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Brian D. Earp, Clare Chambers, Lori Watson

Monogamy

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Stephen Macedo, Peter de Marneffe
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The topic of this chapter is monogamy in relation to government policy. A central controversy here is whether there are good reasons for the law to recognize only monogamous marriages as legal marriages. While we also address some wider ethical issues, we focus on government policy because it is a source of genuine controversy and the subject of much recent scholarship. Monogamy in this context refers to the state of being married to one and only one person at a time. Are there good reasons for the law not to recognize plural marriages as well: for not allowing a person to be legally married to more than one person at a time?

We think there are. In exploring the question and making our case, we inevitably speak also to wider issues, including the strong association between polygamy (the most common form of plural marriage) and patriarchy in the historical and anthropological record, and the issue of why egalitarian forms of plural marriage (nowadays often called “polyamory”) seem so rare. Some philosophers and political theorists carry on a venerable tradition of speculation about the possibility of new and better forms of plural marriage and communal child rearing. Some critics of liberal monogamy—the institution of marriage reformed to include same-sex couples—charge that marriage equality has succeeded only at the cost of “off-loading stigma previously associated with gay families” onto African Americans and others (Franke 2015: 62 and 206; and see Chambers 2017: 66 and 104–105). We take up these and other disputes, focusing on arguments among ethicists and political theorists with generally liberal and egalitarian commitments.

Normative Framework

Justice prohibits some government policies and it allows others. It prohibits policies that violate people’s rights or fundamental principles of fairness, but it allows policies that do not. Because different policies on marriage are consistent with justice, we can ask: Which marriage policy—among those consistent with justice—is best, all things considered? Our answer is that the government should recognize marriage as a legal status, but only between two persons. Why legal marriage? Because the benefits to spouses, children, and others are substantial and the costs are not great. Why only two persons? Because the history of polygyny, as the main form of plural marriage practiced by humans, suggests that polygamy has substantial costs.

We do not argue here that justice requires the legal recognition of marriage. We believe that both legal marriage and marriage abolition are consistent with people’s basic rights and fundamental fairness. A genuinely liberal regime that respects individual rights might choose not to recognize marriage as a legal status at all: the “marriage-free state” is consistent with justice. But,
in our view, justice does not require the abolition of legal marriage. So the question is, which policy is better?

Justice places limits on what marriage law can prohibit and require. People have rights to sexual and reproductive freedom which entitle them to have sexual relations and biological children with persons other than their legal spouses. People also have rights to religious liberty which entitle them to participate in religious marriage ceremonies and to become married in the eyes of their churches. Marriage law must recognize and respect these rights and consequently, there should be no laws against fornication, adultery, cohabitation, or plural cohabitation. Justice also requires fairness in the distribution of government benefits and the accommodation of minority cultural practices, but, as we argue below, this requirement of fairness is consistent with a marriage law that restricts legal marriage to two persons.

Some might ask why our case for monogamy should be based on humanity’s long history of patriarchal forms of polygamy, given that new egalitarian forms of plural relationship may emerge. Why not recognize polyamorous partnerships as marriages too—simultaneous intimate relations between multiple partners? The answer is that our past history with polygamy is the largest part of humans’ experience with, and the source of our evidence concerning, plural marriage. That evidence and experience provide a reason to worry about the proliferation of plural marriage in the future. Certainly, different forms of plural relationships exist that do not provide the same grounds for concern. Many people have, or would like to have, or have in the past had, sexual relationships with more than one other person at the same time. Perhaps some of these relationships should be legally recognized as marriages in the future. This depends on what would be gained by doing so and also on what would be lost. We will not know the answer to these questions until plural committed relationships become more common and until those who are engaged in them make claims on their behalf. We think it is unwise to alter the legal structure of fundamental social institutions without greater evidence than we currently have.

Defending any particular marriage policy requires considering the likely consequences of the various policy alternatives that are consistent with justice, and making judgments about their benefits and costs. A judgment of likely consequences will be based partly on what we know about the past from the historical record and what we can plausibly imagine about the future, based partly on social science research. Judgments about costs and benefits will depend partly on the relative importance of various goods. Normative assumptions of this sort are inevitably controversial. So are empirical assumptions about what is likely to happen under different marriage policies. For this reason, it is not possible to ground any marriage policy proposal on unquestionable assumptions. But one can still make a reasoned case, which is what we attempt to do here.

What Is the Law of Civil Marriage for?

Before turning to the various reasons for political and legal institutions to recognize only monogamous marriages we consider the public meaning and purposes of civil marriage today. This might at first seem impossible because people’s marriages vary a great deal: different people want different things out of marriage. Without denying the variability and the flexibility of modern marriage, we think there is a core social meaning that is widely understood. Marriage represents, and publicly expresses, a desire to commit to and settle down with another person and build a life in common together. Through their marriage vows, two people publicly communicate their mutual commitment to building a life together in common. Notwithstanding the fact that many marriages end in divorce (around 40% in the United States and the United Kingdom), marriage is presumptively permanent (and the rate of break-ups among unmarried cohabiting couples is much higher than for married couples (Guzzo 2014). The marriage vows express a commitment for life. In marriage, as Eric Schwitzgebel has put it, “one commits oneself to seeing one’s life always with
the other in view. One commits to pursuing one’s major projects, even when alone, always in a kind of implicit conjunction with the other” (Schwitzgebel 2003).

If marriage is a social institution with a reasonably well-understood core public meaning, what justifies legal recognition: a law of civil marriage? Ralph Wedgwood (2011) observes that many people wish to get married and be married—that is to form this particularly committed bond—not just in their own eyes and the eyes of their friends and associates, but in the eyes of society as a whole. People typically enter into marriages in very public ways: they send out invitations, publish notices in the newspaper, take the wedding vows in front of family and friends, and exchange betrothal and/or wedding rings signaling marital status, and participate in rites in which the bride and bridegroom eat together. Legal recognition facilitates the public legibility of marital commitments in the eyes of society as a whole (Macedo 2015: ch. 4). The public and personal faces of marital commitments help create what Andrew J. Cherlin calls “enforceable trust,” allowing “one to put time, effort, and money into family life with less fear of abandonment by your partner” (Cherlin 2010: 138).

We do not expect everyone to agree with these views, though we are confident many ordinary people would do so. These considerations constitute a prima facie rationale for the institution. We take up fairness considerations below.

Marital commitments are, in these and other ways, unlike other forms of friendship. Friendships are not exclusive but marriages are: where plural marriage is not legally recognized you can only be legally married to one person at a time. Even if a couple decides to have an “open” marriage, or to engage in consensual non-monogamy, mutual consent maintains a form of fidelity. In contrast, non-consensual non-monogamy is understood as “cheating” on your spouse. While attitudes toward many aspects of marriage have become more “liberal,” disapproval of adultery (non-consensual non-monogamy) has risen in recent decades (Sides 2011). Trying to enter into a second legal marriage is in many jurisdictions the crime of bigamy. By preventing spouses from entering into second legal marriages while the first spouse is living, the law deters a form of fraud which was not uncommon in the nineteenth century (Hartog 2002).

In line with our understanding of liberal monogamy, adultery has been decriminalized, or is no longer prosecuted, in most of the West, India, and elsewhere. The law of monogamy does not then threaten with criminal prosecution a man or woman who has sex and children with someone other than their spouse. Does this discrepancy have a justification? We think so, for several obvious reasons. Mandating that the police should investigate and prosecute adultery could lead to invasions of privacy and abuses of power. In addition, marriage is a very flexible arrangement: two people might agree to have a sexually open marriage, or to be “swingers.” Both married and unmarried people have weighty interests in sexual freedom and privacy that justify decriminalizing adultery, polygamous cohabitation, and other non-monogamous relationships.

The legal aspects of civil marriage have other functions as well. In addition to helping to define the public meaning of marriage, the law also sets out a host of more specific rights, responsibilities, and obligations that married couples have to one another. These are commonly referred to as the legal “incidents” of marriage, and there are many hundreds of laws at the state and federal levels that define them (Macedo 2015: ch. 5). Many of them recognize the likelihood that spouses will become emotionally and financially interdependent. So, for example, in many jurisdictions spouses cannot deny one another basic forms of financial support, nor expel the other from the shared homestead without showing cause. For decades, US married couples in which both spouses worked paid a marriage penalty in higher taxes (partly on the theory that by sharing a household their expenses would be less). That has been eliminated in most states but not all (Mengle 2019). In any event, the law of marriage is a package of rights and responsibilities, not a mere bundle of rewards.
The law of marriage provides a readymade package of many rights and responsibilities which couples can just “take off the shelf,” as it were. They can also, if they wish, vary the elements in specific ways through pre-nuptial and post-nuptial agreements. But the existence of the basic standard package defined by law, and the relative infrequency of pre-nuptial agreements (except among the very wealthy), suggest to us that most couples find marriage’s bundling of rights and responsibilities useful (Israel 2013).

Many progressive scholars expected marital commitment to become passé, yet, while less dominant than in the past it has displayed adaptability and resilience. The proportion of American adults aged eighteen and older who are currently married has shrunk from 72% in 1960 to half in 2017. But that decline is due partly to people marrying later in life. The median age at marriage has risen by around seven years for men and six for women since 1970: it is now nearly thirty for men and over twenty-seven for women (Rabin 2018). Cohabitation has become more common but only 7% of American adults were cohabiting in 2017 (Geiger and Livingston 2019). While people born since 1980 attribute less importance to marriage than older generations, that too is likely due partly to the postponement of marriage (Geiger and Livingston 2019).

Delayed marriage allows both spouses to complete their education and begin their careers. There is reason to think these choices are deliberate, informed, and make for more stable marriages. When mature people with careers marry, both spouses have a financial stake in the marriage’s success (Cohen 2019). Harry Benson of the UK’s Institute for Family Studies predicts, based on past patterns and current trends, that only 35% of couples now entering into a first marriage will divorce (Benson 2018).

The law, by recognizing civil marriage and setting out a package of rights and responsibilities that create a standard framework, facilitates couples’ ability to enter into a distinctive form of a committed romantic relationship that very many people very much want to enter. In doing so, the law facilitates citizens’ ability to realize their conceptions of the good life. Of course, the fact that the law furnishes a marital framework, along with marriage’s storied place in our culture and popular media, may also function to some degree as encouragements to marry. But marriage is much more a matter of free choice than in the past: many people live together, have children together, commingle their finances, purchase homes together, without getting married. Divorce is also much easier than in the past. Marriage persists because people choose to get married and take on its rights and responsibilities, benefits, and burdens. We have no way of knowing how many people would choose marriage if the state were to withdraw all its legal recognition and regulation. However, marriage is now most common and stable among the highly educated and economically secure: those most fitted in important respects to act autonomously.

Benefits of Marriage to Spouses

Much evidence supports the association between marriage and greater individual well-being (see the sources cited in Macedo 2015: ch. 5). Married people, on average, are happier and healthier, live longer, enjoy better sex and social lives, and are more financially secure. Married people have lower rates of depression and are less likely to drink heavily and use controlled substances; they experience less violence inside and outside the home (Emery et al. 2012: 126; Macedo 2015: ch. 5; and Wood et al. 2007). The family income of married couples is higher, and so they experience less economic stress. These claims are based on higher self-reports of subjective well-being—how people say they experience their lives—and also on more objective measures (Bartolic 2012). And it is important to emphasize that the apparent advantages of marriage in the United States are in comparison with cohabitation, and not only with being single. This all suggests that the “settling” function of marriage has real consequences: giving couples more of a stake in the future and each other’s futures.
It is often reported that the benefits of marriage are concentrated among men. But some recent studies suggest that the benefits are “equally distributed among men and women” (Strohschein et al. 2005; Strohschein 2016; Williams 2003). This may be due to the increasingly egalitarian nature of spousal marital relations.

Evidence also suggests that stable committed monogamous relationships contribute to greater happiness and satisfaction for gay and straight couples, whereas couples in sexually open and less committed relationships experience greater tension and less satisfaction in their primary relationship (Bell and Weinberg 1978).

It is worth emphasizing that the advantages of marriage are all on average. Married and unmarried people have a wide range of outcomes. Some married people are miserable and plenty of single people thrive wonderfully. But on average, the benefits of marriage are “pervasive” according to many marriage scholars (Emery et al. 2012: 126; Wood et al. 2007).

Marriage skeptics point out that researchers cannot control completely for “selection bias” when gauging the effects of marriage. It may be that marriage selects for happier and more successful people without itself contributing to their happiness and success. We have no randomized controlled trials to test this. Plus, married people are the beneficiaries of some government benefits (as well as special responsibilities) and those may also contribute to better outcomes. Lau and Strohm (2011) cite many studies and argue that marriage itself matters.

Some research suggests that once we control for childhood influences (presumably including parental marital status), relationship duration, and partners’ prior histories of relationship instability, the differences between married and cohabiting couples wash away. Marriage may matter less in societies with more generous welfare states, such as Norway and Sweden (Chambers 2017: 108). We flag but do not seek to settle these controversies. We think it is, at least, not unreasonable to believe that marriage benefits spouses, and return to the critics of monogamous marriage after we consider its benefits for children.

### Marriage’s Benefits to Children

The general scholarly consensus is that two parents in a stable marital relationship are the best bet for children. As a 2007 survey of research put it, “On average, children raised in two-parent families obtain more education and exhibit healthier adult behaviors than children from other types of families. These differences, in turn, have consequences for adult health and longevity” (Wood et al. 2007: 56).

Unmarried parents have fewer resources, their relationships are less stable, their investments—financial and emotional—in children are lower, and their children do less well in a wide variety of respects (McLanahan and Garfinkel 2012: 149). More generous social provision could compensate on the financial side, but not for the emotional resources provided by two parents. In Germany, where social provision is more generous than in the United States, adults raised by a single mother for the first fifteen years of their lives reported “significantly lower general life satisfaction than the group reared by both parents,” and this difference persisted across adulthood, and was equally true of men and women (Richter and Lemola 2017).

As with spouses, children from all family types exhibit a variety of outcomes. Some children raised by two parents in a stable marriage do poorly, while a child raised by a single mother with the help of grandparents ascended to the American presidency in 2008 and now serves as a role model to billions (Obama 2004). Nevertheless, McLanahan and Isabell V. Sawhill similarly affirmed, in 2015, that, “most scholars now agree that children raised by two biological parents in a stable marriage do better than children in other family forms across a wide range of outcomes.” They also note, “there is less consensus about why” (2015: 4).
One reason is the relationships of parents who cohabit without marrying are unstable. Unmarried cohabiting parents in the United States are often “very optimistic about the future of their relationship”: when a child is born, nine out of ten rates the chances of marrying their partner at “fifty/fifty” or better. Yet while 80% of married couples are still living together five years after the birth of their child, that is true for only about 35% of couples who start off unmarried (about half of that latter group will have married, see McLanahan and Garfinkel 2012: 146–147). Unmarried fathers often drift quickly away from parenting responsibilities: half of nonresident fathers see their child at least monthly in the first year, but only 35% do so after five years. Only a quarter make regular cash payments during the first year, and a mere 14% do so by the fifth year (McLanahan and Garfinkel 2012: 148–149).

Are children of single parents (almost always mothers) disadvantaged by state recognition and facilitation of marriage? That is, granting that they may be disadvantaged by being raised by a single parent, are they further disadvantaged by the state’s recognition and support for marital parenting?

We think that it is permissible for governments to point out, and make it the basis for policy, that two-parent families are generally better for children than unwed parenthood, or polygamy (as we will see). Sex education classes in public schools might, for example, encourage young people to think about the benefits of getting married before having children, while also pointing out that very many single parents are excellent parents. Any stigma that might arise from disseminating information about the advantages and disadvantages of various family forms should be counteracted. Governments should, for example, ensure that single parents receive adequate public support and that all children are valued and respected. We can both recognize the special challenges and applaud the dedication of single parents.

Some complain that these policies send “mixed messages” (Chambers 2017). We have two responses. One is that simpler messages are false: children raised by two parents in a stable marital relationship do better on average, but single parents, overwhelmingly mothers, are unsung heroes whose sacrifices for their children should be celebrated and supported. In truth, they deserve our full support in public policy. In addition, public policies often send “mixed messages” of this sort for good reasons. We exhort people to wear sunscreen and watch their weight, but fund medical care and research to help those who do not heed such warnings.

**Marriage, Stigma, and Fairness to Single Parents and Their Children**

None of this gets to the crux of the matter for some civil marriage abolitionists. Clare Chambers argues that it is not *marriage* that is important for children and spouses, but rather the *characteristic features of a reasonably well-working marriage*: for children, being raised by one’s own two parents in a committed and stable relationship. So, she says, “The evidence suggests that what is important to children’s well-being is some combination of stability in family relationships and having one’s own parents live together, not simply having married parents” (Chambers 2017: 104).

We agree that what matters to children’s well-being is stability in family relationships and having one’s own parents live together, but we believe that these benefits are more likely to be present when two parents are married to each other and that parents are more likely to be married to each other when marriage is recognized in the law as an important institution. Chambers is right that all the evidence we have about the apparent benefits of marriage is from families in states that recognize marriage (Chambers 2017: 103). Who knows what the evidence would show in a society without state-recognized marriage? But this point about evidence cuts both ways. One of Chambers’ main reasons for opposing state-recognized marriage is her conviction that it stigmatizes unmarried people and their children. However, all the evidence we have about stigma is also from states that recognize marriage. The stigma of being unmarried or the child of unmarried parents could be even worse in a marriage-free state. The norm of monogamy might
well flourish in a marriage-free state—as religion has flourished in the United States where there is no established church—and single parents and their children might well be stigmatized there. The available evidence does not prove that stigma would be reduced in the marriage-free state.

The arguments on both sides of the marriage debate are based partly on unprovable speculation about what things would be like in a different world. Our speculative judgment is that without legal recognition, monogamous marriage would be less prevalent, and children would be less likely to live in stable families with both their parents living together. We think this judgment is sufficiently grounded in scholarly research and common understandings to be the basis of public policy.

We have seen no proof that state recognition of marriage causes harmful stigma to unmarried parents and their children. (Chambers cites two studies on (2017: 105) neither of which warrants this conclusion.) Children of unmarried parents may suffer other disadvantages that are created by the law, but these disadvantages are not caused by state recognition of marriage itself and a supporter of state recognition can consistently think they should be removed, as we do.

Chambers, like Franke, sometimes seems most exercised by the fact that marriage equality for same-sex couples did nothing in itself to relieve the plight of many single parents and their children. That is true: marriage equality cured one specific form of invidious discrimination; it did not address all forms of injustice. Franke and Chambers cite no evidence to support their assertions that marriage equality “adds stigma” to, or had the effect of “off-loading stigma” from gay people to, single mothers and their children (Chambers 2017: 109; Franke 2015: 62, 206). That, obviously, was not the intention and it seems unlikely to us that it was an effect. We see no reason to assume that the quantity of stigma in society is fixed, such that it can only be moved around and never simply eliminated.

It seems to us telling that many among the dispossessed for whom marriage seems (or is) out of reach nevertheless seem to understand and aspire to marriage. Edin and Nelson find that low-income unwed fathers, black and white, understand marriage and its requirements in ways very similar to that of others in society. Notwithstanding their reluctance to marry, these economically insecure fathers still aspire to marriage, esteem it, and like others in society, understand that it involves settling down with one other person, entering into a commitment to that person, and making oneself accountable to them (Edin and Nelson 2013: 99–102). The fathers studied by Edin and Nelson are, on the whole, unwilling to commit to and settle down with the mothers of their children: they reject the idea of commitment to them, they are “rarely” willing to “take on the full set of normative expectations that marital relationships” entail. For example, they seldom “embrace the ethos of ‘til death do us part’ or even pool their finances.” They are unwilling to commit to sexual fidelity (Edin and Nelson 2013: 100). They do not reject marriage as such but rather display “aspirations for marriage,” and express “high standards for the institution.” Precisely because they do understand what marriage means and entails, they refuse it because they are “unwilling to fully commit themselves to the women they find themselves having children with” (Edin and Nelson 2013: 90), yet they neither misunderstand nor reject marital ideals and norms.

And yet, Franke charges that marriage has “revealed itself to be a supple and effective means by which racism could reproduce itself through the state licensure of intimate relationships” (Franke 2015: 188). “Appeals to dignity, respectability, and the virtues of marriage... are likely to offload stigma from gay couples to their constitutive outside, African American families most prominently” (Franke 2015: 206). We believe African Americans are harmed by systemic racism, and that working and middle-class Americans generally—including African Americans—are harmed by miserably low levels of social provision (as compared with much of Europe), including such measures as universal healthcare, paid family leave, guaranteed employment at decent wages, and other factors. But we don’t think these are good reasons to end legal recognition of two-person marriage: the connection between that exotic proposal and increased social justice seems to us entirely speculative and implausible. Chambers herself raises the “logical possibility” that some
people are simply disinclined to commit to a stable relationship quite independently of the presence or absence of legal marriage in their society (Chambers 2017: 105).

Moreover, as already mentioned, the low-income fathers studied by Edin and Nelson, among whom marriage rates are low, often aspire to marriage. Roughly half the men in this study were African American and African Americans are more socially conservative than white liberals in a variety of ways. It seems doubtful to us that most of them would join very progressive academics like Chambers and Franke in supporting an end to civil marriage (Putnam and Campbell 2010).

Consider also the evidence that children in general—including the children of single parents and African American children in particular—benefit from the sort of father presence in households that is associated with marriage. Economist Raj Chetty and his co-authors find that all of the children in a given locality benefit from having higher proportions of fathers present in households. That is, the children of single parents are benefitted, not disadvantaged, when many other children in their neighborhoods have fathers at home as well as mothers (Chetty et al. 2020). Chetty and his co-authors find that this is one of the principal factors contributing to the success of boys in particular.

So it seems to us that fairness toward, and special concern for, unmarried parents and their children do not argue for marriage abolition.

Finally, consider that David Cole has shown that the success of marriage equality was owed in large part to decentralized democracy in action, as citizens sued and mobilized for marriage rights in Hawaii, California, Vermont, and elsewhere, often well before state and national gay rights organizations thought the time was ripe (Cole 2016). And while state recognition of marriage, and the norms and understandings about family life that surround it, have been opposed for decades by marriage critics, including some we have discussed, most of our fellow citizens are not convinced. We have tried, in contrast, to understand and appreciate what marriage means to ordinary people. While we have no doubt that marriage will continue to evolve, we think the meanings, norms, and laws that currently shape marriage are consistent with justice and are broadly defensible in the terms we have set out.

**Fairness to Others Outside of Monogamous Marriage**

We turn now to issues of whether monogamous marriage is harmful and unfair to single people and to those who prefer novel forms of plural marriage (“polyamory”).

Some critics of marriage argue that close friends, cohabiting relatives, and others in significant, meaningful, and beneficial relationships that are not marital (as marriage is currently conceived) should be able to enjoy some or many of the benefits and privileges of married couples. We altogether agree. People should be able to assign hospital visitation rights and powers of attorney to trusted friends. Perhaps preferential treatment in immigration should be extended from family members to close friends. The specific legal incidents of marriage—which number in the hundreds if not thousands—ought to be examined to ensure fairness to the unmarried.

Some argue that, “State recognition of marriage, or an alternative status such as civil union, means that the state enacts a hierarchy between those with and those without that status” (Chambers 2017: 66). We find this implausible. Single people are not stigmatized and discriminated against in the way that gay, lesbian, and transgender people have been. Many happily married people may wish that some or many of their single friends were also happily married, and many single people also seem to wish that. This is not stigma. It’s just tough luck.

Perhaps, however, when many people in society get married, the social opportunities for single people diminish. It’s possible. But it is hardly the case that married people don’t socialize with single people. It seems likely to us that marriage tends to be good not only for married people but
also for others in their community, including single people, because there are third-party benefits from the prevalence of marriage in a society.

Suppose nevertheless that legal recognition of marriage does in some ways create disadvantages for those who prefer, or are relegated unwillingly, to single lifestyles. So, for example, unmarried men and women entering middle age may have fewer friends available to “hang out” with once their friends start settling down. Even so, fairness (and the related idea of government “neutrality” among differing reasonable conceptions of the good life) permits several different responses (Patten 2012). The government might respond to this by “disestablishing” marriage as it has disestablished religion: by withdrawing legal recognition and support. Marriage abolitionists argue for this option. But instead, governments might continue to recognize and support marriage, but also enact policies designed to promote social opportunities and friendships among single people (see Danaher, this volume). That is, if there is some unfair favoritism in current policy, we could respond by doing more for single people—by facilitating the availability of social activities for singles—rather than doing less for those who benefit from civil marriage. We think the latter option is superior: it avoids the vice of “leveling down.”

Why Should Governments Favor Monogamy over Polygamy?

Fairness toward singles is one source of complaint by critics of monogamous marriage. Another concerns the issue of monogamy itself. Why limit marriage to two?

*Polygamy* derives from the Greek *polygamaia*: the state of being married to many spouses. It overwhelmingly takes the form of *polygyny*: one husband with multiple wives, sometimes referred to as “plural marriage.” Strictly speaking, polygamy comes in two different forms. *Polygyny* is extremely common in the historical and anthropological record as an exalted status to which the most successful males aspire: emperors, sultans, and those with sufficient resources to emulate them. So dominant is this patriarchal form that it is what “polygamy” has come to connote. Eighty-five percent of the societies studied by anthropologists have practiced some form of plural marriage as the preferred marital form for the privileged (Heinrich et al. 2012).

“Polyandry,” in which one wife has multiple husbands, is historically much rarer. It exists in a few societies in central China and near Tibet today, sometimes taking the form of “brother marriage” that enables male siblings to keep the family farm intact.11 In conditions of extreme poverty, a small family farm may simply be unable to support more than one family (Henrich 2010: 60). Then too if danger is also great, a wife and children might need the protection of a group of brothers (Zeitzen 2008: 111). Westermarck’s historical account of marriage cultures associates polyandry with “poverty and paucity of women” (Westermarck 1930: 260).

In December 2011, Chief Justice Robert J. Bauman, of the Supreme Court of British Columbia, set out what may be “the most comprehensive judicial record on the subject ever produced” (Supreme Court of British Columbia 2011) in a 100,000-word opinion generally (unfortunately) ignored by ethicists. Expert witnesses—including leading social scientists and historians—described the evidence concerning polygamy as a lived social form. They concluded that, “The prevention of [the] collective harms associated with polygamy”—to women, children, and society—“is clearly an objective that is pressing and substantial” (ibid.; and see Bala 2011).

The reasons for societies to favor monogamy are based on the welfare of spouses, children, and society as a whole, and also considerations of justice.

Polygynous marriages, compared to monogamous ones, tend to be characterized by feelings of neglect and jealousy on the part of the wives (Altman and Ginat 1996: 149–150); competition and conflict among the wives for attention and resources (Bennion 1998: 140–142; Young 1954: 191–209; Zeitzen 2008: 129); difficulty for husbands in meeting the material and emotional needs of several wives and their children, and corresponding feelings of stress, frustration, and failure
(Altman and Ginat 1996: 436; Jeffs 2009: 8–9); and heightened conflict among the family members resulting from competition for resources, perceptions of unfairness, and feelings of neglect and jealousy (Altman and Ginat 1996: 436; Young 1954: 283). Zeitzen observes that “studies of polygyny often focus on rivalry, antagonism, and jealousy” among plural wives and their children (2008: 128).

Rose McDermott, a scholar of comparative politics at Brown University and one of the expert witnesses in British Columbia, surveyed the consequences of plural marriage vs. monogamy in countries around the world, summarizing the effects thus: “polygyny’s negative effects are wide-ranging, statistically demonstrated, and independently verified” using a variety of analytic tools:

Women in polygynous communities get married younger, have more children, have higher rates of HIV infection than men, sustain more domestic violence, succumb to more female genital mutilation and sex trafficking, and are more likely to die in childbirth. Their life expectancy is also shorter than that of their monogamous sisters. In addition, their children, both boys and girls, are less likely to receive both primary and secondary education. (McDermott 2011)

The conflicts inherent in polygamy are often dealt with by participants maintaining distance and remoteness from one another: the suppression of all “strong emotional bonds” (Zeitzen 2008: 117 and 120). One historian describes Mormon polygamy as an “assault on the romantic love ideology,” an attempt to instill an alternative ideal of “spiritual love” (de Marneffe 2016: 146). Well aware of the greater difficulty of managing polygamous as opposed to monogamous marriages, nineteenth-century leaders of the Church of Jesus Christ of Latter-Day Saints (Mormons) confined polygamy to the Mormon elite, and affirmed that it required special virtue to manage successfully. For that reason, too, Mormon leaders argued that it should not be practiced outside the LDS church.

Polygamy tends to reduce the average parental investment per child and children are likely to receive better care in monogamous families (de Marneffe 2016: 135–139; Macedo 2015: 171–172). As compared with monogamy, polygamy allows male heads of households to invest surplus resources in securing additional wives, leaving fewer resources for the education of rising generations. Indeed, studies of Mormon polygamy in the nineteenth century found that the children of poorer Mormon men tended to enjoy greater health and longevity because their fathers couldn’t afford to have multiple wives (Henrich et al. 2012: 661–662; Zeitzen 2008: 89–107).

The malign effects of polygamy are not confined to families but extend to society as a whole. Where the incidence of polygyny is higher, the opportunities for any single man to marry are correspondingly lower. Fewer men will be married where polygyny is practiced, and higher proportions of unmarried men are associated with higher rates of violence, drug and alcohol abuse, and crime (Henrich et al. 2012). Consequently, to the extent that a norm of monogamy increases the opportunities of men to marry, it will increase their happiness, prosperity, and health and the welfare of society.

Stanford historian and classicist Walter Scheidel, another expert witness in British Columbia, points out that while its exact origins are unknown, “socially imposed universal monogamy” (applying to even the wealthiest and most powerful males) became the rule in ancient Greece and Rome and spread through Rome’s influence, and eventually also with the influence of Christianity. Monogamy reduces destructive conflict among men within a society and helps lay the groundwork for more cooperative, inclusive, open, and egalitarian social relations. Indeed, the transition to institutionalized monogamy appears to contribute to greater parental investments in children, overall social progress, and a fairer distribution of the opportunity to enter into family relations (Henrich et al. 2010; Scheidel 2008).
Obviously, when it comes to non-monogamous or plural sexual and family arrangements, any number of relationship types are logically possible. Instead of the familiar polygamous household in which there is one man with several wives who are married to him but not one another – which Greg Strauss calls a “hub and spoke” arrangement (Strauss 2012) – there might be several husbands and several wives all married to one another in some sort of network. Utopian communities and cults have experimented with such arrangements, as in the Oneida Community, which practiced “complex marriage” (with everyone “married” to everyone else). It lasted thirty years (Rosenblum 1998).

The worldwide decrease in the practice of polygamy has been accompanied by an increase in gender equality (Macedo 2015: 192). Monogamy has proven to be consistent with much greater gender equality than was known in the past. It could be and should be entirely equal as a matter of law. As a matter of fact, where polygamy persists in the world—including in parts of the Muslim world and Africa—it is generally seen by women’s rights organizations as an obstacle to the realization of gender equality.

We oppose the criminalization of plural cohabitation but argue against equal legal recognition of plural marriages of the sort that legal systems around the world increasingly provide for same-sex couples. We think the law should in some ways recognize the effects of plural marriages in order to protect the vulnerable. The crucial point is that plural marriage as widely experienced, “rather than an imagined form of life,” has been incompatible with “securing equal liberty and fair opportunity for all” (Shrage 2012). The historical and anthropological records—which is to say, human experience—suggest that normative monogamy best secures citizens’ equal basic liberties, equal status and standing, and fair opportunities to pursue the good of family life. When it comes to polygamy, we need not rely on moralism to justify not legalizing it. It is reasonable to believe that monogamy helps secure equal freedom and greater welfare for men, women, children, and society as a whole.

**Monogamous Marriage, Neutrality, and Fairness**

Many scholars argue that government policy should be neutral toward citizens’ differing conceptions of a good life. The reason is that the state belongs (as it were) equally to all of us: it should not take sides among citizens and favor some arbitrarily or unreasonably at the expense of others. The importance of government neutrality follows from the more fundamental values of governments treating citizens fairly, or as equals (Patten 2012).

We support those ideas, but also think that such commitments ought to be qualified by the recognition that it is often not only reasonable but vital for governments to promote certain aspects of human welfare which have a place in many different conceptions of the good life. These include the “welfare goods” of health, education, recreation, aesthetic enjoyment, sociability, and many others. Governments ought not simply to respect the diversity of reasonable conceptions of the good life as a side-constraint, but ought actively to secure the social and institutional foundations of equal citizenship and human flourishing.

What about the related ideas of political liberalism and public reason? These doctrines hold that the justification of important public policies should not rely on reasons whose force depends on accepting particular “comprehensive” religious, philosophical, and ethical ideals. The underlying idea is that people disagree not unreasonably about their religious views and many long-contested philosophical questions. Public deliberation on important policies and laws ought to draw on reasons and evidence that are accessible to citizens with a wide array of reasonable comprehensive doctrines: that is, democratic deliberation should be based on publicly recognized forms of evidence and reasoning. We agree with these ideas, and so we have defended monogamous marriage as tending (as compared with the main historical alternative, polygamy) to promote equal freedom
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and forms of human welfare that are widely recognized by people with many different comprehensive conceptions (welfare goods such as health and happiness).

Some argue, however, that state recognition of civil monogamous marriage violates the idea of liberal neutrality: it is unfair for the state to favor one ideal of life (monogamy) over others.

The most plausible idea of liberal neutrality holds that, in order to treat citizens as equals, governments should not, in the design of public facilities and institutions, discriminate against minority practices and preferences, even if these are deemed (and really are) inferior. So, chess may really be a better game than checkers, on a true perfectionist account of better and worse games, but if a sizeable cohort of citizens prefer checkers, and the government is funding the availability of chess sets in public parks, checkers should also be made available (Patten 2012). Unfairness in the provision of public facilities of various sorts is especially morally problematic when the preferences or activities that are short-changed are those of marginalized minority cultures and communities. It is against that sort of background that some argue that legal recognition of monogamous marriages solely is unfair to those who are left out (e.g., Chambers 2017: 66, 109). The left out includes single people and people whose conceptions of the good life incline them toward fleeting and uncommitted or plural relationships.

We have already addressed charges that marriage stigmatizes the unmarried, so let us leave that aside. A further possible unfairness is suggested by Patten: insofar as legal recognition succeeds in encouraging monogamous marriage, there will be fewer people who share the lifestyles of the non-monogamous, making their lives worse by reducing the numbers of people who share this minority preference.

These concerns are not groundless, but their practical force is easily exaggerated.

Attempts to analogize past discrimination against gay, lesbian, and transgender people, on the one hand, and polygamists, on the other, are unconvincing. In the United States, polygamy, in the form of polygyny, seems mainly to be practiced in a few isolated fundamentalist Mormon enclaves in the American and Canadian West. Those people want mainly to be left alone, and the policy of decriminalization does that. Decriminalization also facilitates their access to social services, including law enforcement when abuses occur within complex households.

More fundamentally, plural marriage is not treated differently because it is like checkers as compared with chess: harmless but inferior for those with “sophisticated” tastes. It is treated differently on account of its association with serious social pathologies in the forms of violence, patriarchy, and social inequality.

Some suggest, nevertheless, that the word “marriage” is an honorific title of sorts, and that is unfair. Partly with an eye toward that concern, Elizabeth Brake proposes that whenever people share in some of the legal incidents of marriage, their relationship should be called a “marriage” and regarded as one in law (Brake 2012: 157–158). So, for example, if a person shares a household with A, has sex with B, and gives powers of attorney to C, each of these relationships should be called a marriage.

This proposal strikes us as unhelpful. It puts too much emphasis on the “honorific” aspect of marriage, and not nearly enough on the fact that marriage is a distinctive relationship with a particular social meaning. The law should facilitate non-standard but valuable relationships: for example, a grandmother who shares a household and mutual support obligations with a grandson. It would be deeply misleading and detrimental, however, for government to foist the label “marriage” on such a relationship. The same applies to non-marital friendships and partnerships. We, therefore, reject Brake’s proposal for “minimal marriage” (Brake 2012; Macedo 2015: ch. 9).
Monogamy: Government Policy

What about Polyamory?

Many ethicists who favor legal recognition of plural marriages appear to reject traditional polygamy in favor of “polyamory”: an egalitarian form of non-monogamous plural or group sexual relationship (Brake 2012; Den Otter 2015; and see Macedo 2015: 197–201). These scholars assert that it is wrong to assume that plural marriages of the future will resemble polygynous marriages past and present. Women now have far more equal opportunities for education and employment than in the past, so polygamy need not be polygyny. If plural relations lack the hierarchical and specifically patriarchal patterns of traditional polygamy, why should governments not recognize them as marriages?

While there is much academic speculation about such group marriages, their actual incidence appears to be quite small, and evidence concerning these relationships is largely anecdotal. Perhaps most importantly, polyamory very often takes the form of non-monogamous and fluid sexual relationships that do not involve long-term commitment and are not marital.

We do not rule out the possibility that a valued and valuable social practice of non-monogamous plural marriages might someday come into existence. Egalitarian threesomes or foursomes, for example. What is clear is that while including same-sex couples in monogamous marriage did not require other fundamental revisions to the law of monogamous marriage in its contemporary form (as it existed in the 1990s and 2000s), egalitarian plural “marriages” raise new possibilities for conflict, and require novel forms of legal structure and support. The most sensible, and most liberal, approach is to let these new social forms develop in conditions of freedom, and then create appropriate forms of legal recognition and protection. Philosophical speculation detached from lived experience is an unreliable basis for lawmaking in this complex and still poorly understood area of human life.

Notes

3 Westermarck (1930, 188) reports the widespread use of wedding rings among Ancient Egyptians and Hindus, in ancient Rome, in China and elsewhere.
4 Bigamy is a crime throughout the US, see, https://www.hg.org/legal-articles/bigamy-in-the-u-s-is-it-criminal-in-all-states-48723 The rule of monogamy requires a prohibition on simultaneous multiple wives.
5 The crime of adultery remains on the books in some US states, though prosecutions are extremely rare. It is decriminalized in Europe, India, much of Latin America, though it remains a crime in most predominantly Muslim countries, see https://www.theweek.co.uk/62723/where-is-adultery-is-still-illegal
7 The rest of this paragraph and the next three draw on Macedo, “Marriage, Monogamy, and Moral Psychology,” Oxford Handbook of Moral Psychology, John Doris and Manuel Vargas, eds. (forthcoming).
8 See the sources cited and discussed in Eskridge 1996: 237, n.87-88. For a study based on nationally representative samples see, Levine, Herbenick, Martinez, Fu, and Dodge 2018. Rubel and Bogaert (2015) argue that the evidence is inconclusive.
9 Perelli-Harris et al. 2018, finds that, “Significant differences between cohabitation and marriage are only evident in the U.S. and the U.K., but controlling for childhood background, union duration, and
prior union dissolution eliminates partnership differentials.” On the importance of social context for marital happiness, see Lee and Ono 2012.

10 Richter and Lemola report that, “Participants who spent their first 15 years with a single mother further showed a lower degree of social integration during adulthood, including a smaller number of friends and fewer visits to/from family as well as less success in romantic relationships, including a lower probability of living with a partner and a higher probability of having been divorced, controlling for childhood SES” (2017). Ribar 2015 provides evidence suggesting that public policy cannot fully substitute for the effects of marriage. See also McLanahan 2004; McLanahan and Sandefur, 1994.

11 Numerous accounts confirm the rarity of polyandry, Henrich 2010. Also see Henrich, Boyd, Richerson 2012; Bala 2009; and Jones 2012. Even Judith Stacey, who advocates acceptance and recognition of a wide range of family forms, says “modern polyandry is scarcely thinkable” (Stacey 2012: 150).

Works cited


