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Practicing Polygamy: Multicultural Right or Liberal Crime?

Jessica Freitas

ABSTRACT

Publication of polygamous practices in American media has brought the issue of the legality of polygamy into American politics and discussion forums as a question that pits multiculturalism and free choice versus liberalism. An evaluation of the legal history and current situation of polygamy reveals two sides to the issue. Advocates of multiculturalism such as Charles Taylor argue that different cultures have a right to recognition of their identity and that their practices are essential to forming that identity. Certain feminists and religious theorists also support this viewpoint. Liberalism, in contrast, argues that polygamy results in the subjugation of women to men's desires for more wives and restrains individual rights. An array of feminists supports the liberal position as well. Even though the arguments for a multicultural acceptance of polygamy have been gaining recognition, the practice of polygamy is justly outlawed in the United States due to its suppression of individual rights from a liberal perspective.

Where would Americans be without pita bread, Hanukkah, and meditation?

Multiculturalism in the United States has brought a variety of foods, traditions, and practices from other religions and cultures into contact with American citizens and has expanded their knowledge of other countries. However, some of those practices have been met with resistance both socially and legally after their exposure to American life. The practice of polygamy, introduced in the United States by Mormon and Islamic religions, has been a source of contention throughout the years. It is considered an integral tenet of those religions' family structures, and it is believed that the original religious leaders commanded it (Davis, 1992).

Although moderate Muslims and Mormons no longer practice polygamy, resistant sects consistently adhere to the original construction of their religion (Public Radio International, 2010). The plural marriages performed by these religions overwhelmingly fall into a specific category of polygamy called polygyny (West's Encyclopedia of American Law, 2008). Polygyny is the practice of one man being married to more than one woman at a time. The patriarchal cultures these religions originated in help explain why more preference was given to men in the structure of the relationship.

Even though the arguments for a multicultural acceptance of polygamy have been gaining recognition, the practice of polygamy remains outlawed in the United States. An analysis of the evolution of polygamy legislation is essential to understanding the progression of American perceptions of polygamous behavior. All types of polygamy are currently illegal in the United States based on English Common Law, which developed into specific laws in America after the growth of early Mormonism (West's Encyclopedia of American Law, 2008). Subsequent rulings by the Supreme Court in the 19th and 20th centuries, specifically the 1878 *Reynolds v. United States* and the 2003 *Lawrence v. Texas* decisions, have solidified the legal opinion of polygamy as contradictory to American values; however, those laws have been hitherto unsuccessful in stopping polygamous practices in the United States. Some religious practitioners persistently

hold on to their beliefs, and those who emigrate from other countries continue to keep multiple wives in defiance of the laws.

These actions have brought the issue of polygamy up in American politics and discussion forums as an issue that pits multiculturalism and free choice against liberalism. Advocates of the ideals of multiculturalism, such as philosopher Charles Taylor, argue that different cultures have a right to recognition of their identity and the practices essential to forming it (Taylor, 1994, 27). Polygamy would be seen as an expression of cultural and religious diversity and thus supported by multiculturalism. Liberalism, in contrast, would argue that polygamy results in the subjugation of women to men's desires for more wives, which restrains individual rights. Historically, as women's opinions have been ignored in the inclusion of multiple wives, polygamy is often painted as a form of bondage with man as master (Song, 2008, 92). As a result, feminists are often called upon by scholars to discuss whether this religious practice is theoretically justifiable, and women align on both sides of the issue.

After a thorough analysis of both sides' positions, it is clear that polygamy is harmful to the individuals participating and perpetuates a dangerous structure of oppression. Multiculturalism is important to consider when respecting practices that seem curious to an inexperienced observer, but when individual liberties are systematically threatened it is clear that the concepts of freedom inherent in liberalism must be preferred. In the United States, where it took so long to affirm the rights of both genders and then all races, the legislative and judicial branches must stand against practices that threaten to impinge on the rights of citizens.

LEGAL HISTORY

To understand the basis for arguments about polygamy, it is essential to review its legal history in the United States, which began with English Common Law and developed into a set of precedents that extended into the 21st century (West's Encyclopedia of American Law, 2008).

Before polygamy became a hot-button issue in the United States, it was merely addressed in American law by a ban that was adopted from English law and precedent. After America gained independence, each state adopted statutes banning polygamy. These laws received little attention in the early years after America's founding, as there was not enough religious diversity for the law to provide radical challenges to general Christian practices and beliefs. Differing belief systems eventually created multiple religious sects, and there were many instances of clash between different religious adherents, but due to limited means of international travel most areas in the United States remained homogeneous and primarily Christian.

The founding of the Mormon religion in 1830 spawned a surge of new religious ideas and behaviors that forced the judicial system to take a stance on polygamy. The founding prophet of Mormonism, Joseph Smith became a polygamist under Church mandate, and as his adherents followed suit their actions prompted a response from the government. Polygamy became official Church doctrine publicly after Smith's successor, Brigham Young, led the Mormon migration in 1845-1848 from Illinois through Iowa and Nebraska and ultimately to Utah and only after they settled did the legislature began to focus on their practices. The area the Mormon group settled on was largely uninhabited (Sigman, 2006, 113). As the numbers of polygynists within the community grew from 1856-1857 during the Mormon Reformation (Harmer-Dionne, 1998), they became difficult to ignore. At the time of the first salvo of the federal assault on polygyny, about 20% of the Mormon community in Utah was practicing polygamy (*Church of the Latter Day Saints v. United States*, 1890).

Initial Conflict

The practices of the Mormon community did not go unnoticed by the federal government and were summarily addressed by Abraham Lincoln. On July 8, 1862, the 16th president signed the Morrill Anti-Bigamy Act and enacted legislation to ban polygamy and limit the Mormon

Church and non-profit ownership in any territory of the United States to \$50,000 (Library of Congress, 2006). Although initially not funded and thus not enforced, the Morrill Act was refined and its tenets became the basis for the Edmunds-Tucker Act of 1887. The basic agreement on these acts resulted in the criminalization of polygamy and bestowed a fine of \$500-800 and imprisonment for up to five years for those caught practicing it. It was difficult to enforce these various acts against polygamy because finding a witness to testify about polygynist marriage ceremonies was extremely tricky. Instead, polygamists were charged with bigamous cohabitation, a misdemeanor created by the Edmunds Act of 1882. Proving cohabitation was an easier task, and over 1,300 Latter-Day Saints (LDS) were jailed as "cohabs" in the 1880's (Davis, 1992). This act not only infuriated the male Mormon practitioners of polygamy, but their wives as well. The men protested, arguing their religious practices should be respected under the First Amendment's free exercise of religion clause, and some of their wives claimed they too "were defending their right to the 'sacred calling' of being sealed to their husbands 'for time and eternity'" (Sigman, 2006, 120). Amid all of this controversy, it was only a matter of time before a clash would occur between the government and the promoters of polygamy.

Supreme Court Weighs In

As Mormons continued to follow their religious dictates in defiance of the law, a public conflict between the Supreme Court and the Mormon Church was expected. In order to finally bring the matter to a head, the First Presidency of the LDS Church asked the secretary in the Office of the President of the Church, George Reynolds, to act as the defendant. To challenge the constitutionality of the anti-polygamy laws, Reynolds consented and the grand jury indicted Reynolds for the crime of bigamy (Sigman, 2006, 122). After his appeal, the Utah Territorial Supreme Court upheld the ruling, and Reynolds went into the Supreme Court hearing with a sentence of two years of hard labor in prison and a fine of \$500; this marked the first time that

the Supreme Court encountered the issue of religious exemptions (Oleske, 1997, 754). *Reynolds v. United States* established a direction of polygamy legislation that persists to this day.

The defendant opened the debate by claiming that the Free Exercise Clause was applicable to the case of polygamy practiced by the Church of Jesus Christ of Latter Day Saints since polygamy is a religious practice. Reynolds claimed that there should be a religious exemption for Mormons because members of the church believed the practice of polygamy was directly enjoined upon the male members by the Almighty God in a revelation to Joseph Smith, and failing or refusing to practice polygamy by such male members of the church would be punished by damnation in the life to come (Linder, 2012). Reynolds claimed that a law banning bigamy without a religious exemption was unfairly discriminating and oppressing members of the Mormon Church.

The Court did not find Reynolds's argument convincing; in fact, the Court unanimously rejected this argument, stating that such an exception would "make the professed doctrines of religious belief superior to the law of the land, and in effect ... permit every citizen to become a law unto himself" (Oleske, 1997, 755). To the court, maintaining the integrity and superiority of the laws was tantamount, and the justices did not want this case to become a precedent for breaking laws and claiming religious exemption. Using Jeffersonian Belief-Act doctrine, the Court outlined how religious beliefs are the prerogative of the individual, but the actions that stem from those beliefs are not. Thus, the Free Exercise clause did not apply to Reynolds's practice of bigamy as man, according to Thomas Jefferson, has "no natural right in opposition to his social duties" (Lipscomb, 1903). These acts were particularly harmful to society, in the Court's opinion, because they challenged the traditional construct of marriage. This belief held that polygamy threatened to reduce society to a "stationary despotism" since the husband was given the power to marry as many wives as he pleased, despite the first wife's opinion (Oleske, 1997, 755).

Reynolds v. United States became the landmark case serving as precedent in later cases such as *Davis v. Beason*, where the detriment to marriage issue was fleshed out: “polygamy tends to destroy the purity of the marriage relation, disturb the peace of families, to degrade women, and to debase men” (*Davis v. Beason*, 1890). The issue of polygamy was clearly established as not only illegal but also immoral, ironically as the courts used religious morals to declare another set of religious morals as illegitimate. Polygamy became universally criminalized as each state added provisions against it, culminating in the final federal ant bigamy provision in 1892, which excluded polygamists from immigration into the United States, and this exclusion remains part of the U.S. Immigration and Naturalization Code (Davis, 1992).

POLYGAMY TODAY

There are many who still practice polygamy in America and, as their actions become more widely publicized, more people are exposed to the concept and its practitioners. Cases such as the arrest of polygamist Mormon sect leader Warren Jeffs for the sexual assault of 12 and 15 year old girls have served to further criminalize polygamy in the minds of Americans. In contrast, television shows like “Big Love” and “Sister Wives” pique the interest of Americans who see the happy polygamous families strongly contrasted to the disturbing reports of fundamentalist Mormon sect sting operations. Currently, according to Brigham Young University researchers, there are an estimated 30,000 to 50,000 people living polygamist lifestyles in America (Public Radio International, 2010).

This sector of the population calls into question the picture of polygamy framed by past Supreme Court rulings. One family, the Dargers, have publicized their polygamous lifestyle in the book *Love Times Three*. It describes how Joe Darger and his three wives embrace their polygamous lifestyle. Although Joe hid from coworkers and neighbors that he was a polygamist for more than two decades, he now wants laws and misconceptions about the faith he and his

wives hold to be corrected (Dooley and Phillips, 2011). Publicizing their story creates a great risk for the family because they could all be arrested for committing a federal crime, but that does not deter the Darger family. Their 23 children support the concept of polygamous marriage and find the rejection of their religious practices to be narrow-minded of the US judiciary system. Joe and his wives Alina, Val, and Vicki, agree that though polygamy can be a veritable minefield of jealousy and hurt feelings, confronting and transcending these negative feelings is what leads to the highest expression of unselfish love, a goal of their religion (Dooley and Phillips, 2011).

The Dargers and other polygamous families face a difficult challenge because even though court rulings have removed restrictions on homosexual relations, polygamous relationships remain criminalized. The Supreme Court's 2003 decision in *Lawrence v. Texas* ruled the State cannot interfere in "the intimate, adult consensual conduct at issue [which] was part of the liberty protected by the substantive component of the Fourteenth Amendment's due process protections" (*Lawrence v. Texas*, 2003). The court then denied its applicability to polygamy in the Utah State Supreme Court case *State v. Holm*. Those who practice polygamy continue in an uphill battle for its legalization and others have joined the practitioners in support of the movement.

CURRENT POLYGAMOUS VIEWPOINTS

The United States is a diverse melting pot of cultures and religions, so it is important to recognize the other religions that practice polygamy and are equally interested in making it a legal practice. Orthodox Muslims believe a man is allowed to marry several women, provided he can treat them all equally (Hagerty, 2008). They, too, believe that polygamous marriages can be spiritually fulfilling and follow the commands of the prophet Mohammad for Muslim wives to encourage and sometimes aide their husbands in taking more wives. Although some of these

Muslims who practice polygamy were born and raised in small communities in the United States, other polygamists immigrate into the US and are forced to hide their relationship to their subsequent wives because according to immigration law, polygamy is grounds for prohibiting immigration into the United States (Bernstien, 2007). The resulting lifestyle is similar to that of Fundamentalist Mormons: women sharing a husband and viewing it as a religious duty to fulfill. One couple, Zaki and Mecca, take a pragmatic view of polygamous marriage. When Mecca decided to study outside the United States, she helped her husband find another wife. She, like the Mrs. Dargers, views her husband as a loan from God and states, “in my religion, if he were able and capable to [marry another wife], I wouldn't want to hold him back” (Hagerty, 2008).

Orthodox Muslims use various methods to allow them to continue their religious practices despite the illegality of polygamy. If the second marriage occurs in America, it is conducted in a secret religious ceremony, and those who immigrate with multiple wives name their second and third wives ‘sisters’ to hide the relationships. All of this secrecy prevents polygamous marriages from being completely psychologically healthy and safe. There are no legal rights for subsequent wives, generally leaving them destitute if the polygamous husband dies. Although the sentiments may be nobly religious, there are times when polygamous marriages fail or property must be divided after the death of the shared husband. If legalized, polygamy could secure legal rights for current wives and ex-wives by regulating the conditions of entry into and exit from such relations (Song, 2008, 91). Ultimately, practicing polygamists of both the Mormon and Muslim faiths desire to have their marriages legalized in America for religious and legal reasons and are continuing to fight the social stigma as well as federal laws.

THEORETICAL JUSTIFICATION

The practice of polygamy does find supporters amongst political theorists who believe supporting multiculturalism is essential to valuing differences and fostering knowledge and

tolerance in society. In evaluating the concept from the view of freedom of expression, toleration of religion, and the feminist perspective, polygamy has a strong base of theoretical justification. French philosopher Montesquieu advocates the toleration of religions and their practices out of respect for religious diversity (Montesquieu, 1750, 493). Charles Taylor argues that accepting cultural differences is essential to valuing different backgrounds and experiences. Many feminists support polygamous behavior because they promote women's rights to enter into any type of relationship, whether heterosexual, homosexual, or polygamous (Price, 1997). These three prongs form the justification for polygamy on a theoretical level, and varieties of these arguments are used to support the battle to legalize polygamy in America.

Religious Acceptance

Montesquieu strongly supports freedom of religious expression. Montesquieu was not a proponent of introducing religion into society but strongly believed that existing religions must each be allowed to fully participate (Montesquieu, 1750, 490). He would have argued to ban the Mormon and Muslim religions from being introduced into American society, but now that they have been established, their fundamentalist branches must be given the right to their religious practices. Entirely supportive of the concept of separation of church and state, Montesquieu believed that "it is necessary, then, that the laws require from the several religions, not only that they shall not embroil the state, but that they shall not raise disturbances among themselves" (Montesquieu, 1750, 492). The state should stay out of legislating religion for the protection of religious communities' identity to avoid fostering inter-religious conflict.

As clearly seen in the ruling in 1878 on polygamous conduct, much of the state's motive arises from the majority belief in Protestant Christian principles (Sigman, 2006, 125). The ruling from one moral standpoint on other religions' practices brings those two religions into dispute with one another. Christian principles do affect many Supreme Court rulings and the influence

shows Fundamentalist Mormons and Orthodox Muslims that there is hostility emanating from those who believe in Christian principles. The state fosters conflict between itself and the polygamists while embroiling other religions in the process. Montesquieu stated, “penal laws ought to be avoided in respect to religion: they imprint fear, it is true; but as religion has also penal laws which inspire the same passion, the one is effaced by the other, and between these two different kinds of fear the mind becomes hardened” (Montesquieu, 1750, 493).

Not only should the government avoid interfering in religious affairs and causing trouble between religions, it should acknowledge that the respective polygamous religions have internal laws that control the polygamous practices to protect against the abuse of the practitioners. There are many moral laws and stipulations built into the religions of both Mormons and Muslims to ensure freedom of choice and equal treatment, and these rules should be all that is needed to moderate those who practice polygamy. Essentially, legalizing polygamy allows the laws inherent in the religion to ensure moral behavior. Legalization would also make for less state-initiated conflict between religions that practice polygamy and those that do not, encouraging direct dialogue between openly practicing polygamists and those who disagree with them. Legalizing polygamy would allow the religion of polygamists to act as a check on harmful behavior and decrease the state-created tension between polygamists and society.

Importance of Recognition

Taylor writes in support of accepting different cultural and religious practices on the basis that they form the practitioner’s identity and thus must be valued (Taylor, 1994, 24). All people have intrinsic value, and if the citizens and lawmakers of a liberal society that supports respect of human rights believe this claim, they must recognize the importance of other belief systems aside from their own. Taylor claims that within these perspectives, misrepresentation shows more than

a lack of due respect; it can inflict a grievous wound, saddling its victims with a crippling self-hatred.

Due recognition is a vital human need (Taylor, 1994, 26). Taylor's arguments applied to polygamy argue that if polygamy continues to be criminalized, the laws against it are devaluing the polygamists. Acting out their cultural and religious practices forms part of their identity, and that identity should be respected. Taylor writes that this difference of opinion on how one should act in society is unique to each individual, and "there is a certain way of being human that is 'my' way. I am called upon to live my life in this way, and not in imitation of anyone else's life...if I am not, I miss the point of my life; I miss what being human is for me" (Taylor, 1996, 30). When societies outlaw polygamy it is not only the suppression of certain religions that practice it but a negation of the humanistic value of the participants. This is harmful to the American ideal that all are welcome. To live up to the promises in the Constitution of equal protection and equal recognition that has been essential to democratic culture, Taylor contends that truly acting as a democracy means allowing diversity of opinion (Taylor, 1996, 27). Americans cannot tell practitioners of different religions that their practices negate their rights without also erasing their value as individuals.

Taylor argues society's negative view of polygamy is harmful to multiculturalism and the different ways that individuals express their cultural need to be recognized as valuable. Even if polygamy is decriminalized and its adherents largely ignored, Taylor states, such 'difference blindness' would still not be enough to protect the individuals' value. In society, "Under the aegis of the general will, all virtuous citizens are to be equally honored" (Taylor, 1996, 49) in order to show equality of value. Any sort of deviation from equality, ranging from an absence of special consideration to a total criminalization of the practice, would be considered the projection of an inferior or demeaning image that has been internalized (Taylor, 1996, 36). The United States must not only accept polygamists, but also consider the protection of their practices as

important as traditional marriage. To show that their culture has value and acceptance in the political and social sphere is giving value to the practitioners themselves. Without the government making this effort on behalf of other cultures, it creates an assumed superiority that allows for the imposition of some accepted cultures on others less conventional. Western liberal societies are supremely guilty in this regard (Taylor, 1996, 36).

To alleviate this guilt, liberal societies, such as the United States, should begin to change their outlook on practices that have been historically viewed as illegal and recognize the equal value of different cultures; they should not only let them survive, but also acknowledge their worth (Taylor, 1996, 65). Taylor champions the multiculturalist perspective that all religions should have publicly acknowledged value in today's society, including practices that are not traditionally Western. He believes, "the rigidities of procedural liberalism may rapidly become impractical in tomorrow's world" (Taylor, 1996, 65) and America should begin to rehumanize its approach to differences. Polygamists have value and beliefs that should be respected and venerated in today's culture to preserve each practitioner's self worth.

Feminist Support

There are still others who view the question of polygamy in America from an entirely different, non-religious standpoint. Many feminists and Libertarians in America argue that everyone has the right to act in any way they choose, and the government should not try to decide whom U.S. citizens decide to marry. The U.S. Libertarian Party supports the decriminalization of polygamy because the party generally holds that the government should not regulate marriage (Friedman, 1990). Marriage is a personal choice that arises out of the free will to choose to love someone and decide to enter into a contractual agreement with that person, and such a decision should be out of the hands of the government. Many feminists echo this sentiment, as Robin Frodge, a member of Utah National Organization for Women states that

since NOW supports "an expanded definition of family including same sex parents ...it's very difficult to look at that and not support other diagrams of families or configurations of families, including polygamous families" (Price, 1997). In a quest to support all aspects of free choice in marriage, many feminists support the rights of women to choose to enter polygamous marriages because they are decisions made by the women. As many of the stories of fundamentalist Mormon and Orthodox Muslim wives have shown, many women consider it a sacred duty to enter into a polygamous marriage to fulfill a higher calling (Dooley and Phillips, 2011). Several feminists would claim that such a decision ought to be protected from governmental interference (Price, 1997).

Not only should polygamy be legalized because marriage is a personal choice, but some feminists also argue that detractors of polygamy have vastly overstated their case. Marina Adshade, an economics professor at Dalhousie University, argues that many of the 'dangerous' aspects of polygamy have been exaggerated. She claims that men and women have "slightly more opportunity to either choose or have the right to refuse matches, and women have more control, not less, over the number of children they have" (Miller, 2010). In support of Montesquieu's position, Adshade argues that the internal checks on polygamy via the religious laws do allow women the freedom to accept or reject a polygamous marriage and have the majority of control over their sex lives as well. Her statements support the argument that polygamy does not injure the women involved and such practices should not be outlawed. Adshade argues that even the children benefited from a polygamous marriage, citing Oxford Professor James Fenske who found that polygyny in western Africa has historically lowered child mortality rates. Adshade concludes, stating that if their mothers chose their husbands based on their children's best interests as well as their own, we would expect lower mortality to be the case (Miller, 2010). She believes polygamy provides benefits to families and is not restrictive to the wife's freedom of choice, and feminists conclude that polygamy should be legalized.

America must live up to its promises of freedom and respect the religious choices of individuals living within its borders. Despite her beliefs, this vein of argumentation ignores key aspects of polygamy that are the basis for the position of liberalism.

THEORETICAL COUNTERPOINT

As important as freedom is to the basic principles of the United States, it can be taken too far. The harmful effects of freedom of choice and unlimited multiculturalism need to be considered before taking a position on the issue of polygamy. After considering the practical negative effects of polygamy on women and children, the practice must be considered through a different philosophical lens. The concept of liberalism, as described by Judith Shklar, outlines a reason to exclude dangerous ideologies: to protect the populace from the fear of losing rights (Shklar, 1998, 3). In the end, Susan Okin's analysis of multiculturalist effects on the rights of women establishes an opposing feminist conclusion that women are harmed by religious practices such as polygamy, and thus it should not be legalized (Okin, 1999, 3). Ultimately, this viewpoint is the most persuasive, and, ultimately, polygamy should continue to be illegal. Freedom of choice is important, but once that choice infringes on the basic human rights of another and causes damage, it must be curtailed.

Polygamy Problems

Polygamy creates serious problems within the marriage itself, the family, and the community. In today's society, the dark side of polygamy is rarely the first impression one creates when they watch the TV show "Big Love" and read the stories cited earlier of women who embrace their lifestyle. However, even within those testimonies there are hints of the problems inherent in polygamy. The Dargers' eldest daughter was uncomfortable with the thought of sharing the man she was in love with, while the Darger sister wives admitted, "When

stumbling upon a pair of Joe's underwear in another sister wife's bed, polygamy can be a veritable minefield of jealousy and hurt feelings” (Dooley and Phillips, 2011). The deep emotional and psychological issues that can develop out of polygamous marriages are often repressed and ignored in society (Schaefer, 2010). Often law enforcement, citing a lack of resources, does not target "adult consensual bigamy" despite flagrant violation of polygamy laws. Instead, it waits for victims of its associated crimes to surface. But, as David Leavitt, a Federal prosecutor explains, "these societies are so secretive and the women are so controlled and manipulated from birth that you almost never see victims [coming forward] (Schaefer, 2010). The secrecy creates a cycle of abuse where those who suffer are instructed not to talk about it, as it casts doubt on their way of life that they must furiously support to counteract the doubters in the United States.

This secrecy has far-reaching, harmful effects on the women in polygamous relationships. Nicholas Bala, Professor of Law at Queen’s University observes that polygamy is exploitive of women and is associated with high rates of spousal abuse (Bala, 2006). Rivalry is common between multiple wives because each is competing for affection and resources for herself and her children (Bala, 2006). The concept Orthodox Muslims promote, where the man must provide equally for each wife, is nearly impossible, and as a result, there is competition for what the husband can give to each wife (Bala, 2006). Because the women become chained to the husband’s affection, their willingness to take abuse to earn more favor is a dangerous trap to which many fall prey.

Research on a broad sampling of polygamous and monogamous families suggests women in the former suffer from low self-esteem and are more susceptible to depression, especially if they are the first wives in the marriage (Sinai, 2008). First wives feel that they are not satisfactory once the husband takes a second wife to fulfill the remainder of his needs, causing damaging effects on the psyche of the first wives with the addition of more wives (Sinai, 2008).

According to Professor Elian al-Karinawi, head of the Social Work Department at Ben-Gurion University, children also bear the burden of the conflict within the polygamous family, with those of one wife being hostile to the children of another wife (Sinai, 2008). Children become pawns for revenge as well as enticements for favors and grow up in simmering atmospheres that hurt their development and mental states. To compound these problems, polygamy can injure the society at large because polygamous families are often unable to support their many children and resort to social assistance (Bala, 2006). The large number of children that are produced in polygamous marriages is often more than the family incomes can handle. As a result, welfare fraud is rampant in polygamous communities with each wife collecting welfare while being a part of one family, with as much as 50% of the polygamous population relying on public assistance (Schaefer, 2004). It is difficult to advocate the legal protection of such practices, even under the considerations of multiculturalism.

Liberalism's Offensive

Multiculturalism is an important concept in the United States, and it is essential that different cultures that develop in America have the right to practice different beliefs, but there is a limit. Judith Shklar believes that there is a compromise that must be made with various groups in America; she supports a liberal justification of group rights where diverse groups receive special considerations that are in line with liberal principles. Polygamous practices in America collide with the concept of liberalism that has one overarching aim: to secure the political conditions that are necessary for the exercise of personal freedom (Shklar, 1998, 3). Individual rights are equally important in the U.S. as is the right to exercise freedom within relationships and be free from mental and emotional abuse. The concept of the "Liberalism of Fear" is the belief that there are several inherently incompatible moralities among which we must choose but which cannot be reconciled by reference to a common criterion (Shklar, 1998, 10). The

legislature should immediately suspect conceptions of morality that subject its adherents to extreme pain and suffering. The American government makes laws that protect citizens from cruelty, which Shklar defines as the deliberate infliction of physical, and secondarily emotional, pain upon a weaker person or group by stronger ones in order to achieve some end, tangible or intangible, of the latter (Shklar, 1998, 11). Multiculturalism can ignore these issues in its efforts to bring equal recognition and protection to all types of religious beliefs and activities, but liberalism focuses on the individuals and determines whether personal rights are protected. It is essential that individual rights be at the forefront of all considerations of communities with different cultural and religious practices. Those who live in the United States have the same right to protection of their individual rights no matter their religion, Fundamentalist Mormonism or Orthodox Islam. The women in those religions have a right to be free from the fear inherent in polygamy.

The concerns of liberalism must be juxtaposed against the claims of multiculturalism in society. Seyran Ates, a lawyer born in Istanbul and author of *The Multicultural Mistake*, urges caution in viewing multiculturalism because she is firmly convinced that “multiculturalism, as it is practiced today, is simply organized irresponsibility: it is an unrestricted tolerance towards the others” (Colombo, 2010). To call for acceptance of a religious practice just because it is different is dangerous for the country and the individuals who practice it. Shklar agrees and states that unless there is an open and public review of all the practical alternatives, especially of the new and alien, there can be no responsible choices and no way of controlling the authorities that claim to be the voice of the people (Shklar, 1998, 16). To protect the citizens of the United States from curtailment of their liberties, practices such as polygamy that oppress and break down its adherents should not be tolerated. As Prime Minister of the United Kingdom, David Cameron, observed, this hands-off tolerance has only served to reinforce the sense that not enough is shared (Cameron, 2011). Freedom to assert oneself, to leave relationships of abuse, and to claim

individual rights for every person in America, is what will create more unity and safety in the country.

The Feminist Critique

Liberalism is not the only political theory that advocates acting on the knowledge of the detrimental effects of polygamy. Feminism, though used to advocate for women who make the choice to be one of many in marriage, rejects polygamy in light of the effect it has on women after they have chosen it. As mentioned above in the stories of the women who chose polygamous lifestyles, they endure the hardships because they believe it is part of their religious duty. However, it can create serious problems for the women.

Okin explores the feminist responses to multiculturalism and polygamy. She cites an example in France where polygamy was allowed to flourish. Once reporters finally interviewed the wives, they discovered what the government could have learned years earlier: the women affected by polygamy regarded it as an inescapable and barely tolerable institution in their African countries of origin and an unbearable imposition in the French context (Okin, 1999, 3). The restrictions polygamous lifestyles placed on women became all the more evident once they were placed against the backdrop of a liberal secular culture. While other women had freedom to choose their husbands and expected them to stay faithful, many in polygamous relationships had no control over the subsequent women their husbands would bring into their lives. Okin further notes that in polygamous cultures many men readily acknowledge that the practice accords with their self-interest, and they see it as a means of controlling women. As a French immigrant from Mali said in a recent interview, “When my wife is sick and I don’t have another, who will care for me?” (Okin, 1999, 15).

The biggest issue feminists have with polygamy is that, not only is it repressive of women’s rights, the abuse is less obvious and less frequently addressed because of the intimate

nature of the discrimination. More evident multiculturalist issues, such as women without the right to vote, are quickly addressed in our liberal culture. But many liberal theorists, such as Wil Kymlicka, attempt to stay out of the personal lives of different people from different cultures, and that blind eye is where the most dangerous instances of discrimination against women occur. Kymlicka regards cultures that discriminate overtly and formally against women, by denying them education or the right to vote or hold office, as not deserving special rights. Unfortunately, sex discrimination is often far less overt (Okin, 1999, 21). Okin argues hidden discrimination requires liberal theorists to apply even more scrutiny towards practices that claim to be innocuous examples of differences in culture, but which, in reality, are perpetuating the most serious discrimination issues. Upon review of different legal cases that described issues with immigrant groups in Great Britain, Okin found that almost all of the legal cases of polygamous African immigrants in France discussed by Sebastian Poulter stemmed from women's or girls' claims that their individual rights were being truncated or violated by the practices of their own culture groups (Okin, 1999, 17). Polygamy is a serious issue that is being ignored in favor of promoting multiculturalism and a delicate version of liberalism, and Okin states that it can no longer be tolerated. The private sphere must be investigated in order to extend liberal rights to freedom from fear and discrimination to the women in polygamous cultures.

Polygamy has multiculturalist protectors that claim that it should be legalized because it is an essential expression of religious duty and the personal choice of the practitioners that expresses their individual value. However, the previous evidence shows that polygamy is harmful psychologically to both the women who partake in it and the children who suffer under it. By virtue of this harm, our liberalist culture should adopt the principles Shklar puts forth in her essay, "The Liberalism of Fear," that all women who come into the United States should be free from the fear of the harms inherent in polygamy. A clear decision can only be made by taking a critical view of polygamy that excludes religious beliefs and focuses on the outcome of

the practice. Even if Charles Taylor argues that polygamy should be protected as an expression of the practitioner's value, the harm it perpetuates serves to lower women into commodities for men. This aspect of multiculturalism works against itself and should not fall under Taylor's protection. The acceptance of religion that Montesquieu advocates is also rebutted by the fact that the impacts of the religious practice extend to harming its adherents' psyche and concept of self. Further, regardless of whatever moral or religious base used to justify polygamy, the clear case of discrimination, restriction of freedoms, and psychological harm that it causes, counteracts those concerns. When feminist opinions collide, it is clear that the overarching goal of feminism, to increase support for female empowerment and value, opposes polygamy. The legal history of polygamy shows that the courts deemed it illegal largely on the majority's moral basis, but this theoretical discussion provides a logical reason to concur with the initial court's assessment. To protect the United States' support of individual rights, the rights of women, and the protection of American citizens, polygamy should remain illegal.

CONCLUSION

Polygamy is a complex issue in the United States, and despite the existence of the practice in multiple religious groups, it has been deemed illegal. Public opinion, however, may be beginning to sway in favor of polygamous marriages, as the media shows the acceptable side of the practice and as polygamous families write books humanizing their relationships. As the fight for homosexual marriage rights gains traction, the American government begins to look benignly on the practices of minority religions, and many call for a multiculturalist perspective that allows for different religions to follow their different rules. Many feminists support the concept, and it from that perspective it seems polygamy should be legalized. Once the negative effects of polygamy are considered in conjunction with the liberalist idea that all women should

be free from the fear of discrimination and degradation, it is important that polygamy remains illegal. An alternative feminist perspective that considers the underlying issues inherent in polygamous practices illustrates why certain aspects of multiculturalism must be curbed to allow for human rights to prevail. Polygamy is a religious custom that endangers women, and multicultural justifications should only extend to practices that support the concepts of liberalism the United States was founded upon.

References

- Bala, Nicholas. (18 Jan 2006). Canada: Not Cut out for Polygamy. *Globe and Mail*. Retrieved from <http://www.wluml.org/node/2677>
- Bernstien, Nina. (23 May 2007). In Secret, Polygamy Follows Africans to N.Y. *New York Times*, Retrieved from <http://www.nytimes.com/2007/03/23/nyregion/23polygamy.html?pagewanted=all>
- Cameron, David. (5 Feb 2011). PM's Speech at Munich Security Conference. *Number10gov.uk*. Retrieved from <http://www.number10.gov.uk/news/pms-speech-at-munich-security-conference/>
- Church of Jesus Christ of Latter-Day Saints v United States, 126 US. 1, 27 (1890); Elisha, supra note 63, at 47.
- Colombo, Valentina. (12 May 2010). How Multiculturalism Destroys Human Rights. *Hudson New York*. Retrieved from <http://www.hudson-ny.org/1193/how-multiculturalism-destroys-human-rights>
- Davis v. Beason*, 133 U.S. 333 (1890) <http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=us&vol=133&invol=333>
- Davis, R. J. (1992). Polygamy. *Encyclopedia of Mormonism, Vol. 1, Anti-Polygamy*. http://www.lightplanet.com/mormons/daily/history/plural_marriage/Legislation_EOM.htm
- Definition of Polygamy. (2008). *West's Encyclopedia of American Law* (2 ed.). The Gale Group, Inc. Retrieved from http://legal-dictionary.thefreedictionary.com/Origins_of_Anti-Polygamy_Laws
- Dooley and Phillips. (16 Nov 2011) Modern Polygamist Family: Why They're Risking Jail. *ABC News*. Retrieved from <http://abcnews.go.com/US/modern-polygamist-family-risking-jail/story?id=14956226#.TtBu0GBuGEs>

- Friedman, David. (1990). Polygamy. New World Encyclopedia. Retrieved from <http://www.newworldencyclopedia.org/entry/Libertarianism>.
- Hagerty, Barbara. (28 May 2008). Philly's Black Muslims Increasingly Turn to Polygamy, *NPR*. Retrieved from <http://www.npr.org/templates/story/story.php?storyId=90886407>
- Harmer-Dionne, E. (1998). Note, Once a Peculiar People: Cognitive dissonance and the Suppression of Mormon Polygamy as a Case Study Negating the Belief-Action distinction. *Stanford Law Review* (50 ed). Stanford University.
- Jefferson, Thomas. (Jan. 1, 1802). Letter from Thomas Jefferson to a Committee of the Danbury Baptist Association. In Andrew A. Lipscomb(ed. 1903), *The Writings of Thomas Jefferson* (p. 242).
- Linder, Doug. *Reynolds v. United States. Exploring Constitutional Law*, 2012. Web. 4 Jan 2012. <http://law2.umkc.edu/faculty/projects/ftrials/conlaw/reynoldsvus.html>
- Lawrence et al v. Texas*. (2003) Supreme Court. Retrieved from <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=000&invol=02-102>
- Miller, Max. (23 Aug 2010). #22: Polygamy is Feminist. *BigThink.com*. Retrieved from <http://bigthink.com/ideas/22921?page=all>
- Montesquieu, (1750). *The Spirit of the Laws*. Trans. Nugent, Thomas. Print.
- Okin, Susan Moller. (1999). *Is Multiculturalism Bad for Women?*. Princeton University Press: New Jersey. Print
- Oleske, S. (February 1997). Undue Burdens and the Free Exercise of Religion: Reworking a Jurisprudence of Doubt [notes] *Georgetown Law Journal*, Vol. 85, Issue 3. pp. 751-774
- Polygamy in America, (12 Feb 2010). *Public Radio International*. Retrieved from <http://www.pri.org/stories/politics-society/polygamy-in-america1873.html>

- Price, Joyce. (12 Aug 1997). Polygamy Could Help Moms Who Work, Says Utah's NOW. *The Washington Times*. Retrieved from <http://www.patriarchywebsite.com/resources/polygamy-working-moms.htm>
- Schaefer, Naomi. (9 Feb 2004). Yes, Polygamy is Everybody's Business. *The Los Angeles Times*. Retrieved from http://www.childbrides.org/sex_LAT_plig_everybodys_business.html
- Shklar, Judith. (1998). The Liberalism of Fear. *Political Thought and Political Thinkers*. Ed. Hoffman, Stanley. University of Chicago Press: Chicago. Print.
- Sigman, S. (2006-2007). Everything lawyers know about polygamy is wrong. In *Cornell Journal of Law and Public Policy* (16 ed) pp. 101-186. Cornell University. Retrieved from <http://heinonline.org.lib.pepperdine.edu/HOL/Page?handle=hein.journals/cjlp16&id=1&collection=journals&index>
- Sinai, Ruth. (27 Mar 2008). State program to Tackle the Problem of Polygamy in the Bedouin Community. *Haaretz.com*. Retrieved from <http://www.haaretz.com/print-edition/news/state-program-to-tackle-problem-of-polygamy-in-bedouin-community-1.242837>
- Song, Sarah. (Jan 2008) *Justice, Gender and the Politics of Multiculturalism*. Cambridge University Press. Vol 18, No 1. Pp 91-94. Retrieved from <http://books.google.com/books?id=vwuB7pNQlswC&lpg=PA164&ots=EfcQJOMOVW&dq=africanpolygamymulticulturalism&pg=PA164>
- [Statutes at Large, 37th Congress, 2nd Session](#), page 501. A Century of Lawmaking for a New Nation: US Congressional Documents and Debates, 1774 - 1875. The Library of Congress. Accessed 18 May 2006.
- Taylor, Charles. (1994). *Multiculturalism: Examining the Politics of Recognition*. Ed. Gutmann, Amy. Princeton, NJ: Princeton University Press. Print.