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Distinguishing Polygamy and Polyamory Under the Criminal Law

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In North America, criminal polygamy laws date back to the mid- to late-Nineteenth century, when polygynist Mormons began to gain political power and, in the case of the United States, threatened to create a state in which polygyny was both legal and widely practiced (Strassberg 1997: 1504–5, n. 5). More recently, polygamy has been defended as an alternative sexual practice and family structure, like same-sex marriage, that is repressed by sexual prejudice and is deserving of legal protection and recognition in a liberal state (Chambers 1997: 81–83; May, this volume). Similar arguments are currently the basis for the strongest legal challenge to the criminalization of polygamy in modern times, a reference to the British Columbia Supreme Court on the constitutionality of the Canadian polygamy law under the Canadian Charter of Rights and Freedoms (BCCLA 2011: 3–4). I have argued, however, that polygamy poses social and ethical concerns in a liberal state that both distinguish it from same-sex and opposite-sex monogamous relationships and justify its continued criminalization (Strassberg 1997: 1615–18; Strassberg 2003b: 363–412).

It may well be that some of the feminist and gay rights support for polygamy is more reasonably explained as support for polyamory (Stacey 2009: 192). *Polyamory* is a recently invented term denoting a relationship form based on the belief that no one individual can meet all the needs of any other individual and that multiple loving relationships are necessary to allow individuals to realize their full sexual, emotional, intellectual and spiritual potential (Strassberg 2003a: 455). Since polyamory celebrates the individual, polyamorous relationships arise out of the voluntary and individual choice of partners based on romantic love and sexual attraction (*Ibid.*: 452). Informed by both the women's and gay rights movements, polyamory values both male and female sexual pleasure and can include multi-partner sexual and romantic relationships that are exclusively same-sex or opposite-sex or a mixture of both (*Ibid.*: 453). While polyamory is an umbrella term covering everything from individuals with multiple separate partners to open marriages, it is only the group marriage version of polyamory, called polyfidelity (*Ibid.*: 466), that could

in any stretch of the imagination be potentially covered by laws criminalizing polygamy. For purposes of this chapter, therefore, references to polyamory in general should be understood as referring to polyfidelity in particular.

Some definitions of the criminal offense of polygamy, most notably that found in American jurisdictions following the Model Penal Code, arguably would not reach polyfidelity. Although there is no case law to this effect, it is likely that the Model Penal Code requirement that multiple cohabitation be an 'exercise of the purported right of plural marriage' would effectively exclude polyfidelity (Strassberg 2003b: 421). To begin with, the term 'plural marriage' is a specific reference to Mormon polygyny, as it is the term used by Mormons to describe marriages involving one husband and multiple wives (*Ibid.*: 424). In addition, the 'purported right' likely refers to the United States Supreme Court's 1878 rejection of the claim that plural marriage by Mormons was an exercise of religious freedom (Reynolds: 166). Polyfidelitous families certainly do not use the term plural marriage, and may not even use the term marriage at all, to describe their relationships (Strassberg 2003b: 425). In addition, they are more likely to view their conduct as an exercise of the right of intimate association, rather than a right to marry (*Ibid.*: 423). As a result, it would be difficult to argue that the Model Penal Code polygamy law gives clear notice, as criminal statutes must, that polyfidelity is covered conduct. However, polyfidelity involving some legally married partners could be criminalized in the United States under state bigamy laws that forbid cohabitation while concurrently married to another (Strassberg 2003b: 418–19).

There are other definitions of criminal polygamy, such as that found in Canadian law, that have a much greater likelihood of criminalizing polyfidelity. The current Canadian polygamy statute now in effect was purged of its original references to plural marriage and now simply prohibits entering into 'any kind of conjugal union with more than one person at the same time' (AGC: 9–10). In its filing in the Canadian constitutional polygamy case, the Attorney General of British Columbia has argued that the polygamy law will and should cover polyamorous relationships only to the extent that they fall within the language of the statute and have become 'marriages or marriage-like through the influence of a binding authority or otherwise' (AGBC: 122). Under this interpretation of the statute, most polyfidelitous relationships would be excluded due to an absence of either any kind of commitment ceremony or external authority understood as capable of 'binding' the parties to each other. However, as a requirement of a binding authority does not actually appear on the face of the statute, this interpretation by the Attorney General may well be an attempt to 'rewrite the provision [to exclude polyamory] in order that it pass constitutional muster' (Bailey 2010/11: 13–14).

In this chapter I will argue that despite the liberal discomfort it creates, criminalizing polygyny, with particular reference to Mormon fundamentalist polygyny, through polygamy laws, continues to be a justifiable social policy.

Although the reasons for criminalizing Mormon fundamentalist polygyny do not apply to polyfidelity as an alternative form of marriage and family, polyfidelity does raise some social and ethical concerns of its own. These concerns do not, however, rise to the level of requiring that polyamory be criminalized. Thus, to the extent that contemporary polygamy laws do apply to polyamory, they should be rewritten. Understanding the differences between polygyny and polyamory may help with this admittedly difficult task.

Polygyny

Contemporary polygyny seems to have two faces, one that is somewhat attractive to feminists and gay theorists, and another that is quite frightening. These two sides of polygyny are illustrated by two articles that appeared in the online version of the *New York Times* within two weeks of each other in January of 2010. The first article described a Muslim Malaysian family with four wives, each of whom is a highly educated and successful woman: a medical doctor, a lawyer, a college professor and a teacher (Gooch 2010). The article suggested that the doctor, lawyer and college professor, who were mostly financially independent, had chosen to become the second, third and fourth wives of their wealthy, industrialist husband because they had put off marriage to further their careers and were unable to find monogamous husbands by the time they wanted to marry. Their polygamous marriage provided them with an opportunity to be in a sexual relationship and have children in a socially conservative society that limited these activities to heterosexual marriage. During the week, the doctor, lawyer and professor had their own homes near their workplaces while their young children were cared for by the first wife at the family home. On weekends, they all converged on the family home, where they cooked together, shared clothes and enjoyed their sisterhood. From a feminist perspective, what is attractive about this polygynous family is that, although polygyny ultimately allowed these women to take on gender-typical roles as wives and mothers, at least they did so voluntarily and in a way that also allowed them to balance gender-atypical roles as professionals. It also may be an illustration of Simon May's argument that polygamy is not inherently vicious (May, in this volume).

In contrast, the second article described a police raid on a Jewish polygynous family in Israel, headed by a religious leader who views himself as the saviour of the universe (Kershner 2010). A raid by the Israeli police on his apartments in Tel Aviv turned up seventeen wives and forty children. While the women had joined the family willingly at first, they had subsequently been abused and terrorized into what became a state of enslavement. Here polygyny magnifies the worst anti-feminist aspects of heterosexual marriage, allowing a single abusive man to dominate and abuse more than one woman.

These two faces of international polygamy are also present in the predominant context for polygamy in the United States, fundamentalist Mormon polygamy. Professor Janet Bennion, an anthropologist who has done extensive field research living with Mormon polygamous families, observed polygamous wives who as mature adults voluntarily left mainstream, monogamous Mormon communities to enter into fundamentalist Mormon polygynous marriages. She describes them as flourishing in a way they were unable to do so in the absence of polygyny (Bennion 1998: 9, 65, 96). On the other hand, women who have escaped abusive polygynous marriages in fundamentalist communities have described conditions that more closely resemble the Israeli family (Strassberg 2003b: 395–402). Positive outcomes in polygyny seem to arise when mature women control and use the institution to meet their need for a family in a larger social and religious context that requires heterosexual marriage. In such cases, the polygynous family so created may be considerably less patriarchal in its day-to-day operation. However, when men and religious belief really control polygyny, it is a very different institution. This, I believe, is most typically the situation in fundamentalist Mormon polygyny, in large part because of the particular religious beliefs that make polygyny a religious practice for such fundamentalists.

Fundamentalist Mormons believe, as did the original historical Mormons, that God himself was once a mortal man who had achieved godhood (Strassberg 1997: 1579). This means that men can also ascend to godhood by creating the right foundation during earthly life. In addition to the initial requirement that a man be righteous, which means faithful and loyal adherence to Mormon Church doctrines and institutions, the primary earthly foundation for godhood is the accumulation of power over large numbers of people, for whom you will subsequently be a god in the Kingdom of Heaven (*Ibid.*). Such power can only be accumulated through the institution of celestial marriage, by which a woman is sealed to a man for all eternity, and by the birth in such a marriage of blood progeny, who are also subordinated to their patriarch for all eternity (*Ibid.*). Since only men can achieve godhood, salvation and eternal life for fundamentalist women requires that they enter into a polygynous union with a righteous man, bear him as many children as possible, and support the further expansion of his progeny by the addition of more wives (*Ibid.*: 1579–80). Rejection of polygyny by women is believed to result in damnation (Strassberg 2003b: 381–2). In addition, to ensure that they marry a righteous man, women must accept marriages that are approved by Church elders and often arranged by them as well (Strassberg 2003b: 366–37, 391).

Polygyny thus serves two religious purposes. First, it reinforces the hierarchy of men over women by, as the founder of the Mormon religion said, freeing men ‘from the unnatural sexual influence women hold over men’ in monogamous marriage (Foster 1981: 176). Second, it is a crucial instrument in making godhood possible by vastly expanding the progeny of men aspiring

to god status. Consequently, it is the religious significance of procreation and patriarchy that must be understood as the driving force behind fundamentalist polygynous marriages. Contrary to the title of the Home Box Office cable television show, 'Big Love', fundamentalist Mormon marriages are not meant to be defined by love, although love may arise.

The role of coercion in how women come to be polygynous wives is the most troubling aspect of polygamy and the primary basis of its continued criminalization. However, coercion is not the case for all fundamentalist Mormon polygynous wives. Some join polygynous communities and polygynous marriages as mature adult converts to fundamentalism and are usually divorcees or widows with children, or never-married 'thirty-somethings' (*Ibid.*: 390–91). They typically come from the mainstream Mormon community which, although it has repudiated polygyny, maintains beliefs about godhood, celestial marriage and eternal power through blood progeny that make divorced women, widows with children, and older, never-married women disfavoured marriage partners (*Ibid.*). Such women are often both financially vulnerable and socially disconnected from mainstream Church culture due to their unmarried state and find that polygynous marriage addresses their needs for survival, sex, family, community and salvation (*Ibid.*). These relationships are no more coercive than many monogamous heterosexual relationships motivated by religious prohibitions on extra-marital sex and child-bearing and most closely resemble the Malaysian polygynous marriage profiled in the New York Times.

However, given fundamentalist beliefs about the purpose of polygyny to exponentially grow men's kingdoms through procreation, older women from outside of the fundamentalist community are only a small proportion of polygynous wives. The majority of such wives enter polygynous marriages from within the isolated polygynous community they grew up in (*Ibid.*: 393). Many, if not most, enter into arranged marriages as teenagers between the ages of twelve and eighteen (*Ibid.*: 366, 386; Bramham 2011). Most of these marriages are with middle-aged to older men who already have multiple wives and families (Strassberg 2003b: 366). This is because older men form the 'righteous' religious hierarchy and they give these teenage wives to themselves and each other (*Ibid.*: 391; Bramham 2011). Many of the younger men who might be natural objects of affection and attraction for these teenage and young adult women are ejected from the fundamentalist community, often as minor teenagers themselves, for the simple reason that polygyny cannot accommodate equal numbers of men and women, and the young men who threaten to undermine polygyny must be removed from the competition for women (Harris 2005: 1–2).

Anecdotal evidence suggests that a number of teenage wives are coerced into polygynous marriages by physical violence and threats of spiritual damnation (Strassberg 2003b: 366–68). These are girls who are raised to obey religious authority in isolated and closed communities, are taught to expect polygynous

marriage, and are pulled out of school before high school because they will not need further education. If they don't actively resist marriage it may only be because they believe that resistance will be met with extreme punishment and that they have no real chance of escape from their community (*Ibid.*).

There are, at the same time, teenage girls in these communities who don't seem coerced into these marriages. They embrace their faith and consent to the marriage arranged for them (*Ibid.*: 373–74). However, as I have argued in greater detail elsewhere, religiously-motivated consent by teenage girls to polygynous marriage should be seen as uninformed, just as we see a teenager's religiously motivated refusal to accept life-saving medical procedures as insufficiently informed to amount to legal consent (*Ibid.*: 381–89). Although teenage girls do not risk certain or even likely death by consenting to become polygynous wives, they are consenting to sexual relations which will be designed to get them pregnant both as soon as possible and as many times as possible during the next 20–30 years. For young teenagers, any pregnancy is physically risky, and multiple early pregnancies will have debilitating effects over the long term. Beyond the health risks, however, are the life-changing effects of accumulating a large brood of children that she will largely raise on her own, or with the help of her similarly burdened sister-wives.

Indeed, just at the point a polygynous wife might become disenchanted with polygyny, she will find it extremely difficult to leave her marriage. Sarah Song has referred to this as the problem of 'exit' (2007: 160–62). Exit is difficult for wives married as teenagers due to their lack of education and exposure to the outside world, their financial dependence on the church and other polygynous wives, and their fear of losing their children and their eternal salvation (*Ibid.*: 400–04). This serves to make teenage consent to polygynous marriage both deeply life-changing and irreversible. Thus, these marriages should be viewed as coerced.

Many of these same exit difficulties are present for those adult polygynous women who can be presumed to enter into such marriages voluntarily. Their voluntary entrance into polygyny does not ensure voluntary exit (*Ibid.*). These coercive realities make me ambivalent at best about the decriminalization of polygynous marriages involving only mature adult women. Furthermore, any attempt to decriminalize polygyny involving only mature adult women must come to grips with the fact that fundamentalist Mormon polygyny, even at its best, is not an individual-focused alternative lifestyle designed to meet the needs of otherwise unmarriageable older Mormon women (*Ibid.*: 410; May in this volume). Rather, Mormon fundamentalist polygyny is largely and most successfully a community-based practice (*Ibid.*: 393), where the communities are inevitably theocracies that have been created by and around a male prophet (*Ibid.*: 405–06). Polygyny is an essential element of the political success of these theocracies because it allows for the control and concentration of sexual, reproductive and economic resources in the hands of the prophet and his

favoured delegates. Given the specific religious significance of fundamentalist Mormon polygyny, decriminalizing mature polygynous marriages would not stop the coercive polygynous marriages of teenage girls. Teenage wives are the mainstay of Mormon fundamentalist polygyny for both practical and religious reasons. Consequently, the entire institution is inevitably tainted by the sexual coercion and reproductive exploitation of young women, not to mention the sexual exclusion and emotional cruelty displayed towards the young men summarily ejected from their families and communities¹.

This does not mean that I support the criminal prosecution of polygynous wives in general, which is simply a re-victimization, although some criminal penalty could be appropriate where polygynous wives become active coercive agents in the marriages of their own young daughters. Maintaining a crime of polygyny on the books is in large part a symbolic rejection of both the specific coercion of teenage and adult polygynous wives and the theocratic communities created by and around polygyny. As I have argued in more detail elsewhere, a more effective strategy against those aspects of polygyny that are most problematic may be to reassert government control and oversight over the economic and social institutions of polygynous communities while simultaneously working to empower both teenage girls and dissatisfied adult women in these communities (*Ibid.*: 430). However, I remain skeptical that such efforts can truly produce a kinder, gentler form of fundamentalist polygyny (May, in this volume). I suspect that the religious ideology driving Mormon fundamentalist polygyny is simply inconsistent with our desire to reform the institution.

Polyamory

There are a number of crucial distinctions between polygyny and polyamory that justify exclusion of polyamory from criminalization. To begin with, polyamory is not the developed social institution that polygyny is. Even the relatively new institution of Mormon fundamentalist polygyny, which was founded as a return to the patriarchal polygyny described in the Bible (Strassberg 1997: 1582), has been practised for more than 150 years (Strassberg 2003b: 353 n.3). Although there may have been antecedents to polyamory as far back as such nineteenth-century social experiments as the Oneida community (Foster 1997: 257–260), the roots of polyamory are more accurately traced back to the free love movement of the 1960s, the concurrent development of the women's and gay rights movements, and the practical experiences of certain utopian communities that existed through the 1970s and 1980s (Strassberg 2003a: 439–42). The term 'polyamory' itself only first appeared in print in 1990 (*Ibid.*: 439, n. 4). Around that time, a movement was borne that has spent the last two decades largely focused on itself: exploring its own theoretical underpinnings, creating a national community through print and internet media, and giving

advice on the practical challenges of polyamorous life (*Ibid.* 442–43). Whether out of a fear of drawing too much attention to itself, or a lack of energy available for external focus caused by the internal demands of polyamorous relationships, polyamory has not developed the political/activist character of the women's/gay rights movements (*Ibid.*: 447).

Because there is no stable social institution of polyfidelity that can be easily studied and characterized (*Ibid.*), determining the impact of polyfidelity upon the adult individuals who choose to enter such relationships, upon the children who may be raised by polyfidelitous families, and upon society as a whole is, therefore, a matter of some speculation. Nonetheless, to the extent that polyfidelity has effectively been criminalized by the polygamy laws in such countries as Canada, or by bigamy laws in the United States, it is necessary to try to do so. In what follows, I shall use the movement's own writings and anecdotal descriptions to compare polyfidelity to polygamy.

Ideologically, polyamory begins with a focus on the individual and the conditions necessary for individuals to flourish. Its values are 'individual choice, voluntary cooperation, a healthy family life and positive romantic love' (Nearing 1992: 59) along with 'sexual equality, a non-possession orientation towards relationships, and a widening circle of spousal intimacy and true love' (*Ibid.*). Polyfidelity ensures that each individual has equal value within a multi-partner relationship by requiring that each person must be in a loving, although not necessarily sexual relationship, with each other 'marriage' partner (*Ibid.*: 10). Adding new partners to the 'marriage' thus requires the knowledge and full consent of each other member (*Ibid.*: 69, 26–7). Many couples interested in polyfidelity spend years looking for just one additional partner whom both partners love, and who wants to be 'married' to both of them (Northrop 1997: 40–42). Adding a fourth or fifth 'marriage' partner is even harder. Maintaining this complex web of relationships in the face of the inevitable jealousy than can arise requires a commitment to communication, emotional honesty, negotiation and trust as well as lots of family meetings. Egalitarian decision-making processes like consensus or majority democracy are used (Nearing 1992: 36–7). Thus, while fundamentalist Mormon polygyny is defined by obedience, patriarchy, and hierarchy, polyamory is defined by autonomy, egalitarianism, and democracy.

Another important distinction between polyfidelity and fundamentalist Mormon polygyny is that polyfidelity is not practiced by members of a pre-existing community who share religious beliefs, cultural bonds or difficult economic circumstances, nor is it imposed upon anyone (Strassberg 2003b: 413). Rather, it is a choice that individuals from anywhere in society may come to if they find themselves attracted to and in love with more than one person. This may arise as a combination of temperament and happenstance. As a result, polyfidelity neither arises out of, nor does it seek to create, a homogeneous and self-perpetuating community engaged in such group 'marriages' (*Ibid.*).

A direct focus on the particular concerns used to justify criminalizing fundamentalist Mormon polygyny also shows that polyfidelity does not cause the same individual or social harms. The primary reason for continuing to criminalize polygyny is to protect the teenage girls who are a significant source of plural wives. Polyfidelity, on the other hand, seeks to maximize the sexual and romantic connections between partners. As a result, these ‘marriages’ are not particularly interested in reproduction, let alone maximizing the number of children borne to the family (Strassberg 2003a: 492–94). Consequently, polyfidelity has no reproductive-based need to target teenage or young adult women.

In addition, a polyfidelitous ‘marriage’ seeking to expand is looking for an individual who is comfortable with sharing sexual and emotional intimacy with more than one person. Teenagers and young adults are quite unlikely to already be dissatisfied with monogamy and seeking multiple-party relationships for themselves. Furthermore, teenagers and young adults are not likely to be emotionally mature enough to deal with the jealousy that comes with sharing partners, or sufficiently self-aware and skilled at communication to live in a group (Strassberg 2003b: 426). Thus, the teenage girls of polyfidelitous families are presumably not going to be married off to other polyfidelitous families, nor are the teenage boys of polyfidelitous families going to be banished from their families and communities. Polyfidelity’s emphasis on individual choice requires allowing any children the family might have to make their own life and relationship choices. In addition, unlike most polygynous families, polyfidelitous families do not live in isolated communities that exert almost total community control over the lives and minds of their children, from education to media exposure (*Ibid.*, 428). As a result, polyfidelitous families are not likely to have the power to coercively marry off their young teenage girls or brainwash them into wishing to enter into such marriages.

Although, unlike polygyny, entry into polyfidelity is limited to adults and is non-coercive, there is a potential ‘dark side’ (Slomiak 1997: 22) to such relationships. To begin with, it is a core principle of polyamory in general that jealousy is an unnecessary emotion that we have been socialized to feel, but can ‘unlearn’ (Strassberg 2003a: 456–60). Since jealousy makes it impossible for sexual and romantic partners to tolerate the existence of others (*Ibid.* 456–57), polyamory devotes considerable energy to helping its practitioners unlearn jealousy (West 1996: 110–59). However, if polyamorists are wrong, and jealousy is inevitable, then polyamory ‘itself is coercive because it necessarily provokes jealousy and then demands of its practitioners that they accept what they cannot accept and pretend not to feel what they cannot help but feel’ (Strassberg 2003a: 506). The invisible self-coercion demanded by polyamory may, in turn, generate a need to coerce other existing or potential partners.

Larger polyfidelitous families may be especially at risk for coercive internal dynamics. Although group decision-making in polyfidelity is ostensibly

democratic, the reality of group dynamics is that individual differences between group members can produce power differentials that turn group decision-making from autonomous deliberation to coercive manipulation (*Ibid.*: 496–97). In larger polyfidelitous families, such power differentials can arise if some members of the family are sexually connected to more family members than others (*Ibid.*: 496). This occurs when, in a particular family, the family members are not sexually fully mutual, i.e. all the family members are not in sexual relationships with all other family members. Thus, in a triad, if one person has a sexual relationship with the two other triad members, but the two other members do not have a sexual relationship with each other, one person is the ‘sexual hinge’ (*Ibid.*, n. 312). In larger polyfidelitous families, especially those that are purely heterosexual, there are likely to be one or two individuals who are sexual hinges. In addition, even in the context of fully mutual sexual relationships within the family, each relationship is unique, and the level of connection will vary both from relationship to relationship and, within relationships, over time. Those family members who are in the most relationships or in the most intense relationships will likely have more power in the group (*Ibid.*). Other factors contributing to power differentials in polyfidelity can include links between particular members created by longer-term relationships, legal marriage, biological and/or legal parenthood and asset ownership. Family members not linked to others in such ways can be more vulnerable than those who have such links. Finally, personal charisma, verbal fluency and personal aggressiveness can create and/or exacerbate otherwise existing power differentials (*Ibid.*). Thus, with all that goes into the relationships that constitute polyfidelity, a procedural commitment to deliberative and democratic decision-making may be subverted by emotional dominance and vulnerability (*Ibid.*: 497).

The Kerista community, a twenty-five member San Francisco community credited with coining the word polyfidelity, suffered from just such coercive and manipulative group decision-making (Slomiak 1997: 20–26). This community began as two group marriages that ultimately merged into one marriage over a twenty-year period (*Ibid.*: 18–20). Although ideologically Kerista was committed to ‘equality, democratic decision-making, and personal freedom’ (*Ibid.*: 20), in reality, there was a social hierarchy that used highly effective techniques of emotional manipulation and intimidation to force conformity with the desires of powerful family members (*Ibid.*: 22–26). Pressure of this kind extended even to decisions such as the addition of new members to the marriage, which meant that ultimately some family members were coerced into sexual relationships with others to maintain the ideology of equality (*Ibid.*: 23).

Of particular interest in the Kerista community was the use of a threat of banishment to weld control over family members (*Ibid.*: 24). Because this community was an economic as well as family community, members stood to lose everything if banished: love, friends, home, and livelihood (*Ibid.*).

This threat of banishment successfully kept dissatisfied community members from challenging the family power brokers for many years (*Ibid.*). The example of Kerista, therefore, suggests that individuals in polyfidelity can have ‘exit problems’ similar to those of polygynous wives.

It is a paradox of polyfidelity that a commitment to individual autonomy ultimately places individuals in group ‘marriages’ capable of exercising much greater control over the individual than any single individual could possibly have exerted (Strassberg 2003a: 500–504). Larger polyfidelitous families have the capacity to take on the coercive and autonomy-depriving characteristics of a cult, as Kerista did. Whether this actually occurs may depend, at least in part, on two inter-related factors; the size of the family and the ideology driving it. Kerista ultimately involved a 25-person marriage, but started out as two associated group marriages sharing a vision to create a utopian community (Slomiak 1997: 19–20). Like Kerista, there are many polyfidelitous families with visions of utopian community at their core (Strassberg 2003a: 498). Such a focus on community is likely to drive attempts to expand the marriage to a size where the coercive potential becomes much greater (*Ibid.*: 498, n. 323). It may well be the case that many polyfidelitous groups larger than four adults have some kind of ‘compelling communal dynamic’ that helps both bring and hold them together (Nearing 1997: 22–23). In contrast, smaller polyfidelitous families may view themselves as merely larger nuclear families with no aspiration to grow bigger than the three or four romantically and sexually connected adults already involved (Northrop 1997: 40–42). This suggests that there may be an important difference between polyfidelity used as an alternative to the nuclear family and polyfidelity used as a basis for the organization of utopian communities. It is the latter that most significantly raises the spectre of coercive, autonomy destroying relationships. One way to ensure that this is less likely to occur would be to place a limit on the size of polyfidelitous families to perhaps no more than four adults.

Do the potential for coercion and difficulties of exit in polyfidelity justify the criminalization of polyfidelity? To begin with, allowing a mature adult to choose to engage in polyamorous relationships that may demand suppression of jealousy seems no worse than entering religious orders that demand suppression of sexuality. These may be impossible demands, and it may be an unwise exercise of an adult’s personal autonomy to attempt such suppression, but this is no reason to prohibit the choice. In addition, although utopian/communal visions may even be commonplace in polyfidelity, there is no evidence to suggest that most polyfidelitous families do contain significantly more than four adult members. As such, they are not likely to have reached the tipping point at which individual autonomy is swallowed by the power of the group. Furthermore, it is not illegal for adults to join a cult. For a mature adult to choose to enter into a polyfidelitous family that has cult potential seems no worse than a mature adult entering a monogamous heterosexual marriage that

has domestic abuse potential. Again, it is possibly unwise, but that alone is no reason to prohibit the choice.

If polyfidelity does not coerce teenagers into polyfidelitious relationships, and at worst allows adults to choose membership in a group that will demand unusual self-discipline and may become personally coercive, we may still ask what impact polyfidelity has upon children raised in such families. With no more than anecdotal data, these concerns are mostly speculation. On the positive side, polyfidelitious families may be the ‘village’ that Hillary Clinton said was needed to raise a child (Ravenhart 1997: 11), providing multiple adult parents to meet the varying needs of children. At the same time, we may ask whether there is any threat to children from living with multiple adults not biologically related to them in the ‘sex positive’ culture of polyamory (Strassberg 2003a: 452–53, 510–17). We know that family members and acquaintances are a major source of sexual abuse for children in general and that children living with only one parent have an elevated risk of such abuse (Finkelhor 1994). In polyfidelitious families with children, children will be living with one or more biologically unrelated adults. However, I do not believe that there is a significantly increased risk of sexual abuse for such children arising out of their family structure. In many polyfidelitious families, the adults will join the family prior to the birth of the child and will consider themselves co-equal parents of the child. Such parents would be very different than the boyfriends or after-acquired husband of a single mother. In addition, the ‘sex positive’ culture of polyamory could also serve to insulate children from such abuse, as

polyfidelity provides multiple sexual outlets for adult family members. Furthermore, polyfidelity would seem unlikely to attract or tolerate latent pedophiles as family members because pedophiles do not have the adult relationship skills sufficient to survive the pressures and demands of polyfidelity. (Strassberg 2003b: 426)

Finally, a larger number of adult parents may minimize such children’s exposure to daycare providers and babysitters, which are other potential sources of child sexual abuse.

A final reason for criminalizing polygyny is its central contribution to the creation of isolated theocratic communities that accumulate considerable economic resources, often at the expense of the women and children who help produce those resources (Strassberg 2003b: 409). Such communities substantially evade federal, state and local regulation in ways that hurt both vulnerable community members and the larger society as a whole. It is clear that polyfidelity poses no such threats. While some practitioners of polyfidelity may value communal living, they are not ideologically homogeneous and show little tendency to band together to create exclusive and truly independent polities (*Ibid.*: 428–29). Indeed, polyfidelity would wither without access to a large population of people not in such relationships from which to find willing and acceptable partners (*Ibid.*: 428).

In conclusion, I would note that the modern decriminalization of adultery, fornication and same-sex relationships has been based on the recognition of sex and love as crucial expressions of personal autonomy. I would argue that to the extent personal autonomy arguments are made the basis for decriminalizing polygyny, such arguments support decriminalization of polyamory much more than polygyny. Polyamorous relationships are based on love and sexual attraction. Mormon fundamentalist polygyny is about reproduction and patriarchy. Since these goals have been given a religious context, the strongest argument for decriminalization of polygyny is the freedom to practice one's religion. But such religious freedom cannot be supported when it destroys the autonomy of the very individuals in whose name claims of religious freedom are made.

Note

- 1 Simon May would characterize this impact on both young men and women as showing the viciousness of polygamy (May, in this volume). I would agree with him in general that it is only contingent viciousness, as polyamory does not produce the same harmful impact. I would argue that Mormon fundamentalist polygyny is inherently rather than contingently vicious. May's claim that polygyny and polyandry are not inherently vicious is based on an assumption that there is no coercion, no problem of exit, and no male domination (May, in this volume). However, he does conclude that the viciousness of the practice is 'parasitic on the underlying distribution of power between men and women' (*Ibid.*). Thus, we might agree as to the actual inherent viciousness of Mormon fundamentalist polygamy, which mandates a highly unequal distribution of power between men and women. I suspect that the reformed institution of polygamy he defends as not inherently vicious is actually polyamory rather than polygyny/polyandry, as the latter are gendered practices that cannot be reformed as he suggests without changing the cultural reality that makes them gendered.

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