43538/>).

Skipper's bed was against the enclosed side of the staircase, Melissa placed her bed in the corner, and she hung sheets, tapestries, and scarves as "walls" that delineated and screened her "bedroom" from sight. Melissa sighed,

Yeah, I think it is more fun for the little kids, to always have someone around to play with. But I'm completely sick of always having everyone around, always having to share the bathroom, never having any privacy at all, even in the bathroom!

Later, the Opal family moved to a different house in the same neighborhood and redistributed the space. Several factors combined to allow Melissa to have her own bedroom, again in the basement, but this time:

It has a door! I keep it shut most of the time. If I want to see people I go up and there they are. Otherwise, I am in here and nobody can bother me. At least they're not supposed to. Before when I could never get any time alone it was a big problem. I could never have a private phone

conversation, they were always wearing my clothes, going through my stuff. It sucked. Now they still try to go through my stuff but I am going to put a lock on my door so they can't get in and mess with my stuff.

The negative effects of crowding appear to become increasingly acute as children age, and the teenagers seemed especially dismayed by their lack of privacy and space. These complaints—i.e. mild overcrowding and lack of personal space—are similar to the experiences of children in many blended families.¹⁵⁴

D. Too Much Supervision

Some children, especially older children, from poly-families expressed frustration at the degree of supervision that they received from the

¹⁵⁴ See e.g. Gill G. Barnes, *Stepfamilies*, 4 ADVANCES IN PSYCHIATRIC TREATMENT 10, 10-16 (1998). This is not to say that there are not times when overcrowding in the familial household is really a problem; it is just that nothing we saw rose to anything near that level. See Walter R. Gove, Michael Hughes, and Omer R. Galle, *Overcrowding in the Home: An Empirical Investigation of its Possible Pathological Consequences*, 44 AM. SOC. REV. 59 (1979) (giving a more detailed discussion of overcrowding and when it is an issue).

numerous adults in their lives. Not only did such surveillance hamper their plans to sneak out at night or skip school, but tweens and teens had difficulty maintaining a coherent lie when dealing with multiple parents. Thinking back on her “rebellious phase,” Cassie Long, a nineteen-year-old, white, full-time college student with parents who had been in a “quad” for many years, reported that:

Sometimes it was a huge drag – I couldn’t get away with *anything*. I mean, anything! The ‘rents [her mother, father, and their partners] were always around, so if I tried to ditch school or pretend I went to practice [for the high school color guard] but went to hang out with my friends instead, someone would always find out. And if I tried to say I was somewhere else, somewhere I wasn’t really, they would poke holes in my story. I would tell mom one thing and try to remember what I had said to her when Diana (Cassie’s parents’ girlfriend) asked me how my day was, things like that. And they would talk to each other, so if I couldn’t keep my story straight they would figure it out pretty quick. So yeah, that part sucked, but in other

ways it was good to have so many people around, it kept me from getting into more trouble in high school.

Cassie found the amount of adult attention she received to be both advantageous and disadvantageous. She liked it when someone was always available to pick her up or make her dinner, but she disliked the degree of supervision that kept her from “getting away with anything.”

Marcus had a similar experience when, as a child, he attempted to lie to his parents. While he felt that “[he] probably didn’t even need to lie to them, they were willing to allow [him] to do a lot of things as it was,” Marcus lied to his parents about walking to the local strip mall with his friends, but without adult supervision:

When mom asked me what I did that day I remembered to say that I got dropped off after practice and did my homework. Later, dad asked where I had gotten the [chewing] gum and I said I went to the grocery store with mom the other day and got some gum. Jim was sitting right there and

said, “That’s weird, I don’t remember you coming with us.” Mom, Dad, and Jim talked about it and couldn’t remember when or where I would have gotten gum, so they asked me again and I tried to lie but it fell apart right away. They saw right through me, but I guess at eight or ten or whatever I was I was a pretty bad liar and having the three of them to cross-check stories made it even worse. So it made it hard to lie, but it wasn’t that big of a deal cause I hardly ever lied anyway, I just didn’t need to.

Multiple adults providing supervision for children deters those children from things that children do when adults are not actively watching them.

E. Family Complexity

The intricacies of polyamorous families are complicated not only for adults, but for the children in those families. Routine family challenges, like jealousy among siblings, can sometimes become even more complicated when intensified by complex poly-family dynamics. Zane Lobo

reflected on his relationships with Pete and Vanessa, his elder siblings:

There is jealousy I guess, between my brother and sister and I. Because we have different dads, you know, there's always been that tension. Especially after their dad is not really that active in their life anymore, and my dad moved out here so he could be with us. There's just kinda always been a problem. But it's been a lot better, cause everyone's just kinda grown up and gotten over it.

Like many other families, children in poly-families can have issues with their siblings.¹⁵⁵ The effects of mixed parentage, which can complicate these already important and intense relationships, can compound these issues.¹⁵⁶ In Zane's case, he

¹⁵⁵ J. Wallerstein & J. M. Lewis, *Sibling Outcomes and Disparate Parenting and Stepparenting after Divorce: Report from a 10-Year Longitudinal Study*, 24 *PSYCHOANALYTIC PSYCHOL.* 445 (2007).

¹⁵⁶ See e.g. Joan Pulakos, *Correlations between family environment and relationships of young adult siblings*, 67 *PSYCHOL. R.* 1283 (1990). See also Melinda E. Baham, et al., *Sibling Relationships in Blended Families*, *THE INTERNATIONAL HANDBOOK OF STEPFAMILIES: POLICY AND PRACTICE IN LEGAL, RESEARCH, AND CLINICAL SPHERES* 175-207 (2008) and William Jankowiak and Monique Diderich, 21 *Sibling Solidarity in a Polygamous Community in the USA: Unpacking Inclusive Fitness, Evolution and Human Behavior* 125-139 (2000).

shared the same mother (Peck) with Pete and Vanessa, but Zane's father is Quentin and Pete and Vanessa's father is Cristof. Mirroring experiences of other blended families with half- and step-siblings in serial monogamous families, these siblings felt some tension over the varying degrees of effort and number of resources provided by each dad to contribute to the family.

Members in some poly-families faced challenges more uniquely polyamorous in nature. Ben and Melissa Opal, each fifteen years old at the time of our interview, were the eldest children in a poly-family residence with ten children and four adults. Melissa and Ben met when their parents began spending time together but had not yet formed a romantic quad. Independent of their parents' relationships, Ben and Melissa developed what Melissa termed:

Melissa: [A] pretty big crush on each other [laughing] and you know kind of flirted and stuff. We were like 12 or something, so it wasn't, you know, we were little kids kind of.

Ben: Not little kids really, just kind of not

Melissa: not like we did anything really, cause we were still trying to figure it out when

Ben: they figured it out first!

Melissa: Ben!

Ben: [laughing]

Dr. Sheff: So does that mean...

Ben: Mom told us they were going to be moving in, and all of a sudden it was like we were going to be living in the same house, like my *sister*, and ugh, that wasn't ... what, uh-

Melissa: We were just like no way, okay, stay away. And it was kinda weird, especially at first, but then we just kind of moved on, you know, shit happens. We joke about it now, its no big deal.

Ben: Yeah, [laughing] its weird.

Ben and Melissa were just beginning to explore their feelings for each other when their parents announced that the families would be moving in together. While their parents did not explain the sexual nature of their relationship, the elder children had “seen through” the parental subterfuge of separate bedrooms and figured out that their parents sometimes switched beds at night.

Without explicitly discussing their potentially shifting familial relationships, Melissa and Ben tacitly agreed that the relationship was too close to sibling status for comfort and chose not to pursue their crush. While Melissa assured Sheff that they could joke about it now and it was “not big deal,” Ben’s laughter sounded somewhat nervous and he commented that it was “weird.” At the very least Ben expressed some ambivalence, and both he and Melissa seemed slightly uncomfortable discussing it. Rather few teenagers have to deal with suddenly becoming covert siblings, and it proved the death of the potentially budding romance between the two children. In a sense, the adult’s family complexity can overshadow the children’s lives. It certainly interrupted and superseded any potential romantic relationship between Melissa and Ben. Again though, it is important to note that step-sibling romance is not unheard of in any blended family context.¹⁵⁷

¹⁵⁷ See Susan Bartell, PsyD. “Sexually Involved Stepsiblings,” *BONUS FAMILIES* (last viewed MAY 16, 2013 <http://www.bonusfamilies.com/articles/bonus-experts.php?id=131>).

VIII. CONCLUSION

Even a cursory examination at the children of American polyamorous families proves revealing for several reasons. Of the harms that have been traditionally ascribed to the children of plural marriage—namely, negative impact on development caused by discord; violence; exploitation; competition between spouses and children for attention—this article finds none. Instead, research finds: a sense of honesty that permeates the familial relationship and encourages closeness and open acceptance; a group of well-adjusted, thoughtful children of different age groups; and a plethora of economic and emotional child support, both comforting for children in their times of need and helpful in the most humdrum and pragmatic ways. In addition, the abundant resources and the attention of a group of adults with varied skill sets provided a profusion of role models for children on whom to depend and emulate.

See also Jeanne Belovitch, *MAKING REMARRIAGE WORK* (1987) and Tasha R. Howe, *MARRIAGES AND FAMILIES IN THE 21ST CENTURY: A BIOECOLOGICAL APPROACH* (2011).

“It takes a whole village to raise a child,” says the old Igbo adage. In many ways, polyamory provides that village, allowing a child to be a social being, interacting in a safe space with people who are not his or her parents, and with people who have different outlooks and approaches, but a shared sense of responsibility and attachment. While critics could argue that the same kinds of benefits are available to children of more traditional blended families—i.e. remarried parents with additional parental figures—polyamory has the added potential benefit of providing these resources under one roof, minimizing the destabilizing effect of multiple households on children.¹⁵⁸ If society legalized plural marriage and officially cemented their commitments, their sense of commitment to care-giving and stability would likely only increase.¹⁵⁹

¹⁵⁸ See J. Rainer Twiford, *Joint Custody: A Blind Leap of Faith?*, 4 BEHAVIORAL SCI. & L. 157 (1986).

¹⁵⁹ See, Jonathan Rauch, *GAY MARRIAGE: WHY IT IS GOOD FOR GAYS, GOOD FOR STRAIGHTS, AND GOOD FOR AMERICA*, 33 (2004); “Marriage, compared with cohabitation, brings much more stability and security in that married couples suffer legal consequences by separating, while cohabitation entails no legal ramifications upon

For the apparent harms, the children encountered no real sense of social stigma, which proves—albeit anecdotally—that the law should recognize people’s existing relationships; differing family structures, and workable units.¹⁶⁰

Some of the children did report jealousy among blended families, and one set of parents’ decision to move in together circumscribed a potential relationship between the children. Jealousy is common amongst children of any familial structure,¹⁶¹ and, especially, within the context of a blended family.¹⁶² As Lindsay M. Monte notes in her article, *Blended but Not the*

separation. A husband is much less likely to walk away when times get tough than a boyfriend or domestic partner.” *Id.* at 37-38. Quoted in Austin Caster, *Why Same-Sex Marriage Will Not Repeat the Errors of No-Fault Divorce*, 38 W. St. U. L. Rev. 43, 55 (2010).

¹⁶⁰ See Janet Bennion, *POLYGAMY IN PRIMETIME: MEDIA, GENDER, AND POLITICS IN MORMON FUNDAMENTALISM* (2011); Project MUSE, Mar. 2013 (last visited Mar. 2013 <http://muse.jhu.edu/>). See also Chelsea Schilling, “Love, American Style: Polygamy Gets Sizzle,” WND, Aug. 20, 2012 (May 18, 2013 <http://www.wnd.com/2012/08/love-american-style-polygamy-gets-sizzle/>); see also Harry Phillips & Sean Dooley, “Modern Polygamist Family: Why They’re Risking Jail,” ABC News, Nov. 16, 2011 (last visited May 18, 2013 <http://abcnews.go.com/US/modern-polygamist-family-risking-jail/story?id=14956226>).

¹⁶¹ See *id.*

¹⁶² Dawn Braithwaite, et al., “*Becoming A Family*”: *Developmental Processes Represented In Blended Family Discourse*, 29 J. APPLIED COMM. RES. 221 (2001).

Bradys: Navigating Unmarried Multiple Partner Fertility,¹⁶³ the lack of an official marriage might contribute to these tensions.¹⁶⁴ As seen in *The Brady Bunch*, or *The Brady Bunch* sequel, *A Very Brady Sequel*, even when an official monogamous marriage occurred, the children of blended families often complain of overcrowding and sometimes experience various levels of intimate attraction towards each other.¹⁶⁵ Especially amongst adolescents, research shows that opposite-sex stepsiblings may be sexually involved with each other.¹⁶⁶ In fact, although all states have laws governing sexual relations between blood relatives, most states do not have any regulations regarding

¹⁶³ Lindsay M. Monte, *Blended but Not the Bradys: Navigating Unmarried Multiple Partner Fertility* in *UNMARRIED COUPLES WITH CHILDREN*, 183–203 (Paula England & Kathryn Edin, eds., 2007).

¹⁶⁴ *Id.*

¹⁶⁵ M. Coleman, et al, *When You're Not the Brady Bunch: Identifying Perceived Conflicts and Resolution Strategies in Stepfamilies*, 8 *PERSONAL RELATIONSHIPS* 55 (2001). See also, L. K. White & A. Riedmann, *When The Brady Bunch Grows Up: Step/Half-And Fullsibling Relationships in Adulthood*, 54 *J. MARRIAGE & FAM.* 197 (1992).

¹⁶⁶ Alan Richardson, *Rethinking Romantic Incest: Human Universals, Literary Representation, and the Biology of Mind*, 31 *NEW LITERARY HISTORY* 553 (2000).

sexual relations between members of blended families.¹⁶⁷

In regard to the sense of distress that some children felt at the loss of treasured relationships when one or more adults left, divorced parents involved in shifting monogamous relationships have similar issues when people they are dating build relationships with their children and then leave, but these departures might not happen quite as often.¹⁶⁸

There are no statistics on longevity of polyamorous relationships, but initial data indicates substantial partner turn-over among some sample members.¹⁶⁹

Clearly polyamorous families pose some significant risks to children -- as do monogamous, serially monogamous, blended, and *de facto* polygamous families. Children remain vulnerable to the pain of losing treasured relationships, familial crowding, complex relationships, and stigma even in families based on sexually fidelitous dyads. These harms are

¹⁶⁷ Frank D. Cox, *HUMAN INTIMACY: MARRIAGE, THE FAMILY, AND ITS MEANING*, 514 (2005).

¹⁶⁸ Andrew J. Cherlin, *THE MARRIAGE-GO-ROUND: THE STATE OF MARRIAGE AND THE FAMILY IN AMERICA TODAY* (2010).

¹⁶⁹ See Elisabeth Sheff, *Strategies in Polyamorous Parenting*, UNDERSTANDING NON-MONOGRAMIES, 169-181 (2010).

not unique to polyamorous families and in fact have accompanied families for centuries and expanded with the increase in divorce rates. The most common complaint, also not specifically unique to the children of polyamorous households but possibly more palpable, that of ‘too much supervision,’ is hardly a serious complaint. In short, while the harms that children in polyamorous families actually experience are really just general *familial* harms, the benefits that accrue are specifically *polyamorous*. Particularly in areas like inner city Philadelphia, where plural marriage by necessity is prevalently practiced, it is hard to imagine punishing the children and denying them a strong familial structure out of fear of the slippery slope.¹⁷⁰

The next step in the plural marriage debate might be to contemplate how to best address legal questions of multiple adults as contemporaneous intimates.¹⁷¹ The first step, however, must be to

¹⁷⁰ See *supra* note 24 and accompanying text.

¹⁷¹ See generally Adrienne Davis, *Regulating Polygamy: Intimacy, Default Rules, and Bargaining for Equality*, 110 COLUM. L. REV.

address the myths and misinformation that have plagued the system for too long. Plural marriage might not be for everyone, and this article is not arguing that it should be the norm. But for some families, and for some children, having a plural marriage support system in place to provide more love, support, and yes, sometimes just more rides, is definitely in their best interest.

1970 (2010);Martha Ertman, *Marriage As A Trade: Bridging the Private/private Distinction*, 36 HARV. C.R.-C.L. L. REV. 79, 125 (2001); Maura I. Strassberg, *The Challenge of Post-Modern Polygamy: Considering Polyamory*, 31 CAP. U. L. REV. 439 (2003).