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Empowering Sister Wives: Why the Relationships Between Wives in Polygynous Marriages Deserve Legal Recognition

Stephanie Halsted*

INTRODUCTION

The legal arguments disfavoring the legalization of polygamous marriages often invoke the notion of an assumed negative impact that polygynous marriages have on the “victims” of the institution: the wives and children.¹ The women in such marriages are framed as powerless chumps who are brainwashed into a patriarchal cult of female subjugation where they function no more than as homemaking robots for their promiscuous husbands.² While there has been debate in courtrooms and legal scholarship over the legal recognition of plural marriages as they pertain to the unions of the polygynous husband and each of his wives, there has been much less discussion over the legal recognition of the relationship between and among the wives themselves.³ In the Mormon tradition, polygynous marriage is analogized as a wheel, with the wives acting as spokes connected by the husband as the wheel’s hub.⁴ The traditional legal discussion follows this same understanding: the relationship between polygynous sister wives is nonexistent without their connection through the patriarch.

This note argues that this legal and discursive dual framework that portrays plural wives as agentless victims whose marriage only has meaning when considered in its patriarchal context works to further disempower these wives. The state essentializes⁵ women in polygynous marriages as a singular, agentless group, and

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1 See *Reynolds v. United States*, 98 U.S. 145, 167 (1878) (holding proper the trial court’s charge to the jury that they ought to “consider . . . consequences to the innocent victims of this delusion [the doctrine of polygamy]. As this contest goes on, they multiply, and there are pure-minded women and there are innocent children”); Jonathan A. Porter, *L’Amour for Four: Polygyny, Polyamory, and the State’s Compelling Economic Interest in Normative Monogamy*, 64 EMORY L.J. 2093, 2100–01 (2015); Peter Nash Swisher, “I Now Pronounce You Husband and Wives”: *The Case for Polygamous Marriage after United States v. Windsor and Burwell v. Hobby Lobby Stores*, 29 BYU J. PUB. L. 299, 308 (2015).

2 Samuel C. Rickless, *The Meaning of Marriage: Polygamy and Same-Sex Marriage: A Response to Calhoun*, 42 SAN DIEGO L. REV. 1043, 1046–47 (2005).

3 See generally *Reynolds v. United States*, 98 U.S. 145 (1878); *Brown v. Buhman*, 947 F. Supp. 2d 1170 (D. Utah 2013); Swisher, *supra* note 1.

4 Casey E. Faucon, *Marriage Outlaws: Regulating Polygamy in America*, 22 DUKE J. GENDER L. & POL’Y 1, 3 (2014).

5 See Angela P. Harris, *Race and Essentialism in Legal Theory*, 42 STAN. L. REV. 581, 585 (1990) (Harris defines gender essentialism as “the notion that a unitary, ‘essential’ women’s experience can be isolated and described independently of race, class, sexual orientation, and other realities of experience.”).

ignores their love for and reliance on one another.⁶ In light of the recent Supreme Court decision in *Obergefell v. Hodges*, which recognized the need for an evolving definition of marriage and family,⁷ this Note asserts the importance for legal recognition of at least some marital rights between and among sister wives in polygynous unions. If the law truly cares about the welfare of women and children within the inherently patriarchal institution of polygynous marriage,⁸ then it should also recognize that validating the shared kinship between wives by affording their relationships certain privileges enjoyed by conventional monogamous married couples would be more successful in removing the veil of victimhood from wives than does a complete ban on plural marriage.⁹ Even if society is unable to accept a legal recognition of the marriage between a polygynous husband and each of his wives because of the patriarchal origins and practices, there should nonetheless be legal privileges afforded to the relationships between wives. Denial of such privileges becomes a self-fulfilling prophecy in perpetuating polygynous wives' "victimization."

This Note will begin with an overview of the Supreme Court's latest interpretation of marriage and family formation through its opinion in the same-sex marriage case *Obergefell v. Hodges*. This Note will then examine how the relationship/marriage between sister wives fits into this interpretation, and conclude that much of *Obergefell's* reasoning can be applied to the harms of denying sister wives' relationships certain privileges.

This Note will then examine the specificities of the relationships between sister wives, common stereotypes they face, and the ways in which they, as individuals and as a united group, would benefit from legal recognition of their relationships in a variety of contexts. The most important benefit would be the removal of legal obstacles in their ability to parent autonomously and collectively. Defining the precise boundaries of granting sister wives' relationships formal legal status, and the mechanics of implementing rights and regulations for those relationships, is beyond the scope of this Note. Instead, this Note proposes a legally recognized relationship between sister wives as a conceptual thought experiment for enhancing wives' autonomy, which might help lead to greater acceptance and legal reform.

This Note will conclude by outlining the specific legal privileges that could be afforded to the relationships between sister wives in order to ensure their ability to realize their agency, even within a patriarchal system. Relevant counterarguments to this thesis will also be examined and dissected.

6 David L. Chambers, *Polygamy and Same-Sex Marriage*, 26 HOFSTRA L. REV. 53, 73 (1997); Ronald C. Den Otter, *Three May Not be a Crowd: The Case for a Constitutional Right to Plural Marriage*, 64 EMORY L.J. 1977, 1987–93 (1977).

7 *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015).

8 *Reynolds v. United States*, 98 U.S. 145, 166 (1878).

9 *Id.* at 167.

I. EXPANDING THE DEFINITION OF MARRIAGE

In a landmark decision in 2015, the Supreme Court expanded the definition of marriage to include same-sex couples in the landmark case *Obergefell v. Hodges*.¹⁰ Justice Kennedy's opinion for the Court is peppered with language of "couples"¹¹ and "two people"¹² in reference to the right to marry, the Court's four main principles that it relies upon to legalize same-sex marriage bolster the argument in favor of legal recognition of the kinship relationships between polygynous wives. These principles include marriage as (1) a private autonomous choice, (2) a historically sacred institution, (3) the cornerstone for raising children, and (4) the keystone of social order.

A. *The Court's Reasoning in Obergefell v. Hodges*

In his majority opinion in *Obergefell*, Justice Kennedy emphasizes four principles in determining the Court's holding that same-sex marriages should be legally recognized. First, the Court reasons that the decision to enter a marriage is a personal, private choice that is "inherent in the concept of individual autonomy."¹³ The Court sees family formation essentially as a privacy right, where any government interference upon a person's choice would intrude on that person's agency.

The Court's second principle is the precedential recognition of marriage as a historically sacred institution of companionship.¹⁴ For all practical purposes, marriage is a powerful tool for citizens to realize a truly fulfilling life; a life that is not diminished by isolation: "Marriage responds to the universal fear that a lonely person might call out only to find no one there. It offers the hope of companionship and understanding and assurance that while both still live there will be someone to care for the other."¹⁵ The ideas of kinship, community, and cohesion guide this principle in the Court's analysis. There is a right to marry because it is good for humanity that persons be intimately associated with one another.

The third principle the Court points to is the impediments put on children with parents who are not legally recognized as such, especially in terms of non-biological parents gaining access to their sick children when hospitalized.¹⁶ Although the relationships between children and parents with no legal claim to those children may be encompassed by the same kind of unconditional nurturing and love that one would expect of an ideal parent-child relationship, the state has deemed it illegitimate, and even dangerous for the child.¹⁷ As the majority points out, "if an emergency were to

10 *Obergefell*, 135 S. Ct. at 2584.

11 *Id.* at 2600 (quoting *United States v. Windsor*, 133 S. Ct. 2675, 2689 (2013)).

12 *Id.* at 2594.

13 *Id.* at 2599.

14 *Id.*

15 *Id.* at 2600.

16 *Id.* at 2595.

17 *See, e.g.*, *In re Black*, 283 P.2d 887, 913 (Utah 1955) (referencing children of polygamy being removed from their homes: "It would be highly desirable if these children could have the care of their *natural*

arise, schools and hospitals may treat the . . . children as if they only had one parent.”¹⁸ That single parent holds legal authority, either through biology or legal adoption, and is legitimized as a parent by the state without any reference to the intimate reality of his or her behavior as a parent.¹⁹ The Court in *Obergefell* recognized this kind of parental impediment as harmful in an instance where a state permitted only opposite-sex married couples and single persons to adopt, thus denying one parent legal recognition despite that parent’s intimate parental relationship with the child[ren].²⁰

The Court further analyzes the social impact that a lack of legal parental recognition has on the children of such families where one or more parents are not legally recognized as a parent.²¹ The Court declares a basis for the right to marry “is that it safeguards children and families and thus draws meaning from related rights of childrearing, procreation, and education.”²² Indeed, the Court points to several harms children face when a person they understand to be their parent is not legally recognized as such by the State, including lack of familial stability, as well as social stigma.²³

At the same time, the Court is careful not to entangle the idea of procreation to a meaningful marriage: “[I]t cannot be said the Court or the States have conditioned the right to marry on the capacity or commitment to procreate.”²⁴ In other words, persons’ abilities to procreate with one another within the confines of a marital union is not an essential element of a legitimate marriage for the Court.

The final principle the Court relies upon in declaring a constitutional right to marry is that marriage and family formation are “keystone[s] of our social order.”²⁵ The institution of marriage is so fundamental to our foundation as a society that life as we know it would virtually crumble if it were denied as a right of the people.

B. Applying Obergefell’s Principles to Sister Wives’ Relationships

Polygynous wives should have a legal claim to their relationships in light of Justice Kennedy’s four principles spelled out in *Obergefell*. While a similar argument exists for the legal recognition of the marriages between a polygynous husband and each wife, this Note will not examine those relationships, as it focuses on bolstering polygynous wives’ abilities to reach absolute agency and autonomy within polygyny’s patriarchal structure. This Note asserts that the most direct path for polygynous wives to realize their agency is through legislation or judicial holdings that would

mother, but it would be more desirable that they be brought up as law-abiding citizens in righteous homes.”) [author’s emphasis].

18 *Obergefell*, 135 S. Ct. at 2595.

19 *Id.* (illustrating ways specific plaintiffs’ were impacted by this practice).

20 *Id.*

21 *Id.* at 2600.

22 *Id.*

23 *Id.*

24 *Id.* at 2601.

25 *Id.*

grant their relationships as sister wives certain marital privileges through legal recognition of their kinship.

As discussed above, the Court's first principle of the fundamental right to marry in *Obergefell* is that marriage is a private, individual choice—an institution where persons can exercise autonomy without government intrusion.²⁶ The Court definitively respects autonomous choice in family formation.²⁷ However, historically, the Court has not understood polygynous wives as having made an autonomous choice in entering a patriarchal plural marriage; instead, the Court has simply accepted that they are “innocent victims” and “sufferers” of the “delusion” of polygynous unions.²⁸ The Court, in assuming the truth this universal judgment, essentializes polygynous wives into a single, homogenous group without regard to individual identity. There is, of course, little doubt that some wives can be said to be coerced or duped into polygamy,²⁹ but it is also true that many wives enter polygamy willingly.³⁰

In spite of the notion that polygynous wives are each their own rational human being capable of having disparate thoughts, feelings, and agency, let us assume for argument's sake that the Court is correct that polygynous wives are invariant, powerless victims of their husbands. For better or worse, they are in this kind of union. Now what? How can the Court remedy the situation for the “sufferers” that have already established lives as polygynous wives and mothers? If their original choice to marry was not based on autonomous choice, does that mean the state should aid in continuing to deny them autonomy through a complete denial of the legitimacy of their families? Like the *Obergefell* Court declared, the choice to marry is inherently an exercise of autonomy.³¹ But autonomous choice does not end with the decision to say, “I do.” Marital partners are constantly negotiating their relationships, and to deny that polygynous wives are capable of attaining agency once they are firmly in the marriage, especially in terms of forming a relationship with each other, arguably aids in perpetuating their “suffering.” The complete ban on polygamy has not ended its practice.³² Therefore, it is imperative that the government give polygynous wives every avenue possible in bolstering their ability to make an autonomous choice. Aid should begin with granting the relationships between and among wives legal

26 *Id.* at 2599.

27 Jack B. Harrison, *On Marriage and Polygamy*, 42 OHIO N.U.L. REV. 89, 117–19 (2015).

28 *See Reynolds v. United States*, 98 U.S. 145, 167 (1878).

29 John Witte, Jr., *Why Two in One Flesh? The Western Case for Monogamy Over Polygamy*, 64 EMORY L.J. 1675, 1678 (2015).

30 Elizabeth F. Emens, *Monogamy's Law: Compulsory Monogamy and Polyamorous Existence*, 29 N.Y.U. REV. L. & SOC. CHANGE 277, 314–17 (2004) (discussing the experience of Mormon polygamist wife Elizabeth Joseph: “[Joseph] sees polygamy as providing ‘a whole solution.’ While it ‘offers men the chance to escape from the traditional, confining roles that often isolate them from the surrounding world,’ more importantly to Joseph, ‘it enables women, who live in a society full of obstacles, to fully meet their career, mothering and marriage obligations.’”).

31 *Obergefell*, 135 S. Ct. at 2599.

32 Swisher, *supra* note 1, at 307.

recognition, and the certain marital privileges subsequently gained through such recognition.³³

The Court's second principle in *Obergefell*—marriage as a sacred institution of companionship—is also applicable to the relationships among and between sister wives in polygynous marriages. Although the Court uses this principle in the context of a “two-person union,”³⁴ the bulk of this principle describes a relationship that could easily extend to non-sexual forms of companionship among multiple persons. Surely, sister wives have an “intimate association”³⁵ in the sense that they are part of the same core family, have shared responsibilities, rely on one another for support, and have children who are half-siblings.³⁶ Their companionship would likely outlast the death of the patriarch, ensuring that while they all still live, they “will have someone to care for the other.”³⁷

The Court's third principle, concern for the children involved in the unconventional family formation, is perhaps the most important basis for legitimizing the union among sister wives in polygynous marriages. The Court points to the fact that legally legitimizing their parents' relationship allows the children of polygynous unions to experience feelings of inclusion in a social setting where they would otherwise feel stigmatized: “[M]arriage allows children ‘to understand the integrity and closeness of their own family and its concord with other families in their community and in their daily lives.’”³⁸ Certainly, children of polygynous marriages, who have multiple mother figures, likely feel some disconnect from the majority community of children with two, or even one parental figure.³⁹ This disconnect may lead these children to delegitimize their other mother figures, and favor their biological mother as the one with whom they should allow themselves to form the closest bond.⁴⁰ This, in turn, could lead to a fracturing of the “closeness” of the family as a whole—a closeness that the Court understands to be so important for children to realize.⁴¹ Further, children may tend to value their relationships with their full biological siblings more than their relationships with their half-siblings because there is nothing binding the relationship among their mothers.⁴²

33 *Id.* at n.54.

34 *Obergefell*, 135 S. Ct. at 2599.

35 *Id.* at 2600.

36 See, e.g., Emens, *supra* note 30; Jaime M. Gher, *Polygamy and Same Sex Marriage – Allies or Adversaries Within the Same-Sex Marriage Movement*, 14 WM. & MARY J. OF WOMEN & L. 559, 585 (2008); Vicki Darger, *A Real Sister Wife Speaks Out: Why I Chose Polygamy*, HUFFINGTON POST (Oct. 3, 2011), http://www.huffingtonpost.com/vicki-darger/real-sister-wife-chose-polygamy_b_991552.html.

37 *Obergefell*, 135 S. Ct. at 2600.

38 *Id.* (quoting *United States v. Windsor*, 133 S. Ct. 2675, 2694 (2013)).

39 Irwin Altman, *Husbands and Wives in Contemporary Polygamy*, 8 J.L. & FAM. STUD. 389, 390 (2006).

40 See, e.g., Katherine K. Baker, *Bionormativity and the Construction of Parenthood*, 42 GA. L. REV. 649, 710 (2008) (“Recognizing one parent as primary over another does have costs... It legitimizes the idea of degrees of parenthood and thereby makes it harder for everyone to view parenthood as an equally shared enterprise.”).

41 *Obergefell*, 135 S. Ct. at 2600.

42 See Anne Taylor, *In re Kingston Children: The Best Interests of Polygamous Children*, 8 J.L. & FAM. STUD. 427, 433 (2006) (“Indeed, a focus on the immorality of polygamy may cause a court to ignore ‘the

Recall that the majority opinion emphasizes that the ability or desire to procreate is not a necessary component of a meaningful marriage.⁴³ It should also not be necessary that the wives did not procreate with each other in order to find their bonds are also meaningful. Indeed, many polygynous husbands marry another wife when their first wife is no longer able to procreate.⁴⁴ To understand the relationship between the first wife and second wife as illegitimate, in this situation, is tantamount to assuming that the barren wife will not be a legitimate member of the family for any future children produced between husband and second wife.

The Court's final principle for finding the right to marry as fundamental—marriage as a “keystone to our social order”⁴⁵—is applicable to the justification for recognizing rights between and among sister wives. Intimate private bonds are deemed by the Court to be the basis for the formation of a stable society.⁴⁶ Society, in turn, grants such private bonds certain social benefits: “[J]ust as a couple vows to support each other, so does society pledge to support the couple, offering symbolic recognition and material benefits to protect and nourish the union.”⁴⁷ Although the Court uses the term “couples” for this portion of the argument, the supportive unions between and among multiple sister wives deserve the same protection and nourishment that societal recognition and benefits can offer to monogamous relationships. Polygynous wives do indeed vow to support one another and to rear their children in a harmonized familial atmosphere.⁴⁸ Adrienne D. Davis argues, “marital multiplicity could provide women with a variety of benefits including friendship, a chance to develop their own capabilities, increased bargaining power to insist upon, among other things, a fair division of labor.”⁴⁹ In other words, sister wives' bonds provide support for our social order in the same manner as any traditional monogamous marital bond: through love, support, and stable family formation. Legitimizing polygynous wives' bonds through legal recognition and social benefits can only work to further strengthen their family formations, and society will also benefit as a result.

II. LEGAL PRIVILEGES FOR SISTER WIVES' SHARED KINSHIP EMPOWERS THEIR ROLES WITHIN POLYGYNOUS MARRIAGES

Since polygyny is, by definition, inherently patriarchal, it is difficult for feminists to reconcile the notion that women in polygynous unions could possibly find

potentially adverse effects of uprooting the children from their homes or separating them from their siblings.”).

43 *Obergefell*, 135 S. Ct. at 2601.

44 Mounira Maya Charrad, *Unequal Citizenship: Issues of Gender Justice in the Middle East and North Africa*, in *GENDER JUSTICE, CITIZENSHIP AND DEVELOPMENT* 285, 298 (Maitrayee Mukhopadhyay & Navsharan Singh eds., 2007).

45 *Obergefell*, 135 S. Ct. at 2601.

46 *Id.*

47 *Id.*

48 Adrienne D. Davis, *Regulating Polygamy: Intimacy, Default Rules, and Bargaining for Equality*, 110 *COLUM. L. REV.* 1955, 2042–43 (2010).

49 *Id.* at 2043.

any power or agency in their roles as sister wives.⁵⁰ This understanding is arguably based on historical and contemporary essentializing stereotypes of polygamous women as victims that these women's capacity for individuality.⁵¹ However, deconstructing these stereotypes, and recognizing their similarity to stereotypes of femininity in general, demonstrates that the relationships among polygamist wives are complex,⁵² and that the act of legitimizing these relationships by granting them legal privileges would work to empower such complex associations, while also disentangling wives from forced reliance on their husband in many aspects of day-to-day life.

A. Historical and Contemporary Portrayals of Polygynous Wives

1. Victimhood

Certainly the most common historical and contemporary portrayal of wives in polygynous marriages is that of the "innocent victim" outlined in *Reynolds*.⁵³ Within this portrayal, women are no more than brainwashed robots, destined to live a life of powerlessness and servitude.⁵⁴ This form of identity-essentializing is, in fact, a common critique of many Western feminists by their non-Western feminist counterparts.⁵⁵ Post-colonial feminist theorist Chandra Talpade Mohanty discusses the harms certain groups of women face (for Mohanty, it is third world women) when they are seen as a homogenous coherent group by other groups with more social power (for Mohanty, it is first world feminists).⁵⁶ Mohanty asserts:

[T]he discursively consensual homogeneity of "women" as a group is mistaken for the historically specific material reality of groups of women. This results in an assumption of women as an always-already constituted group, one which has been labeled "powerless," "exploited," "sexually harassed," etc., by feminist scientific, economic, legal and sociological discourses.⁵⁷

For Mohanty, there can be no uniform, universal experience for women. To essentialize a group of women as victims is to deny them their contextually specific experiences.⁵⁸ Such acts of essentializing create the notion of the average (third

50 See Otter, *supra* note 6, at 1991.

51 Harris, *supra* note 5.

52 See Stu Marvel, *The Evolution of Plural Parentage: Applying Vulnerability Theory to Polygamy and Same-Sex Marriage*, 64 EMORY L.J. 2047, 2075–75 (2015) ("[E]mpirical research in Fundamentalist Latter-day Saints communities such as that in Bountiful, British Columbia, have revealed complex systems of negotiation in operation, where women and children make 'choices about marriage, reproduction, residence, work, and education [that] might be characterized as active, deliberated, and in the service of their own interests.'").

53 *Reynolds v. United States*, 98 U.S. 145, 168 (1878).

54 See Rickless, *supra* note 2; Porter, *supra* note 1, at 2107.

55 See, e.g., Chandra Talpade Mohanty, *Under Western Eyes: Feminist Scholarship and Colonial Discourse*, 12 ON HUMANISM AND THE UNIVERSITY I: THE DISCOURSE OF HUMANISM 333–58 (1984).

56 *Id.* at 336.

57 *Id.* at 338.

58 *Id.* at 336–37.

world) woman for Mohanty:

This average third world woman leads an essentially truncated life based on her feminine gender (read: sexually constrained) and being ‘third world’ (read: ignorant, poor, uneducated, tradition-bound, domestic, family-oriented, victimized, etc.). This, I suggest, is in contrast to the (implicit) self-representation of Western women as educated, modern, as having control over their own bodies and sexualities, and the freedom to make their own decisions.⁵⁹

Mohanty’s “average woman” analysis can be analogized to the legal and social rhetoric surrounding the apparent “suffering” of sister wives when compared to monogamous wives. The adjectives Mohanty uses to describe Western feminist understandings of the average third world woman are amazingly similar to the ways in which monogamous society historically and contemporarily understands the average polygynous wife.⁶⁰ Sister wives are also socially and legally understood to be coerced and bound by religious tradition, relegated to the private domestic sphere, and ignorant to the autonomous benefits that monogamy has to offer them.⁶¹ Such an essentializing notion of polygynous wives as vulnerable victims arguably degrades their individuality in a similar extent that (as anti-polygamists argue) the institution of polygamy itself allegedly degrades these women. Each woman in a polygynous marriage, just like each woman living in the third world, is unique, complex, and experiences her life differently. She comes into each new situation with an individual history and perspective. To deny her uniqueness through a homogenous characterization of victimhood, vulnerability, and ignorance only perpetuates her powerlessness. It also suggests that women in monogamous relationships have power and autonomy within those bonds simply due to the relationship’s structure.⁶² Such an assertion, of course, cannot be lived reality since power structures of relationships are multi-faceted and contextual, and not dependent on a single individuation. The same complexity exists for each relationship between and among sister wives in a polygynous marriage. Their power or powerlessness within their individual family formations cannot be determined solely on the basis of the type of marital structure in which they find themselves. As a result, by denying their relationships legitimacy because their family formations cause society and the law to constitute them as a homogenous group of vulnerable victims, those in power prevent these wives from ever obtaining individual legitimacy outside of a traditional, monogamous marriage.

59 *Id.* at 337.

60 Swisher, *supra* note 1, at 301 (“Anti-polygamists of the nineteenth century often equated husband and wives in a plural marriage to a slave master and slaves, regarding polygamous marriages as ‘no better than Turkish harems, a practice designed to serve male lust without women’s willing consent.’”); Emens, *supra* note 30, at 332–33.

61 Porter, *supra* note 1, at 2110.

62 Mohanty, *supra* note 55, at 353.

2. Jealous Hysteria

A second popular characterization of wives in polygynous marriages is that of romantic rivals who constantly compete with each other for individual attention from their shared husband.⁶³ This notion of the jealous sister wife has both historical and contemporary bearings. Writings from the 1800s by a first wife, Angelina Farley, emphasize her resentment and jealousy of her husband's third wife due to the greater sexual attention afforded the third wife by the lone husband.⁶⁴ In one instance, Angelina apparently overhears her husband having sexual intercourse with his third wife: "I had my feelings woefully wrought up by [what they supposed was] a private act on himself and Lydia which made me act and speak very unbecoming."⁶⁵ At the same time, however, Angelina apparently did not feel the same degree of resentment towards her husband's second wife,⁶⁶ fact which supports the notion that each relationship between sister wives is unique, complex, and always being negotiated in its performance.⁶⁷

A modern portrayal of viperous polygynous wives comes in the form of a reality television show on the network TLC appropriately titled "Sister Wives."⁶⁸ The show features patriarch Kody Brown, his four wives, Meri, Janelle, Christine, and Robin, and their multiple shared children. The show attempts to give an inside look into the day-to-day lives of a polygynous family. Its stars often emphasize their desire to send their audience a message of familial normalcy in order to remove some of the social stigma related to plural marriages.⁶⁹ However, a message frequently sent to the show's audience is one that emphasizes the wives discomfort about and jealousy towards their husband's sexual encounters with their sister wives.⁷⁰ In the show's third season, the wives admitted, "many sister wives like to banish from their brains, the fact that their husband is having sex and full intimate relations with his other wives, but that becomes unpleasantly difficult when a sister wife becomes pregnant."⁷¹ This emphasis of the sister wives' jealous natures overshadows their cooperation with each other in running the family.⁷² A monolithic characterization of

63 See Jonathan Turley, *The Loadstone Rock: The Role of Harm in the Criminalization of Plural Unions*, 64 EMORY L.J. 1905, 1916 (2015).

64 Paula Kelly Harline, *Inside the Diaries of Polygamous Wives: Life as an Early Mormon Woman*, SALON.COM (May 31, 2014, 2:30 PM), http://www.salon.com/2014/05/31/inside_the_diaries_of_polygamous_wives_life_as_an_early_mormon_woman/.

65 *Id.*

66 *Id.*

67 For more on the concept of negotiated interactions and performativity of identity see JUDITH BUTLER, *GENDER TROUBLE* (1990).

68 *Sister Wives*, TLC, <http://www.tlc.com/tv-shows/sister-wives/> (last visited Jan. 4, 2016).

69 Chris Henrichsen, *Sister Wives: Trading Anonymity for Tolerance*, PATHEOS (Jan. 17, 2014), <http://www.patheos.com/blogs/approachingjustice/2014/01/17/sister-wives-trading-anonymity-for-tolerance/>; Marvel, *supra* note 52.

70 Bonnie Fuller, *The Four Sister Wives Finally Confess that They're Creeped Out by Kody Brown's Sex Life with Them!*, HUFFPOST (Oct. 3, 2011), http://www.huffingtonpost.com/bonnie-fuller/the-four-sister-wives-fin_b_992475.html.

71 *Id.*

72 *Id.*

the jealous sister wife further works to delegitimize the kinship the wives share with each other and all of the family's shared children. In fact, Kody Brown's first wife Meri, sacrificed the legality of her marriage to Kody so that her husband could legally adopt his fourth wife Robyn's children from a previous marriage.⁷³ This selfless act by Meri arguably demonstrates her commitment to her plural family and a personal desire to protect her sister wives and the family's children from legal impediments that delegitimize the family structure.

3. Loving Allies

The probably least invoked portrayal of sister wives is that of cooperative and loving members of the same family, with a symbiotic relationship in their shared familial responsibilities. However, this kind of rapport between sister wives does exist in accounts by women in polygynous marriages. As mentioned in the previous section, Meri Brown forfeited her legal marriage in order to allow her husband's fourth wife Robyn and her children the benefits of a legally recognized familial bond.⁷⁴ The decision was admittedly difficult for Meri,⁷⁵ as one could imagine it would be. At the same time, though, the family knew that a divorce was the best available course of action in order to ensure Robyn's children from a previous marriage ability to access to Kody's health insurance benefits, like his biological children are able to do.⁷⁶ A divorce between Kody and Meri may not have been necessary if the bond between Meri and Robyn had legal recognition. Robyn's children would already have a legal connection to Meri, whose legal marriage to Kody would transfer the benefits to Robyn's children. Kody's participation would not be fundamental. The wives would not be forced to rely on their patriarch, and instead would be able to find power within their relationship with each other.

Indeed, at least some polygynous wives purport to have always expressed a desire to enter a plural marriage, in part because of the support that sister wives offer to the family.⁷⁷ Polygynous wife Vickie Garner, for example, wrote an opinion editorial describing the pivotal role her two sister wives played in her recovery from postpartum depression: "In the end, what got me through this rough time was the steadfast devotion of my husband and sister wives. . . . When I was unable to give my children the attention they needed, Alina and Val were there to make sure they were cared for and loved."⁷⁸

73 Emily Strohm, *Inside the Emotional Sister Wives Adoption: 'It was a Validation of Our Family'*, PEOPLE (Oct. 28, 2015), <http://www.people.com/article/sister-wives-inside-adoption-validated-family>.

74 *Id.*

75 Emily Strohm, *Sister Wives' Meri Brown on Kody's Quickie Divorce and Wedding to Fourth Wife Robyn: 'It's Just Weird'*, PEOPLE (Sept. 11, 2015), <http://www.people.com/article/sister-wives-meri-brown-calls-kody-brown-robyn-brown-wedding-just-weird>.

76 *Id.*

77 For example, "Sister Wives" star Christine Brown, a third wife, expressed in an interview that she has "only wanted to be a third wife" after growing up with multiple mothers in a plural parentage home. *Anderson: Former FLDS Teens, Plus, Kody Brown & 'Sister Wives'* (Telepictures Productions Sept. 29, 2011).

78 Darger, *supra* note 36.

All in all, the three aforementioned disparate stereotypes of sister wives in polygynous marriages may, in fact, aid in bolstering the argument that such wives cannot be characterized as homogenous and one-dimensional simply for the fact that their marriages are inherently patriarchal. If they could be characterized as such, then more than one stereotype would not be necessary. Each woman in a polygynous marriage finds herself there for a variety of reasons; whether through coercion or free will, or a combination of the two. The interrelations between sister wives is, like all relationships, complex. The act of delegitimizing their bonds through the state's denial to legally recognize them as members of the same family does nothing to empower these women who, for better or worse, are living the reality of a plural marriage. In fact, it may have the opposite, deleterious effect.

B. Benefits Gained Through Legal Recognition

1. Benefits to Wives—Psychological and Practical

Wives in polygynous marriages would benefit from legal recognition legally, socially, and psychologically. Legal recognition would aid to disentangle polygynous wives from compulsory reliance on husbands, as well as strengthen the bonds between wives and the bonds between each child and each wife/mother. The social stigma faced by polygynous wives would decrease because society would see them as having more autonomy and agency in their marriages with their bonds legally recognized.⁷⁹ In essence, the apparent veil of victimhood would begin to lift. Wives could feel freer to exercise their symbiotic relationships without mandatory input from the patriarch. Tasks that require parental consent, like hospital visits and school enrollment, would cease to be complicated endeavors that currently allow only the biological mother's presence, or the presence of the patriarch.⁸⁰

2. Benefits to Children—Psychological and Practical

The children of polygynous marriages will benefit from a legal recognition of the relationships between and among their mothers. Legitimizing their mothers' relationships will enhance the closeness of their bond with each wife, as well as their bond with each half-sibling. The social stigma they face will decrease and their psychological health will be enhanced.⁸¹ A good example of the benefits to children is the Brown divorce and adoption case that was mentioned previously.⁸² With their mothers' bond legitimized, children of polygyny will not be forced to engage in a litigation process that demands a legal reorganization of their family.

79 See Davis, *supra* note 48, at 1978 (“Strassberg and Sigman both capture th[e] concern that polygamy's harm to the liberal state is its production of ‘unregulated communities’ that are incompatible with liberal democracy and its commitments to individual well-being.”).

80 See Samuel D. Brunson, *Taxing Polygamy*, 91 WASH. U.L. REV. 113, 152 (2013).

81 See generally Taylor, *supra* note 42 (describing the legal and social challenges faced by children in illegal polygamous families).

82 Strohm, *supra* note 73.

3. Social Benefits—Psychological and Practical

There are benefits to be gained by wives in their everyday lives, especially in the sense of no longer facing the burden of keeping their family formation secret. Further, legal recognition could arguably strengthen the bond between sister wives, and allow them to be more affectionate with each other, instead of feeling the need to act as romantic rivals.⁸³ Without the need for patriarchal reliance, wives are arguably less likely to compete, and more inclined to cooperate.⁸⁴

III. TYPES OF PRIVILEGES NEEDED

The US government grants numerous privileges to legally married persons.⁸⁵ This section simply gives a short list of some of the legal privileges in the United States Code that arguably would be most beneficial to the bonds between sister wives if they were legally recognized as legitimate.⁸⁶ These suggestions include a mix of federal, state, and private benefits. The mechanics of how these benefits may be implemented for wives (e.g. whether they should be regulated by federal or state law, or whether or not they may be voluntarily chosen by wives) is beyond the scope of this Note. The suggestion of benefits is simply a means of conceptualizing how sister wives' autonomy may be promoted through a relationship regulated by law and understood to carry a defined bundle of rights and responsibilities.

First, government benefits like social security would enhance the agency of sister wives. If a sister wife who is legally married to the husband is deceased, then any subsequent wives would be eligible to receive her benefits as well. This would enable the still-living wives more financial independence within the polygynous marriage.

Employment benefits like access to a family member's health insurance, retirement benefits, and family sick leave would also grant sister wives more autonomy. Working wives would have the ability to provide their sister wives with both financial and physical support without requiring any practical participation on the part of the patriarch.

Health benefits like the ability to visit a sick family member in the hospital would give sister wives agency over their shared children. This benefit, as already mentioned, was pointed out by Justice Kennedy in his opinion in *Obergefell v. Hodges* as a necessity for parents in legally unrecognized unions with hospitalized children.⁸⁷

83 See Davis, *supra* note 48, at 2044 (“[w]hile on its face polygamy might seem to perpetuate what Gayle Rubin called the ‘traffic in women,’ in fact, plural marital associations with the legal norms described . . . might offer women the opportunity to convert their status from that as ‘exchanged’ to ‘exchangers’ in intimate marketplaces.”).

84 *Id.* at 2043.

85 *Marriage Rights and Benefits*, NOLO, <http://www.nolo.com/legal-encyclopedia/marriage-rights-benefits-30190.html> (last visited May 8, 2017) (listing an overview of both legal and practical benefits regarding marital status).

86 Letter from Dayna K. Shah, Associate Gen. Couns., to Senator Bill Frist, Senate Majority Leader (Jan. 23, 2004), <http://www.gao.gov/new.items/d04353r.pdf>.

87 *Obergefell v. Hodges*, 135 S. Ct. 2584, 2595 (2015).

Sister wives have children with a shared father, and they often rely on one another to help with parenting each other's own biological children.⁸⁸ Access to this benefit again allows the wives to side step the patriarch, and it also allows them to comfort the children of their family in an emergency when the child's biological parents may be unavailable.

Family benefits like filing for stepparent or joint adoption are also crucial for sister wives. Such benefits would have allowed Meri Brown to avoid divorcing her husband so that he may adopt his fourth wife's children.⁸⁹ A legally-recognized union between the sister wives would allow all of the wives to adopt the children of the others, thus tightening the bond between each wife and the bond between the wives and each child, regardless of biology.

Finally, legal benefits like spousal privilege should be provided sister wives. Sister wives should not be compelled to testify against each other in a criminal suit, especially if that suit is related to the illegality of their marriage. The cohesion of sister wives' bonds needs to be strengthened by the state, instead of weakened through compelled opposing testimony.

IV. RELEVANT COUNTERARGUMENTS

Giving sister wives' bonds legitimacy through legal recognition requires a radical reconceptualization of what "family" means. As a controversial proposal, there will undoubtedly be arguments against it. Such counterarguments will likely draw upon the same lines of reasoning used for the continued outlawing of polygamy in general. Indeed, the notion of plural marriage has been invoked by Justice Scalia previously as a slippery-slope argument against finding a fundamental right to private, homosexual conduct in *Lawrence v. Texas*.⁹⁰ In his dissenting opinion, Justice Scalia asserts, "[t]he [statute in question] undeniably seeks to further the beliefs of its citizens that certain forms of sexual behavior are 'immoral and unacceptable,'—the same interest furthered by criminal laws against fornication, *bigamy*, adultery, adult incest, bestiality, and obscenity."⁹¹ The grouping of sister wives and their husband into a category with individuals who have sexual intercourse with animals arguably demonstrates Justice Scalia's tendency to view sister wives as a homogenous, dehumanized group. In fact, Justice Scalia is not alone in linking legal polygamy with legal bestiality as inevitable results of expanding the legal definition of families, especially gay marriage.⁹² Now that gay marriage is legal in all fifty states,⁹³ opponents of that legal decision will almost certainly meet with hostility any proposal to further expand legality to the types of family formations they feared would be legitimized through granting legality to gay marriages. For these slippery-

88 See, e.g., Darger, *supra* note 36.

89 See Strohm, *supra* note 73.

90 539 U.S. 558, 597 (2003) (Scalia, J., dissenting).

91 *Id.* [author's emphasis].

92 Emens, *supra* note 30, at 278 n.10, 11.

93 See *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015).

slope theorists, privileging the bond between sister wives is simply the next step that leads to the downward spiral of American morality.⁹⁴

Apart from the slippery-slope argument, another counterargument to legally recognizing sister wives' bonds is, as previously mentioned, the notion that the practice of polygyny is simply bad for women.⁹⁵ However, intersectional and post-colonial feminists have begun to deconstruct that claim by examining the ways in which such a claim can have the detrimental effect of "othering" polygynous wives, while simultaneously normalizing monogamous wives.⁹⁶ In fact, feminists have questioned the notion that polygamy is inherently more harmful to women than monogamous heterosexual relationships.⁹⁷ It is not a novel concept that women have historically and perpetually been relegated to a subordinate role with respect to the men in their lives. It is also well recognized that advancing the position of women in society requires affirmative state actions.⁹⁸ Enhancing the bond between sister wives through state recognized legitimacy empowers women who live under the dominion of an institution founded on patriarchal principles. Of course, such patriarchal foundations are present in both heterosexual, monogamous unions, as well as polygynous ones.

CONCLUSION

The legal system of the United States is doing a disservice to women in polygynous marriages by viewing them to be virtual strangers, plagued by an institution that has long been thought to victimize and dehumanize them. The lack of legal recognition of sister wives' bonds inevitably aids in perpetuating polygynous wives' inherently disempowered roles within their patriarchal marriages. Wives remain reliant on their husbands to overcome economic and legal systems that impede wives' ability to determine the fate of their families. Without state recognition, a family's shared children may come to understand that their bonds with their father's other wives can never be as genuine as the bond with their biological mother. With no real legitimate connection between the wives, women who join the family subsequent to the first wife's legal marriage may feel like outsiders and consequently come to resent the first wife because she has legal legitimacy in the family.

94 See *Lawrence v. Texas*, 539 U.S. 558, 601 (Scalia, J., dissenting).

95 See, e.g., Witte, Jr., *supra* note 29, at 1719.

96 Michelle Chan, *Beyond Bountiful: Towards an Intersectional and Postcolonial Feminist Intervention in the British Columbia Polygamy Reference*, 16 *APPEAL REV. CURRENT L. & L. REFORM* 15, 17 (2011).

97 See *id.*; Judith P. Stelboun, *Patriarchal Monogamy*, in *THE LESBIAN POLYAMORY READER* at 39, 42 ("Feminist scholars state that the origins of monogamy have their source in patriarchal thinking. Viewed as the possessions of the male, women were used for barter and/or procreation. . . Legitimacy of a child relates to acknowledgement of the child's father, not to the child's mother."); Gher, *supra* note 36, at 594.

98 See, e.g., Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13 ("States Parties shall take in all fields, in particular the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men."). At the time of the authoring of this note, the United States has failed to ratify CEDAW.

It is in proponents of gender equality's best interests to look at polygynous wives through a nuanced lens that does not include the act of homogenizing them as an *othered* category of women. Like all human beings, each polygamist wife is a complex person with a unique perspective and varied experiences. If the goal of the legal system is to help these women, then it must give them the tools to find empowerment within their marriages, especially within their marriages to each other. The first step to achieving this kind of empowerment is to legally recognize their bonds as legitimate, and, in turn, allow them access to the benefits and privileges afforded by this kind of recognition.