

Latin (amor).¹²⁸ Second, the hybridity of the word points to a feature of polyamory represented in this definition: the wide variety of relationships that fall within its ambit.¹²⁹ Third, the reference to polyamorous "people who currently have one or no partners" suggests that people not only practice polyamory, people can be "poly."¹³⁰ Finally, the last two sentences point toward the philosophical interests of many of polyamory's practitioners: polys have well-articulated views of relationships and beliefs about interpersonal ethics.¹³¹

There are different definitions and innumerable models of polyamory.¹³² The primary definitional disputes about polyamory involve the delineation of its boundaries with regard to sex and to love.¹³³ In order to be poly, must a relationship involve sex among more than two, love among more than two, both, or neither?

With regard to sex, there is a dispute as to whether polyamory necessarily involves sexual relationships among more than two people. For instance, Martha Ertman has recently defined polyamory as incorporating all "relationships that include more than one participant" regardless of whether the participants are sexually involved with one another.¹³⁴ By privileging a very general definition

"cheating" Women who cheated were "loose." Men, less likely to acquire STDs from heterosexual intercourse [than women], and not at all likely to become pregnant, were said to be "sowing wild seeds" when they had multiple sexual involvements.

Marcia Munson & Judith P. Stelboun, *Introduction to THE LESBIAN POLYAMORY READER: OPEN RELATIONSHIPS, NON-MONOGAMY, AND CASUAL SEX*, *supra* note 101, at 1-2; *see also* DEBORAH M. ANAPOL, POLYAMORY, THE NEW LOVE WITHOUT LIMITS 5 (1997) ("The term *polyamory* was first proposed by Church of All Worlds founders Oberon and Morning Glory Zell to replace the awkward expression *responsible nonmonogamy*. Cyberspace conversations via the Internet and the World Wide Web popularized its use all around the world over the last several years and helped bring it into general usage"). A sketch of historical antecedents to the concept of polyamory could extend further back, possibly including, for instance, the late-nineteenth-century utopian Oneida community. *See, e.g.*, Robinson, *supra* note 40, at 146.

128. "Homosexuality" comes from the Greek for same (homo) and the Latin for sex (sexus). *See* OXFORD ENGLISH DICTIONARY 115, 334, 345 (2d ed. 1989).

129. *See infra* text accompanying notes 150-63.

130. Not all polys agree with this proposition. *See, e.g.*, Elise Mathiesen, *all/polyamory: Frequently Asked Questions (FAQ)*, at <http://www.flags.org/flags/polyamory/faq/> (last updated Apr. 25, 2004) ("[A]ccording to the philosophy of some folks, people aren't polyamorous, although behavior can be. Some people find that approach useful, and others prefer to think of 'polyamorous people.'"); *see also infra* Part IV. Moreover, the level on which someone is or is not poly is a matter of some dispute. *See id.*

131. *See infra* Section III.C.

132. For detailed descriptions of particular relationships, *see infra* Section III.B. For a vivid fictional account of three different forms of triads, *see* Tara Ayres and Dong Holtz's play, *Loving More* (manuscript on file with author), which was performed by the Mercury Players Theatre at the Bartell Theatre in Madison, Wisconsin, during December 2003. *See also* Lue Allen, *Howdy, Partners: A New Play Argues for Multiple Lovers*, *ISTHMUS*, Dec. 12, 2003, at 24 (reviewing *Loving More*).

133. On the meaning of the term "love" in these debates, *see infra* text accompanying notes 143-46.

134. "While polyamory literally means 'many' and 'love,' the term does not impose additional conditions such as sexual relations." Ertman, *Private/Private Distinction*, *supra* note

of polyamory—"all forms of multi-partner relating"—Maura Strassberg also appears to join with those polys who consider sex to be an unnecessary part of the equation.¹³⁵

Among polys, there seem to be two impulses pushing towards the inclusion of nonsexual intimate relationships within the definition of polyamory. First, many polys oppose hierarchy and strict definitions.¹³⁶ Like that of "queers,"¹³⁷ the sensibility of many polys rebels against line-drawing and exclusion.¹³⁸ Polys are therefore inclined to include everyone within polyamory who wants to be included. Second, polys who oppose hierarchy or who have alternative definitions of sexuality may not want to define their nonsexual relationships as categorically different from their sexual relationships. They may not want to privilege certain relationships along the axis of sex. Thus, they may want to put all their loving relationships under the umbrella of polyamory.

By contrast, some writers posit that the term polyamory must incorporate sexual nonexclusivity. Deborah Anapol writes that "[o]ne thing [polyamorous] relationships have in common is that they are *both* sexual *and* loving" ¹³⁹ According to Marcia Munson and Judith Stelboun, "The term 'polyamory' literally means 'many loves.' While loving several people simultaneously is the reality of most people's lives, the term polyamory usually implies sexual involvement with more than one person."¹⁴⁰ For some polys, including sex within the term polyamory may be an important aspect of the term's signaling

26, at 124-25. Ertman also writes:

The term [polyamory] also includes arrangements with combinations of people who organize their intimate lives together, regardless of the extent of the arrangement's sexual elements. Thus, if a lesbian couple has a child by alternative insemination, using a gay man as a known donor to father the child, and the donor remains involved in the child's life, the arrangement is polyamorous. These three individuals love one another, or are bonded by the love for the child. The lesbian couple's relationship is romantic and sexual, and similar to marriage in that the couple lives together and jointly parents the child. The two biological parents, in contrast, are neither romantic partners nor even involved in the way that cohabitants and co-parents are.

Id. at 124.

135. Strassberg, *supra* note 8, at 444 (quoting Loving More's definition of polyamory, at <http://lovingmore.com/terms> (last visited Apr. 24, 2004)). Strassberg asserts that "the fundamental value of polyamory is relationship, particularly loving relationships." *Id.* at 454, and supports this proposition with the assertion, without qualification, that "[t]he focus of polyamory is on having and maintaining loving relationships that may or may not be sexual," *id.* (quoting Loving More, <http://lovingmore.com/faq>, at question #1).

136. *See infra* note 153 and accompanying text.

137. *See* Elizabeth F. Emens, *Queering Law?: A Queer Theory of Same-Sex Marriage* 5-7 (May 28, 2004) (unpublished manuscript, on file with author).

138. *See infra* note 153.

139. ANAPOL, *supra* note 127, at 6 (emphasis in original).

140. Munson & Stelboun, *supra* note 127, at 1. *Cf.* Mathiesen, *supra* note 130 ("Polyamory means 'loving more than one.' This love may be sexual, emotional, spiritual, or any combination thereof, according to the desires and agreements of the individuals involved . . ."). *But see* Mathiesen, *supra* note 130 (reporting one woman's opinion that polyamory "need not involve sex (although it often does)").

function: just as a straight person may not want to proposition or fall in love with a gay person, a poly person may wish to avoid propositioning a person who is not open to sexual nonexclusivity.¹⁴¹ And some polys may feel that a definition of polyamory that does not contain sex is a kind of whitewashing or watering-down of this nonnormative practice.¹⁴²

When love is considered, the dispute is inverted; must polyamorous relationships include multiparty love, or can they be primarily or exclusively about sexual nonmonogamy? "Love" is used loosely in these discussions because the focus of the dispute is negative; the question is whether a relationship can be poly without any love. For example, this issue is often framed in terms of whether polyamory includes "swinging," or casual sex—that is, sexual involvement with multiple parties not necessarily based on love or intimacy.¹⁴³ In this context, then, "love" should be understood to mean some kind of emotional or intimate attachment beyond the sexual connection. On the one hand, Deborah Anapol emphasizes the role of sex and love together "with no separation between the sex and the love."¹⁴⁴ She uses the term "sexualizing" to demonstrate the unity of the two, and insists that "we're not talking about casual, indiscriminate sport sex."¹⁴⁵ On the other hand, Marcia Munson and Judith Stebbins say that "'polyamory' includes many different styles of multiple intimate involvements, such as polyfidelity or group marriage; primary relationships open to secondary affairs; and casual sexual involvement with two or more people."¹⁴⁶ With regard to both sex and love, then, polyamory may

141. See *infra* text accompanying notes 401–03.

142. Such a view might be compared to that of queers who criticize certain choices to desexualize the gay rights movement, see, e.g., WARNER, *supra* note 4, at 39–40 ("[W]e [or some of us, acting in the name of homosexuals] try to clean ourselves up as legitimate players in politics and the media. As a movement we resort to a temporary pretense: 'We're gay,' we say, 'but that has nothing to do with sex.' And then, too often, this stopgap pretense is mistaken for the desired utopia. No more sex! Free at last!"), and to that of lesbians who reacted against Adrienne Rich's formulation of the "lesbian continuum" as including straight women who resisted patriarchal society in a variety of nonsexual ways, because these lesbians felt that Rich's lesbian-continuum idea trivialized the role of sex in lesbian lives and self-naming, see *supra* note 35 and accompanying text; see also Rich, *supra* note 1, at 648 ("I mean the term *lesbian continuum* to include a range—through each woman's life and throughout history—of woman-identified experience; not simply the fact that a woman has had or consciously desired genital sexual experience with another woman."); see also *id.* at 651 ("If we consider the possibility that all women . . . exist on a lesbian continuum, we can see ourselves as moving in and out of this continuum, whether we identify ourselves as lesbian or not.")

143. The conflict over whether swingers "count" as poly can be seen in the slightly defensive or conflicted tone of some of the articles in *Loving More*. The author of one article, for example, tries to defend her open marriage as "poly enough," although she and her husband have never engaged in what she calls "poly activity"; that is, they have never had her husband or additional primary partners. See Jasmine Walston, *Am I Poly Enough?*, *LOVING MORE MAG.*, Fall 1998, at 28, 28–29.

144. ANAPOL, *supra* note 127, at 6 (emphasis omitted).

145. *Id.*

146. Munson & Stebbins, *supra* note 127, at 2; see also Kevin Lano & Claire Parry, *Preface to BREAKING THE BARRIERS TO DESIRE: POLYAMORY, POLYFIDELITY, AND NON-MONOGAMY*—NEW

therefore be understood to have a narrower definition and a broader definition.

Another dispute about the boundaries of polyamory concerns whether traditional polygyny, as practiced by, most prominently, fundamentalist Mormons, "counts" as polyamory. The sex-based hierarchy of traditional Mormon polygyny seems incompatible with the typical poly dedication to principles of equality and individual growth, causing some polys and commentators to exclude Mormon polygyny from the umbrella of polyamory.¹⁴⁷ In this article, one of the relationships profiled is a Mormon-type polygynous union, which none of the participants calls "polyamorous" but which blends elements of traditional hierarchy with modern feminist ideas of female solidarity, satisfaction, and work outside the home, according to the accounts given by the female participants.¹⁴⁸ By including this relationship, I do not mean to resolve the question of whether this relationship "counts" as polyamorous, but mean merely to present it as a lesser-known type of the polygyny that most people picture when they think of multiparty relationships.

Because the number of people in poly relationships has no theoretical limit, the models of poly relationships are also theoretically limitless. Some of the more typical models have specific names.¹⁴⁹ Definitions of these models often rely on the terms "primary relationship,"¹⁵⁰ "secondary relationship,"¹⁵¹ and occasionally "tertiary relationship,"¹⁵² although some polys object to the

APPROACHES TO MULTIPLE RELATIONSHIPS, at v, vi (1995) ("It is a point of contention in the poly community as to whether 'swinging' can be regarded as responsible non-monogamy—we think it can, provided that the choices made are negotiated and consenting").

147. See, e.g., Strassberg, *supra* note 8, at 440–41 (describing some polys' rejection of traditional patriarchal polygyny); Maura Strassberg, *The Crime of Polygamy*, 12 TEMP. POL. & CIV. RTS. L. REV. 353, 355 (2003) (noting that some poly commentators exclude polygyny "from the polyamory umbrella due to its sexism and heterosexism").

148. See *infra* Section III.B.3.

149. For further discussion of polyamory's many terms, particularly those describing sexually exclusive groups, see Strassberg, *supra* note 8, at 444–65.

150. See, e.g., ANAPOL, *supra* note 127, at 7 ("Primary relationship. Lovers who are in a long-term, committed, marriage-type relationship are primary partners. Primary partners live together and share finances, parenting and decision making. Primary partners are not necessarily legal married, but they are bonded together as a family."); Mathiesen, *supra* note 130 ("Primary—word often used in a hierarchical multi-person relationship to denote the person with whom one is most strongly bonded. In some cases this bond or commitment takes the form of legal marriage. As bigamy is not legal, the option of having two (or more) legally wedded primaries simultaneously is not currently practicable, though non-legal ceremonies may certainly be performed. In some cases 'primary' refers to the lover with the most seniority"). On the curious set of state laws that define bigamy merely by extramarital cohabitation, see *infra* note 158.

151. See, e.g., ANAPOL, *supra* note 127, at 7 ("Secondary relationship. Secondary partners may also have a long-term, committed sexualizing relationship. But usually they live separately, have separate finances and see themselves as close friends rather than immediate family. Secondary partners may take on roles in each other's families similar to those of cousins, aunts and uncles in an extended family of blood relations."); Mathiesen, *supra* note 130 ("Secondary—follows from primary, in a hierarchical relationship, denotes a person with whom one is involved without the emotional, legal, or economic complexities and commitments of primary bonding").

152. See, e.g., ANAPOL, *supra* note 127, at 8 ("Tertiary relationship. Lovers who spend time

hierarchy implied by these terms.¹⁵³ For example, according to Deborah Anapol, an "intimate network" comprises "several ongoing secondary relationships Sometimes all members of the group eventually become lovers. Sometimes individuals have only two or three partners within the group. The group can include singles only, couples only[,] or a mixture of both."¹⁵⁴ The term "line marriage" identifies "a different form of familial immortality than the traditional one of successive generations of children"; rather, a line marriage is "a marriage that from time to time adds younger members, eventually establishing an equilibrium population (spouses dying off at the same rate as new ones are added)."¹⁵⁵

A term such as "polyfidelity" clarifies the type of commitment among the parties, and is defined as "[a] lovesyle in which three or more primary partners agree to be sexual only within their family. Additional partners can be added to the marriage with everyone's consent."¹⁵⁶ The idea of polyfidelity brings us to a distinction between two aspects of polyamorists' transgression of monogamy, what I call the "exclusivity" axis and the "numerosity" axis.

Criminal law helps us to see the distinctiveness and the importance of these two axes. "Exclusivity" refers to whether someone has sex with people outside a relationship. As in the common phrase "open relationship," exclusivity concerns whether a relationship is "open" or "closed." In the legal realm, adultery statutes target violations of the exclusivity norm.¹⁵⁷ By contrast, "numerosity" concerns how many people are in a relationship. From the perspective of monogamy, the basic question here is whether a relationship involves two individuals or more than two individuals. Thus, bigamy statutes target violations of numerosity norms.¹⁵⁸ Within polyamory, exclusivity and numerosity define aspects of

together only once in a while or for a brief time are *tertiary partners*. Their contact may be very intimate, but they are not an important part of each other's day to day life.").

153. Mathiesen, *supra* note 130 ("Some people also don't like the terms primaries and secondaries or the concepts behind the terms, preferring to have 'a circle of equals' as one poly person called it. Stef contributed the term 'Non-hierarchical Polyamory' for this kind of arrangement"); cf. ANAPOL, *supra* note 127, at 8 ("While noting that 'some polyamorous people object to the whole concept of hierarchies of commitment and rankings of love (as in the old Chinese practice of 'number one wife'), varying levels of affinity can occur naturally. This diversity of form, along with the realization that identical forms may result from radically different dynamics, automatically creates a social environment different from our familiar homogeneous, awkwardly monogamous culture.'").

154. ANAPOL, *supra* note 127, at 8.

155. Mathiesen, *supra* note 130 (attributing the term to Robert A. Heinlein).

156. ANAPOL, *supra* note 127, at 9. This is the type of polyamory on which Maury Strassberg focuses her work. See *supra* note 8.

157. See *supra* note 50.

158. See *supra* note 51. Curiously, while both adultery and bigamy laws require the party at issue to be married, some bigamy laws do not require an additional marriage or even attempted marriage. In five states, the crime of bigamy covers mere extramarital cohabitation by a married person. See COLO. REV. STAT. § 18-6-201 (2003); GA. CODE ANN. § 16-6-20 (2003); R.I. GEN. LAWS § 11-6-1 (2002); TEX. PENAL CODE ANN. § 25.01 (Vernon 2003); UTAH CODE ANN. § 76-7-101 (1999).

individual relationship models, such as polyfidelity, which might be understood as a sexually exclusive model analytically distinct from monogamous relationships primarily in the number of the participants.

Some relationship models are specifically defined by the number of participants. For example, an "open marriage" is a "nonexclusive couple relationship[]" in which the two "partners have agreed that each can independently have outside sexualloving partners."¹⁵⁹ A poly "triad" involves "[t]hree sexualloving partners who may all be secondary, all be primary, or two may be primary with a third secondary. It can be open or closed. A triad can be heterosexual or homosexual, but is often the choice of two same sex bisexuals and an opposite sex heterosexual."¹⁶⁰ Two different types of triads are further distinguished by the types of bonds among the three partners: "vees" and "triangles," each of which may be diagrammed as the figure that names it:

Vee—Three people, where the structure puts one person at the bottom, or "hinge" of the vee, also called the pivot point. In a vee, the arm partners are not as commonly close to each other as each is to the pivot.

Triangle (or equilateral triangle)—relationship where three people are each involved with both of the others. Sometimes also called a triad.¹⁶¹

As these examples indicate, diagrams may help to demonstrate the possible polyamorous configurations.¹⁶² These are just a few of the poly models with specific names,¹⁶³ which are in turn only a small sample of the possible models.

B. Relationships

This Section depicts several models of polyamory through four accounts of contemporary relationships. April Divilbiss, Shane Divilbiss, and Chris Littell are in a polyandrous relationship; the details of their relationship became public during their unsuccessful lawsuit in 1999 to keep April's daughter in their home after she was removed by court order. Eddie, Adam, Amber, and Mike form an open four-person partnership, which Eddie was kind enough to take the time to discuss with me at length. Elizabeth Joseph has written about her positive experience as a career woman in a Mormon polygynous marriage. And Dossie

159. ANAPOL, *supra* note 127, at 8. Whether a sexually nonexclusive couple falls within the definition of polyamory is a question taken up in Part IV.

160. *Id.* at 9; see also Mathiesen, *supra* note 130 ("Triads—three people involved in some way. Often used in a fairly committed sense, in some cases involving ceremonies of commitment, but also used simply to mean 'three people who are connected'. Example: 'Jodine, Mischea and Mickey are a FMM triad living in Excelsior.'").

161. Mathiesen, *supra* note 130.

162. See, e.g., RYAN NEARING, *Forms Responsible Nonmonogamy Can Take*, in THE POLYFIDELITY PRIMER (PEP Publishing 3d ed., 1992), reprinted in ANAPOL, *supra* note 127, at 9.

163. See, e.g., Mathiesen, *supra* note 130 ("Quads, pentacles, sextets and more. There are polyfolk who exist in multiple arrangements with more than three members. Geometry can get complicated, and creative nomenclature abounds").

Easton has struggled to keep her relationships open to other sexual, loving experiences since she left an abusive partner several decades ago.

1. *A Woman with Two Husbands: April Divilbiss*

A 1999 Tennessee juvenile court case involved a custody dispute between a polyandrous threesome—a polyfidelious vee—and the grandmother of their child.¹⁶⁴ The facts of the case, as well as relevant documents, became widely available because *Loving More Magazine* sponsored a campaign to raise money for the attorney's fees of the mother, April Divilbiss.¹⁶⁵

In 1995, when April became pregnant, her child's biological father moved out of town with no forwarding address.¹⁶⁶ In 1996, April, newly a mother, married Shane Divilbiss, and Chris Littrell was the best man at the wedding.¹⁶⁷ By January 1997, April Divilbiss and Chris Littrell had fallen in love.¹⁶⁸ On Valentine's Day, April told Shane that she and Chris were in love.¹⁶⁹ Shane and Chris went to a restaurant and discussed the situation.¹⁷⁰ They realized that neither of them wanted to lose April, so in March 1997, all three moved in together.¹⁷¹ April slept with Chris and Shane separately, and Chris and Shane were not sexually involved with one another.¹⁷² According to one article, they tried a threesome once, but Chris ended the attempt.¹⁷³

In November of 1998, when April's daughter was three, MTV aired a program about polyamory, and the triad went on television and talked about their relationship, saying that they considered themselves all married.¹⁷⁴ The day after the program aired,¹⁷⁵ the child's paternal grandmother, with whom she sometimes spent weekends, filed for removal of the child and for custody, on the

164. In the Matter of A.M., No. K1719 (Juv. Ct., Memphis and Shelby County, Tenn., Apr. 16, 1999) (decision on file with author).

165. Court documents and information about the fundraising campaign have subsequently been removed from the Loving More site. However, copies of documents from the Loving More website about the Divilbiss case are on file with the author. For much of the information that follows, see also Cloud, *supra* note 125.

166. Transcript, In the Matter of A.M., No. K1719 (Juv. Ct., Memphis and Shelby County, Tenn., Apr. 16, 1999) (Lane, J.) (conducting direct examination of Donna Olswing, the child's paternal grandmother).

167. Cloud, *supra* note 125, at 91.

168. *Id.*

169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.*

173. *Id.* at 90. ("No, the two guys don't go for each other, the triad tried a ménage à trois once but stopped because Chris thought it was tacky. Instead, they lived as man and wife and man, with April taking turns.")

174. Transcript, In the Matter of A.M. (No. K1719). The program was called "Sex in the '90s: It's a Group Thing." Cloud, *supra* note 125, at 90.

175. See Jim Gerard, *Three's Company: So Is Four or Five*, SALON, July 17, 1999, at <http://www.salon.com/health/sex/1999/07/17/polyamory/print.html>.

grounds of April's immoral lifestyle.¹⁷⁶ The judge saw a video of the program and subsequently removed the child from April's care without regard to findings and procedures that April's lawyer claimed were required by the state.¹⁷⁷ In the months leading up to the hearing, there seemed to be some optimism among those involved that the case could be a kind of Stonewall¹⁷⁸ for the poly movement.

On April 16, 1999, the case was heard in the Juvenile Court of Memphis.¹⁷⁹ Prior to the hearing, four court-appointed experts reached the conclusion that the child had not been negatively influenced by her mother's lifestyle.¹⁸⁰ But the presiding judge, the Honorable Herbert Lane, rejected their findings, as well as April's constitutional claims.¹⁸¹ After viewing the MTV program during a recess, he brought the trial to a close without permitting April to testify.¹⁸² He said he understood the case already:

COURT: What I have got here is a young lady who has decided to have an alternative life style and the issue becomes is that life style, in fact, detrimental to this child. You know, parents oftentimes are called upon to make great sacrifices for their children. And when she was faced with that, when some guy came to her and said I'm in love with you too although you are married, you know, most people would have said, well, hey, I'm married; forget it. But, no, she decides, well, why not. I'll just—I'll have both of them. I can have my cake and eat it too. Well, parents can't do that. Parents have to set the correct examples for the kids. And part of the statute says that you have to be concerned with the moral upbringing of the child.¹⁸³

He said the court must intervene on behalf of the child's best interests:

COURT: So here is how we are going to resolve this, folks: Custody of

176. Transcript, In the Matter of A.M. (No. K1719).

177. See Respondent Natural Mother's Motions for an Immediate Hearing, In the Matter of A.M., No. K1719 (Juv. Ct., Memphis and Shelby County, Tenn., Apr. 16, 1999).

178. Gerard, *supra* note 175. The Stonewall riots, which took place when New York City police tried to close down the Stonewall Inn in Greenwich Village on June 27, 1969, are now popularly imagined to have been the birth of the lesbian and gay rights movement. *Introduction: Stonewall at 25*, 29 HARV. C.R.-C.L. L. REV. 277, 278 (1994).

179. See Transcript, In the Matter of A.M. (No. K1719).

180. Asa Hoke, *Asa's Updates* (Apr. 22, 1999) (on file with author); see also Cloud, *supra* note 125, at 91.

181. April filed a motion to dismiss alleging violations of her rights under the First, Fourth, Ninth, and Fourteenth Amendments, as well as Article I, § 8 of the Tennessee Constitution; a motion to dismiss the complaint "for wrongful deprivation of child without due process"; and "alternatively," a motion "to return child immediately as a result of findings of no harm." Transcript, In the Matter of A.M. (No. K1719).

182. *Id.*

183. *Id.*

the child is going to be placed with the Department of Children's Services with an extended visit in the grandmother's home until such time as the mother resolves her situation.¹⁸⁴

Despite April's attorney's protests that April, Shane, and Chris were not all sleeping together, the judge concluded:

COURT: Now I am not about to put that child back into a situation where all three of these people are in the same bed. She has got a legal husband. Make a choice. It is just that simple.¹⁸⁵

April did not appeal the decision.

The editors of *Loving More Magazine* offered me a number of explanations for April's decision not to appeal. Brett Hill, a coeditor of *Loving More Magazine*, said that they ran out of money and that the ACLU and other gay rights organizations "would not touch" the case.¹⁸⁶ Ryan Nearing, *Loving More Magazine's* other coeditor, wrote to say that money was not a problem, but that the mother eventually gave up the legal fight and allowed her child to remain with the biological grandmother.¹⁸⁷

2. *A Four-Partner Family: Eddie Simmons*

Eddie Simmons is part of a four-person partnership: "My family consists of myself, two other men, and a woman."¹⁸⁸ The woman and one of the men—Amber and Adam—have the oldest relationship of the group. At the beginning of their relationship twenty years ago, Adam told Amber that he was bisexual and hoped to have a relationship with a man as well. According to Eddie, at that time there was "no word 'polyamory' yet," though "these relationships have always been there."¹⁸⁹ Fifteen years ago, Eddie, who is also bisexual, met Adam and Amber through the bisexual community in the city where they live; they

have been together as a family since that time. Eddie, Adam, and Amber had no intention of expanding their family, but about three and a half years ago, they met a doctoral candidate named Mike who "adored the concept of our family" and wanted to become a part of it.¹⁹⁰ Mike first became "involved" with Eddie, then with Adam, and then Amber "got to know him."¹⁹¹

"There are many flavors of polyamory," Eddie says; "mine is only one."¹⁹² On the emotional level, "each of us [has] a relationship to the other three" and "each two has a relationship that is distinctly ours."¹⁹³ Eddie, Adam, and Amber also have some history that Mike is not yet a part of, so to an extent, there are three that also have distinct emotional relationships. On the sexual level, Eddie, Adam, and Mike all sleep together in various combinations, and they "all have outside sexual relationships that we disclose to each other."¹⁹⁴ Eddie emphasized the importance of disclosing to outsiders that "they are not getting involved with someone with whom they are going to have a monogamous relationship."¹⁹⁵ In Eddie's words, Amber "is not poly, and is not bi," but "she does not need the person she's with to be the same way."¹⁹⁶ On the legal level, Adam and Amber are married, "which was something they did to get health insurance basically."¹⁹⁷ No one else in the family has legal ties, and no one else could be married under current U.S. marriage laws. For a while, Adam and Eddie considered having a "commitment ceremony."¹⁹⁸ Eddie laughs, "My dad imagined that we were about to do something illegal, but of course we can't get married anyway. His brain kind of tipped over. We can't do polygamy because it's not legal."¹⁹⁹

Though the "media loves sex," Eddie (like many other polys²⁰⁰) reports that one of the biggest issues for polys is scheduling. Eddie says, "If you want to get rid of the press in a hurry, tell them that the big issue in your relationship is time management."²⁰¹ Eddie's family's approach to time management has changed over the years: "It's looked very different at different times."²⁰² Currently,

190. *Id.*

191. *Id.*

192. *Id.*

193. *Id.*

194. *Id.*

195. *Id.*

196. *Id.*

197. *Id.*

198. *Id.*

199. *Id.* On a relevant variation in the legal definition of bigamy, see *supra* note 158.

Eddie's family has also had other law-related concerns about the arrangement. When his parents lawyer found out about the relationship, he "blew his top." The lawyer said that Eddie's parents need "to protect [their] son's inheritance" from the "goldiggers." *Id.*

200. See, e.g., Terry Brussel Gibbons, *Love on Schedule*, *LOVING MORE MAG.*, Summer 1997, at 18. The theme of this issue of *Loving More Magazine* is "Time Enough for Love?"

201. See Simmons Interview, *supra* note 188.

202. *Id.*

184. *Id.*

185. *Id.*

186. E-mail from Brett Hill, Editor, *LOVING MORE MAG.*, to the author (Nov. 26, 2000) (on file with author).

187. E-mail from Ryan Nearing, Editor, *LOVING MORE MAG.*, to the author (Nov. 28, 2000) (on file with author).

188. Telephone interview with Eddie Simmons (Nov. 28, 2000) [hereinafter Simmons Interview]. Eddie is open about his relationships and kindly took the time to speak freely with me about his family. He asked that I change the names in this piece, however, because other members of his family are open to varying degrees to their families and coworkers. The names in this Subsection are therefore fictional, though the individuals represented are not. The difficult issues surrounding the dilemma of whether to come out as poly are the focus of the fifteenth issue of *Loving More* magazine. For an overview, see the editors' introduction. Ryan Nearing & Brett Hill, *About This Issue*, *LOVING MORE MAG.*, Fall 1998, at 2, 2.

189. Simmons Interview, *supra* note 188.

Eddie, Adam, and Amber live in the same apartment house—with Eddie in the apartment directly above Adam and Amber—and Mike lives in a nearby suburb. Eddie sees Adam and Amber "several times a week"; he and Amber "go out to lunch or coffee"; and he and Adam "have some time together on Sunday afternoon and evenings."²⁰³ Adam sleeps with Eddie on Sunday night and other times "depending on what's going on."²⁰⁴ Mike and Adam spend Thursday evening and nights together, and they often have supper on Wednesday night. Sometimes they all "do things as a family on Saturday, or sometimes Sunday."²⁰⁵ Noting that poly relationships are a lot of trouble, Eddie observes, "In my experience, [all] relationships are very hard work if they're going to last."²⁰⁶ In addition, he found monogamy to be not a "panacea" but a "bore." He is quick to say that is "strictly a statement for myself."²⁰⁷

Eddie says the reason the relationship has worked is that they are all people "who are a little older," have different relationships and histories, and have "a clear sense of self."²⁰⁸ They are all "process queens."²⁰⁹ Therapy forms an important part of their lives. They are all in therapy, and they do family therapy. They all "come from a perspective that that's a good thing to do, not just something you do because you're in some kind of crisis."²¹⁰ He talks about having met another poly family years ago who had one HIV-positive family member, and being impressed with the "amount of human resources they had."²¹¹ Eddie feels that two-parent families are not "a very good model" for raising children, and something like a kibbutz model would be better. He considers himself lucky: "I live in a city where there is an active poly community."²¹²

3. *A Mormon Wife: Elizabeth Joseph*

Elizabeth Joseph is a lawyer who lives in Big Water, Utah, with her husband Alex and his eight other wives.²¹³ She writes, "Polygamy, or plural marriage, as

203. *Id.*

204. *Id.*

205. *Id.*

206. *Id.*

207. *Id.*

208. *Id.*

209. *Id.* The term "process queen" describes someone committed to discussing and working out conflicts with other people—it comes from the use of the word "process" as a verb. The term is often used in a tone of fond self-mockery.

210. *Id.*

211. *Id.*

212. *Id.*

213. The sources for this Section are an article that Joseph published in the *New York Times* in 1991, Elizabeth Joseph, *My Husband's Nine Wives*, N.Y. TIMES, May 23, 1991, at A31, and an article that appeared in *Redbook* several months later, Mary-Lou Weisman, *The Tenth Wife*, REDBOOK, Nov. 1991, at 90. My description of Joseph's polygynous family, like the other accounts of individual relationships in this Section, is written in the present tense, based on the

practiced by my family is a paradox. At first blush, it sounds like an ideal situation for the man and an oppressive one for the women. For me, the opposite is true."²¹⁴ She depicts her situation as bridging old and new: "While polygamists believe that the Old Testament mandates the practice of plural marriage, compelling social reasons make the life style attractive to the modern career woman."²¹⁵ In Joseph's eyes, monogamous women must make compromises to have it all:

Pick up any women's magazine and you will find article after article about the problems of successfully juggling career, motherhood, and marriage. It is a complex act that many women struggle to manage daily. . . . In a monogamous context, the only solutions are compromises. The kids need to learn to fix their own breakfast, your husband needs to get used to occasional microwave dinners, you need to divert more of your income to insure that your pre-schooler is in a good day care environment.²¹⁶

By contrast, she sees polygamy as providing "a whole solution."²¹⁷ 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."²¹⁸

Joseph describes the structure of her life in terms both warm and functional. She writes, "When I leave for the 60-mile commute to court at 7 A.M., my 2-year-old daughter, London, is happily asleep in the bed of my husband's wife, Diane. London adores Diane."²¹⁹ "When London awakes," Joseph continues, "about the time I'm arriving at the courthouse, she is surrounded by family members who are as familiar to her as the toys in her nursery."²²⁰ According to an article by Mary-Lou Weisman published in *Redbook*, eight of the nine wives work full-time, and the ninth, Leslie, works part-time and gets paid by the others to babysit.²²¹ Elizabeth Joseph shares a home with another wife, Delinda, and in the evenings they usually eat "a simple dinner" together with their three kids: "We'd rather relax and commiserate over the pressures of our work day than

state of her family at the time of the articles describing that family. A recent local news story indicates that Joseph's husband died in 1998 and that Joseph and the other wives went their separate ways; Joseph has been living as a single mother. Dawn House, *Sister Wives: Wives of Dead Polygamist Rebuild Their Lives*, SALT LAKE TRIB., Feb. 24, 2002, available at <http://www.polygamyinfo.com/polygmedia%2002%2029trib.htm>.

214. Joseph, *supra* note 213, at A31.

215. *Id.*

216. *Id.*

217. *Id.*

218. *Id.*

219. *Id.*

220. *Id.*

221. Weisman, *supra* note 213, at 92.

chew up our energy cooking and doing a ton of dishes."²²² Joseph says with an air of solemnity, "Mondays, however, are different. That's the night Alex eats with us."²²³ She describes these evenings as "special," with the kids "excited" and "on their best behavior," because these occasions come "only . . . once a week."²²⁴

The sex, Joseph says, is by appointment rather than schedule. "If I want to spend Friday evening at his house, I make an appointment. If he's already booked, I either request another night or if my schedule is inflexible, I talk to the other wife and we work out an arrangement."²²⁵ She observes, "One thing we've all learned is that there's always another night."²²⁶ She says the situation meets her needs:

Most evenings, with the demands of career and the literal chasing after the needs of a toddler, all I want to do is collapse into bed and sleep. But there is also the longing for intimacy and comfort that only he can provide, and when those feelings surface, I ask to be with him.²²⁷

According to Weisman's *Redbook* article, there has been group sex in which "some, but not all, of the wives participated."²²⁸ Diane reported that group sex was initially "'threatening,' but then, in addition to pleasure, she found that the activity had the unanticipated effect of reducing sexual jealousy among the women involved."²²⁹ Joanna, another wife, told Weisman that "group sex is now 'pretty much a thing of the past,'" and Weisman reports that the initial sexual jealousy among the wives has dissipated "now that everyone's an old married couple."²³⁰ Weisman observes that "jealousy constellates around issues other than sex," such as looks, fertility, brains, income, and youth.²³¹

Despite any sexual or nonsexual jealousy, the wives appear to cherish their relationships with one another. Joseph describes with great satisfaction the simplicity and comfort of her home with Delinda.²³² According to Weisman, "Female friendship is the great reward that lies at the heart of polygamy."²³³ Joanna observes, "'Women in monogamous relationships tell me that they find it

222. Joseph, *supra* note 213, at A31.

223. *Id.*

224. *Id.*

225. *Id.*

226. *Id.*

227. *Id.*

228. Weisman, *supra* note 213, at 102.

229. *Id.*

230. *Id.*

231. *Id.*

232. Joseph, *supra* note 213, at A31.

233. Weisman, *supra* note 213, at 104. Nineteenth-century writings in support of Mormon polygamy also celebrated this aspect of the relationships. See, e.g., Iversen, *supra* note 44, at 516-18 (reporting that "throughout the polygamy literature, one finds extraordinary stories and examples of cooperation among women").

difficult to maintain their female friendships."²³⁴ By contrast, Weisman presents the friendship between Joseph and Delinda as "an extreme expression of the kind of love that can exist between wives."²³⁵ Weisman offers as an example Delinda's decision to make a baby for Joseph, who was having trouble conceiving. This is how Joseph became the mother of London: Delinda conceived the child with Alex. "Lindi says she has no difficulty thinking of London as [Elizabell]s child. 'Giving London to Eli was the proudest thing I did,' she says."²³⁶

Alex is a former fundamentalist Mormon who broke off to start his own church.²³⁷ According to Weisman, "Whatever their religious backgrounds, the invisible cord that binds these women to one another and to Alex in what some would call unholy matrimony is their extraordinary conviction that he is not just a husband—he is a god."²³⁸ Joseph's article, by contrast, says little about religion. While some wives have apparently not liked the family arrangement (Alex has been divorced eight times, which Weisman notes "puts him about even with the national divorce rate"²³⁹), the current nine wives report satisfaction with sharing him. "Eli recalls with a shudder the taste of monogamy she got when she went away with Alex on a two-week trip. 'Little things about him began to grate on my nerves. We ran out of things to talk about.'²⁴⁰ Although none of the wives has ever been in a monogamous relationship, "they are convinced that monogamy is monotony."²⁴¹ Weisman concludes that "[a]ll nine wives are equally convinced that polygamy is God's gift to modern woman."²⁴² In her account, Joseph is more sanguine, saying, "Plural marriage is not for everyone. But it is the life style for me."²⁴³

4. *An Ethical Slut: Dossie Easton*

Dossie Easton, coauthor of *The Ethical Slut*,²⁴⁴ describes her poly awakening and her current struggles to live a polyamorous lifestyle by

234. Weisman, *supra* note 213, at 104.

235. *Id.*

236. *Id.*

237. According to Weisman, Alex Joseph was born into the Greek Orthodox faith, then joined the Church of LDS as a young adult. Four years later, he joined the Fundamentalist Mormons, who still practice polygamy despite the teachings of the official Church of LDS. See *supra* note 117. Later, he broke off from the Fundamentalists and "founded his own church" because "he did not like the way they oppressed their wives and children." Weisman, *supra* note 213, at 92.

238. Weisman, *supra* note 213, at 100.

239. *Id.*

240. *Id.* at 104.

241. *Id.*

242. *Id.*

243. Joseph, *supra* note 213, at A31.

244. DOSSIE EASTON & CATHERINE A. LISZT, *THE ETHICAL SLUT: A GUIDE TO INFINITE SEXUAL POSSIBILITIES* (1997).

explaining her thoughts during one painful night with her primary lover, whom Easton does not name but calls her "most beloved partner"²⁴⁵ or simply her "lover."²⁴⁶ The night before, Easton had sex with her longtime friend, coauthor, and occasional sexual partner, Catherine. On this night, Easton's primary lover, with whom she is in an expressly nonmonogamous relationship, is struggling to deal with her emotions about Easton's liaison with Catherine. "My lover is late coming home," Easton writes, "I hope she is all right—the morning she left in tears."²⁴⁷ Easton explains, "I am asking my lover to go through the fire for reasons most of the rest of the world consider frivolous if not downright reprehensible—I am asking my lover to suffer because I hate monogamy."²⁴⁸

Easton rejected monogamy after a brutally possessive relationship:

I have hated monogamy for twenty-seven years, since I left my daughter's violent father, fighting my way out of the door, bruised and pregnant, promising anything, promising I would call my parents for money, lying. After I escaped Joe he sent me suicide threats, and threatened murder—one time he almost found us and set fires around the house he thought we were still in.

Joe was very possessive. Initially I found this attractive, proof positive that he really cared about me....

....

... He would beat me, screaming imprecations, "You slut!" when another man looked at me.²⁴⁹

Although she was "perfectly faithful" to Joe, Easton says, "After I left, I decided he was right—I am a slut, I want to be a slut, I will never promise monogamy again.... I will never be a piece of property again."²⁵⁰ She describes her response to this experience in political and philosophical terms:

Joe made a feminist of me. A feminist slut. This was in San Francisco in 1969, so I decided to invent a new lifestyle.... I vowed to remain single for five years in order to figure out who I am when I am running my own life. I made a life creed out of looseness.²⁵¹

Despite her commitment to nonmonogamy, Easton still has doubts about her choices, particularly during this difficult night with her lover: "Why did I insist on doing this? I'm in no way perishing from unfulfilled lust. I actually wasn't

even particularly horny, or salivating for Catherine and Catherine only."²⁵² Catherine and Easton have had a sexual relationship as long as they have known each other; "that is part of how we write books, and how we are the dearest of friends."²⁵³ Easton writes that she and Catherine "have been patiently waiting to resume that relationship when my newfound and most beloved partner was ready."²⁵⁴ Easton's optimism that her lover was ready stemmed from her lover's growing comfort with nonmonogamy:

My lover has already conquered the terrors of group sex—tomorrow we will have another couple over for dinner and my birthday spanking, which she herself arranged with no egging on from me. She never was embarrassed at orgies, much to her own amazement. Within the last year she has had more new sexual experiences than possibly she had in the previous forty-eight years, and taken to it all like a duck to water.²⁵⁵

Thus, Easton's lover seemed to be adjusting to nonmonogamy.

But this situation—"her lover having a date with one other person"²⁵⁶—was possibly too much for Easton's lover. "She has trouble accepting me having sex that doesn't include her, has trouble feeling left out, has trouble that we are doing it in our home this time, not neutral territory."²⁵⁷ Again, while waiting for her lover to express herself, Easton wonders if she has made a mistake, asking herself, "how could I hurt her like this?"²⁵⁸ She further reflects on her reasons for choosing nonmonogamy:

When I decided to create my new way twenty-five years ago, I figured that I would never again take my security from my relationship, particularly not from the sexual exclusivity of my relationship. Joe had cheated on me, I knew that, it didn't even bother me very much. I sort of expected it. I resented those cultural values that said that my sense of security and self-worth were contingent on the status of whatever man I managed to attract to me, as if I had no status of my own. So I vowed to discover a security in myself, the stable ground of my very own being, something to do, I thought, with self-respect and self-appearance.²⁵⁹

Easton found love and support in the communal atmosphere of San Francisco in 1969. "I figured I would get my support from my extended family, my kinship network that consisted of everybody that I was connected to, through friendship,

245. *Id.* at 11.

246. *Id. passim.*

247. *Id.* at 9.

248. *Id.*

249. *Id.* at 9–10.

250. *Id.* at 10.

251. *Id.*

252. *Id.* at 10–11.

253. *Id.* at 11.

254. *Id.*

255. *Id.*

256. *Id.*

257. *Id.*

258. *Id.*

259. *Id.* at 11–12.

communal living, coparenting, and/or sex. And it worked."²⁶⁰

When her lover is finally ready to talk, the process is painful. "I listened," Easton says, "This time I listened, without interrupting, trying only to let her know that I love her, I feel her pain, I am here for her—this is very painful. She is furious with me and I am not giving myself permission to defend myself, and I hurt."²⁶¹ Easton explains:

This story has no tidy ending—we talked for hours, or maybe I listened, and I heard how difficult it was for her, how she felt invaded, how she felt her home was not safe, how she feared that my other lover would not like her, how she felt attacked by her and me both, how very much she feared I was abandoning her. We came to no pat little answers that make good stories for books—we just poured out anguish, and went to sleep exhausted. We woke up the next morning feeling better, but still not over it—the issue resurfaced occasionally for the next couple of days. The birthday party helped, a subsequent date with Catherine and her girlfriend and my lover and me helped, although it was difficult.²⁶²

Easton's conclusion is tentative: "My lover and I are still in love, and still working on it. We are committed to this relationship, and to working through our differences with compassion for each other and ourselves. I am from time to time terrified that she will leave me, just because I hate monogamy."²⁶³

C. Theory

As the preceding narratives suggest, polyamory is not only a practice. For some, it is a theory of relationships. In an effort to organize and explain the contours of that theory, this Section sketches five principles espoused by contemporary polys. These principles, which I have extracted from a range of contemporary polys' writings and comments, are presented by polys as both aspirational and descriptive. That is, experienced polys tend to present these principles as tools for making polyamorous relationships work (aspirational), based on their experience in and around functioning polyamorous relationships (descriptive). And the principles are aspirational in another way. They are offered by polys not only as functional tools for creating and sustaining intimacy among multiple people; they also represent an ethical vision of how those relationships should be conducted.

To my knowledge, there are no studies of the content of contemporary polyamorous relationships. For this and other reasons, such as the wide variety of poly relationships, my purpose in presenting these principles is not to say that poly relationships all successfully embody these ideas. Rather, my purpose is to

show the seriousness with which some polys have considered the ethical and practical questions of how multiparty relationships should be conducted, and to convey some of the answers they have developed thus far.

These five principles come from no one source but instead represent my attempt to synthesize the content of many sources. The principles are self-knowledge, radical honesty, consent, self-possession, and privileging love and sex. These principles are of course not unique to polys; on the contrary, most of them are embraced by many monogamous couples. The poly privileging of more loving and sexual experiences over other activities and emotions, such as jealousy, is the most particular to polyamory, and the other principles have particular applications, meanings, and significance in the poly context. This Section considers each principle in turn.

1. Self-Knowledge

Self-knowledge is portrayed by polyamorists not only as valuable, but as necessary. In her foundational book, *Polyamory: the New Love Without Limits: Secrets of Sustainable Intimate Relationships*, Deborah Anapol outlines "Eight Steps to Successful Polyamory," the first of which is to "Know yourself."²⁶⁴ This dictate operates on two levels. The first level involves understanding one's own sexual identity. This no doubt comprises knowledge of one's "sexual orientation" as we typically use the term—as in heterosexual, bisexual, or homosexual—but also, more importantly, it encompasses self-knowledge about one's sexual identity with regard to monogamy. As discussed in Part IV, some polys embrace the view that you either are poly or you are not,²⁶⁵ whereas other polys writings characterize monogamy and polyamory more as choices or constructed identities.²⁶⁶ Regardless, whether they understand "poly" and "mono" identities as hardwired or chosen, polys call for an interrogation of one's own identity.

Polys also value self-knowledge as the core structural component, and the daily substrate, of healthy, successful relationships. Understanding oneself and listening to one's own feelings are vital to the process of working through the "baggage" of living in a monogamous world. Anapol instructs, as another of her eight steps to success, "Let jealousy be your teacher."²⁶⁷ Rather than deny the existence of emotions like jealousy, polys encourage an honest interrogation of these feelings. Individuals in any form of relationship may of course aspire to and attain self-knowledge. But polys, in order to do all that "processing," have a

264. ANAPOL, *supra* note 127, at 32. The other steps that Anapol identifies are as follows: heal yourself, replace guilt and shame with self-acceptance and love, open yourself to sexual energy, let jealousy be your teacher, choose a spiritual path, and look at the big picture. *Id.* at 31–48.

265. See *infra* notes 398–403 and accompanying text.

266. See *infra* notes 361–66, 403 and accompanying text.

267. ANAPOL, *supra* note 127, at 43.

260. *Id.* at 12.

261. *Id.* at 13.

262. *Id.* at 13–14.

263. *Id.* at 14.

particularly strong need for constant access to their feelings and desires.

2. Radical Honesty

The poly ethic of honesty also operates on two levels: a broader philosophical position and a daily practice of living. The structural critique may be understood partly as a reaction to the gap between the fantasy and the reality of compulsory monogamy. The judge in the Divilbiss case criticized April for her "immoral" response to a man's attentions: "[W]hen some guy came to her and said I'm in love with you too although you are married, you know, most people would have said, well, hey, I'm married; forget it."²⁶⁸ In response, a poly might assert instead: "The judge has it wrong. Most people would have said, 'Well, hey, I'm married, so we'll have to keep this a secret.'"²⁶⁹

One theory of polyamory views the entire culture as basically polyamorous but dishonest about it. In the words of Deborah Anapol, "Lies, deceit, guilt, unilateral decisions and broken commitments are so commonplace in classic American-style monogamy that responsible nonmonogamy may sound like an oxymoron."²⁷⁰ The weak form of this claim is that serial monogamy is in a sense polyamory. That is, almost no one settles down with the first person she has sex with, no one is truly supermonogamous, and so everyone is really polyamorous. The stronger claim, however, is that many people are polyamorous in the sense that they feign simple monogamy while practicing nonmonogamy. They lie to their partners and to the world.²⁷¹ Thus, radical honesty is a philosophical and practical approach to living that involves admitting and embracing nonmonogamy. For many polys, honesty is so central to polyamory that they would object to the use of the term polyamory independent of honesty, protesting that honesty is a definitional element of polyamory. For example, one posting on a popular polyamory webpage says, "A great many people have secret affairs while they're in a supposedly monogamous relationship. I think those people might have the potential to be polyamorous, but I do not think they are practicing polyamory."²⁷²

Brad Blanton is a writer praised by some polys for his books on "radical honesty."²⁷³ His books outline a philosophy of absolute honesty and of honesty

as a revolutionary way to improve oneself and the world. Radical honesty, Blanton tells us, "involves not denying or avoiding anything, particularly anger that comes from attachment to the one true way we all seem to come up with every fifteen seconds. It involves clearing our way back to contact with each other through honesty about what we think and feel and do"²⁷⁴ Many of the examples of life changes made by participants in Blanton's workshops include spouses who admit their affairs, prompting the couples either to turn a failed marriage into a positive honest one²⁷⁵ or to split up and try to find new, more honest, relations elsewhere.²⁷⁶

Whether or not they particularly follow Blanton, polys tend to privilege honesty as the foundation of positive relationships. The Loving More mission statement names "honesty" and "openness" first among the bases of relationships.²⁷⁷ Likewise, Deborah Anapol encourages would-be polys to "[m]aster the art of communicating,"²⁷⁸ and warns of the dangers of keeping secrets:

My experience is that neither intentional communities nor intimate networks can survive, let alone thrive, without a free flow of information within their boundaries. A withhold is just as destructive in a group of intimate friends (whether or not they are sexually involved) as it is in a couple or a nuclear family and for the same reasons. Secrets and lies destroy intimacy, erode trust, create paranoia, and ultimately strangle the life out of relationships. And when sex and love are involved, nothing puts an end to passion more effectively than a withhold.²⁷⁹

Although radical honesty need not mean radical disclosure,²⁸⁰ a wide variety of

the Author" page at the back of Blanton's most recent book tells the reader:

I've been married 4 times and divorced 3 times, and am currently separated from my most recent wife. We were together for 21 years. We are on somewhat amicable terms and do not know yet whether we will divorce. I am currently sexually and emotionally involved with several women and they all know about each other, and some of them know each other. I have 5 kids ranging in age from 7 years old to 31 years old. I love them with all of my heart. They are the teachers to whom I am most grateful and from whom I have learned the very most. They continue to teach me.

BLANTON, PRACTICING RADICAL HONESTY, *supra* note 273, at 343-44.

274. BLANTON, PRACTICING RADICAL HONESTY, *supra* note 273, at 338.

275. *E.g.*, *id.* at 24.

276. *E.g.*, *id.* at 25 ("A woman diagnosed by physicians with arthritis told the truth to her husband about an affair she had been hiding for a long time. They eventually split up, but her arthritis went away. Her next relationship was one of more honesty, less pain and illness, and more creativity in a shared life together.")

277. LOVING MORE, *supra* note 126; see also text accompanying note 302.

278. ANAPOL, *supra* note 127, at 37.

279. Deborah Anapol, *Privacy: When Are Secrets Lies?*, LOVING MORE MAG., Fall 1998, at 9.

10. The author describes a "withhold" as "a judgement, an opinion, an emotional reaction which is not shared because of politeness, fear of rocking the boat, or simply lack of consciousness." *Id.*

280. See, *e.g.*, *infra* text accompanying notes 293-95 (describing ways of thinking about

268. For the full quotation, see *supra* text accompanying note 183.

269. *Cf.*, *e.g.*, Stelboun, *supra* note 101, at 44 ("In those cultures that regard monogamy as ideal, non-monogamy is widely practiced, secretly").

270. ANAPOL, *supra* note 127, at 3.

271. See MAILLÉ, *supra* note 100, at 29-32 (making this point in an argument for structural polygamy).

272. Mathiesen, *supra* note 130 (quoting a post to the alt.polyamory newsgroup by Stef).

273. See Thomas Burgo, *Coming Out Going In: True Confessions of a Polyamorous Bodyworker*, LOVING MORE MAG., Fall 1998, at 13, 13. Blanton's books include BRAD BLANTON, RADICAL HONESTY: HOW TO TRANSFORM YOUR LIFE BY TELLING THE TRUTH (1997), and BRAD BLANTON, PRACTICING RADICAL HONESTY: HOW TO COMPLETE THE PAST, LIVE IN THE PRESENT, AND BUILD A FUTURE (2000) [hereinafter BLANTON, PRACTICING RADICAL HONESTY]. The "About

poly writings invokes honesty as a key principle for relationships.²⁸¹ As Eddie Simmons emphasized, a great deal of therapy and communication—the cherished tools of process queens—sustains his family.²⁸² For one contributor to *Loving More Magazine*, expressing her views on honesty is a key reason to be out as poly: “I love being in situations where it is respected that we are a group marriage. Those are my favorites. There I can really shine about my life’s primary focus, the legitimacy of polygamy and the absolute need for honesty in intimate relationships.”²⁸³

Of course, polys are not alone in recognizing the value of honesty. But a heightened emphasis on communication is highly characteristic of polys, and openness about nonmonogamy is the most distinctive aspect of poly honesty. Indeed, the latter commitment prompts polys to describe their honesty as “radical.” Note, however, that if society presumed nonmonogamy, then it might be radical to embrace and admit openly a commitment to monogamy. In this way, the radicalness of poly honesty is contingent.

3. Consent

Honesty is also something more than the transmission of information in polyamorous relationships: In this context, honesty forms the basis of consent. The ideal of consent—that partners in a relationship or a sexual encounter make an informed decision to participate in the relationship or the encounter, including knowing its polyamorous context—pervades poly writing, both implicitly and explicitly.²⁸⁴ For instance, Dr. Joy Davidson presents “Negotiating and making agreements” as one of the key relationship challenges for polyamorous relationships, emphasizing that “each agreement is a reminder that consent is at the heart of successful poly relating” and that “consent must be given at an explicit and detailed level.”²⁸⁵ From her perspective as a clinical psychologist

privacy and disclosure within a relationship that aim to maintain boundaries between individuals).

281. See, e.g., Janet Kira Lessin, *The Penis and Pearls of Polyamory*, *LOVING MORE MAG.*, Fall 2000, at 26, 27 (“Pearl 6: Always be honest.”); EASTON & LISZT, *supra* note 244, at 61–62.

282. See *supra* note 209 and accompanying text.

283. The Dragon Bear Family, *A Multiplex Perspective on Living Out*, *LOVING MORE MAG.*, Fall 1998, at 14 (quoting the portion labeled Poolzen’s Perspective).

284. See, e.g., EASTON & LISZT, *supra* note 244, at 21–22; Tibbetts, *supra* note 27, at 1 (defining polyamory as “ethical nonmonogamy (practicing extradyadic relationships with mutual consent among those involved)”).

285. Joy Davidson, *Working with Polyamorous Clients in the Clinical Setting*, *ELECTRONIC J. OF HUM. SEXUALITY*, Apr. 16, 2002, <http://www.ejhs.org/volume5/polyoutline.html> (identifying, within a discussion of consent and relationship agreements, the following “issues often taken for granted in monogamy [that] require exhaustive processing in poly”: “Time and Resources: how much should be expended on whom?[] Sex: what type of sex is OK, with whom and under what circumstances? (i.e., male or female, casual, party, bdsm play w/ or w/o genital contact, penetration, etc.)[] Safer sex: medical issues, contraception[] Disclosure: how much sexual/emotional disclosure about other partners is desired, how much is too much?[] Relating to a lover’s other partners: to what extent? meet them before sexual activity occurs?[] Belongings and personal space considerations: i.e., “No, your lover can’t wear my bathrobe to get in and out of

who works with polyamorous partners, Singer also emphasizes the importance of distinguishing between “true consent” and “[c]loaked consent,” noting that “[t]herapists may see clients whose relationships reflect manipulation, dishonesty, or other dysfunctional patterns that are no more representative of healthy poly than healthy monogamy.”²⁸⁶ Though individual poly relationships may not always embody true consent, this ideal is a vital part of the relationship models to which polys aspire.

Consent is also of vital importance in nonpoly relationships, of course. In a simple way, the poly emphasis on consent is another part of the poly critique of the secretive nonmonogamy practiced by some purported monogamists. But the poly attention to consent runs deeper than that. The prominence of the idea of consent also stems from the poly emphasis on freedom of choice about relationship norms and the importance of individual, rather than societal, relationship expectations. Because no one relationship model provides a blueprint for the number, shape, or type of bonds among individuals within and without poly relationships, polys must develop their own models through the agreement of the partners.

4. Self-Possession

A number of prominent poly writers describe their embrace of polyamory as fueled by their insights about power and possessiveness in monogamy and by their desire for autonomy within their relationships. This aspect of polyamory builds in part on a feminist understanding of monogamy as a historical mechanism for the control of women’s reproductive and other labor.²⁸⁷ Judith Stiebnoun writes, “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.”²⁸⁸ In light of these accounts of the patriarchal origins and functions of monogamy,

the hot tub,’ or, ‘Yes, it’s OK if you and he make love in our bed.’[] Integrating new partners with family and friends: if, when, how?[] Parity: attaining relative equivalence in extra-dyadic relationships; addressing the ramifications of lack of parity[] Veto Power: who has the right to say ‘no’ to a partner’s choice of another?”).

286. *Id.*; see also Strassberg, *supra* note 8, at 508 (expressing concern that partners in larger poly/dishonest relationships may be subject to coercive group practices).

287. See, e.g., ANAPOL, *supra* note 127, at 47 (“Monogamous marriage as we know it today is based on patterns established in Biblical times governing men’s ownership of women. In Biblical days the law prescribed that women be stoned to death for taking a lover, but men were allowed as many secondary wives or concubines as they could afford. For most of recorded history, the absolute authority of the husband over his wife has been taken for granted and male violence against disobedient wives has been considered natural and right.”); see also Robinson, *supra* note 40, at 144 (arguing that “institutionalized monogamy has not served women’s best interests. It privileges the interests of both men and capitalism, operating as it does through the mechanisms of exclusivity, possessiveness and jealousy, all filtered through the rose-tinted lens of romance.”).

288. Stiebnoun, *supra* note 101, at 42.

Stelboun seeks to explain why so many contemporary lesbians adopt monogamy: "The implications of the historical prerogative of male inheritance have little relevance for the lesbian community, but the social values and behavioral modes of the dominant heterosexual community have been firmly implanted within most of the lesbian population."²⁸⁹ In response, she offers several purposes of nonmonogamy in lesbian relationships, including as a political statement against the "confining heterosexual models of monogamy," and as "a way for two women to define autonomy within a coupled situation and avoid the intense bonding typical of some lesbian partners."²⁹⁰

In an essay aimed at helping couples lessen jealousy in their relationships, Marny Hall paints a similar portrait of polyamory as a useful way to create individual space and autonomy within primary relationships. As a general matter, she observes, new couples make decisions about what parts of their lives they will share and what they will keep to themselves. "When partners first get together, they may have different ideas about what is mine, yours, and ours. Time, money, even how many daydreams to share are up for discussion. . . . [Ultimately, for some couples, the 'us' pile is so huge it dwarfs both the 'me' and 'her' stacks."²⁹¹ Couples make similar, though often tacit, decisions about sex:

Acknowledged or not, many couples also have three sex stacks. There is ours, yours, and my sex. Private sex may consist of a favorite fantasy or a vibrator quickie after a girlfriend has gone to work. The erotic activities in one's private domain are not exactly secret. But just as we don't divulge the amount we paid for a pair of birthday earrings, we don't announce every time we [masturbate].²⁹²

But, she observes, the privacy about certain details of a partner's sexual self does not typically extend to encounters with other sexual partners. "Yet," Hall asks, "what if it did?"²⁹³ Hall suggests that this approach would require "only [that we] consciously extend the usual cultural rules about privacy—the ones that already apply to our fantasies and our vibrator—to other sexual partners."²⁹⁴ She describes several methods that couples use to create such privacy:

For example, some partners agree to being unaccountable to each other during certain specified periods of time. . . .

Still other partners prefer the information filter to be partial. In other words, they prefer to know about the existence of other sexual partners

289. *Id.* at 44.

290. *Id.* at 45.

291. Marny Hall, *Turning Down the Jezebel Decibels*, in *THE LESBIAN POLYAMORY READER: OPEN RELATIONSHIPS, NON-MONOGAMY, AND CASUAL SEX* 47, 53 (1999).

292. *Id.*

293. *Id.*

294. *Id.* at 54.

but want to be spared all the details. . . .

. . . .

Another couple consciously made information about outside sex optional. Each kept a brief log of her encounters with other women. Both partners' record books, which listed only names, places, and dates, were left on top of the bookcase—available for either to check if she so desired. One partner never checked the log. After a peek or two, the other stopped. . . .

. . . .

Eager to maintain a high level of privacy and intimacy—and avoid the schlep factor of cross-town apartments—[the partners in one couple] live in separate flats in the same building [and have been together] for ten years. . . .²⁹⁵

Thus, in these open relationships, the possibility of outside lovers helped partners resist the pressure (from either heterosexual tradition or the lesbian "U-Haul Syndrome"²⁹⁶) to merge into one being, and thus helped them preserve their own privacy and separateness. In her therapeutic practice, Hall views polyamory as more than just a means of strengthening or enhancing primary relationships. She also recognizes its potential to instigate transitions out of relationships when couples need to move on, as well its potential to create partnerships of more than two.²⁹⁷

For Dossie Easton and Deborah Anapol, realizations about the strictures of monogamy came through their experience or study of domestic violence. As described above, Easton devotes energy and emotion to preserving the independence made possible by polyamory because an abusive relationship opened her eyes to the control exerted in monogamous relationships.²⁹⁸ Anapol, whose doctoral dissertation in clinical psychology focused on domestic violence, identifies connections between the possessive claims of monogamy and the cycles of abuse and violence in these relationships:

I married for the second time, trying to fit myself into the traditional mold with an ambitious, personable husband and a house with a white picket fence. He too had unfinished business with an old lover, but while continued friendships were acceptable to him, extra-marital love affairs were not. I was researching domestic violence for my doctoral dissertation . . . and was horrified to realize that the dynamics of domination, control, jealousy and dependency that I'd observed in

295. *Id.* at 54–55.

296. Munson & Stelboun, *supra* note 127, at 3 (explaining the U-Haul Syndrome as "a long-joked-about tendency of lesbians to move in together on the second date").

297. See Hall, *supra* note 291, at 55–59.

298. See *supra* text accompanying notes 244–63.

abusive marriages I was studying, existed, at a more moderate level, in my own marriage.²⁹⁹

These realizations were one factor which led Anapol to reject traditional monogamy and pursue polyamory as a way to exercise greater personal autonomy in her relationships.

5. *Privileging Love and Sex*

A crucial aspect of poly thinking, and the one most particular to polyamory, is the idea that when it comes to sex and love, more expression and experience may truly be better than less. One source of this philosophy is the various free love movements of the 1960s. The science fiction writer Robert Heinlein famously said, "'Love is that condition wherein another person's happiness is essential to your own.'"³⁰⁰ One poly writer asserts that, in light of Heinlein's "foundational premise, jealousy and possessiveness become seen [by our community] not as symptoms of love, but as a pathology of insecurity."³⁰¹ This idea, that more may be better, inspires the name of Loving More, as well as its mission statement, which explains that the organization has

[A] specific vision of relationships based on honesty, openness, respect for the individual, love as an infinite resource, the body and sexuality as sacred, and relationship as a path to personal & spiritual growth. In this vision, there's room for more love, more intimacy, more possibilities, and more people.

Accordingly, there is also more responsibility and challenge: a deeply personal challenge to transform ourselves, our lives, and our world into a more loving and responsible place.³⁰²

Eddie Simmons expressed a similar idea when he talked to me about his realization some years ago that it is "very important to tell people" you love them, to tell them "now rather than later."³⁰³ For Eddie, AIDS created the conditions for that understanding. He knows that he loves many people, and he tells them so.³⁰⁴

The practice of "loving more" may also generate more resources of many kinds. Eddie suggested that he thought polyamory was a positive context in which to raise children because polyamory provides so many resources for

299. ANAPOL, *supra* note 127, at 123.

300. Oberon Zell & Morning Glory Zell, *Poly Advice: What Are Some of the Usual Objections Raised Against the Poly Lifestyle?*, *LOVING MORE MAG.*, Fall 1998, at 26, 26 (quoting, in the portion labeled "Oberon," ROBERT HEINLEIN, *STRANGER IN A STRANGE LAND* (1961)).

301. *Id.*

302. LOVING MORE, *supra* note 126.

303. Simmons interview, *supra* note 188.

304. *See id.*

caring.³⁰⁵ Emphasizing the loving care her daughter receives while she is at work, Elizabeth Joseph describes polygyny as a "whole solution" to the modern woman's juggling act.³⁰⁶ Expressing a similar sentiment, psychotherapist Marny Hall highlights the "resource-intensiveness" of three triads that she interviewed:

When we think of threesomes, the metaphor of the third wheel—the unwanted extra—immediately comes to mind. After my exposure to these trios, however, the old metaphor never quite recovered its former potency. On the contrary, the extra wheel was usually an asset. Whenever a particular need arose, somebody was on hand to take care of it. For example, if someone was short of cash that week, someone else pitched in to cover household expenses. Ditto for emotional support, sexual energy, child care help, even companionship.³⁰⁷

When a community of people values the expression of love, polys would say, the benefits accrue to all its members.

Love and sex are of course widely valued. But poly relationships, to a greater extent than many monogamous relationships, privilege love and sex over other feelings and activities. Polys privilege love insofar as they tend to prioritize talking and other forms of creating and sustaining intimacy over other activities. They therefore devote much time to processing everyone's feelings.³⁰⁸ As Hall said of the trios she interviewed, "[T]he trios required more time for discussion about everything from hurt feelings to chores."³⁰⁹

Polys truly seem distinct from most monos when it comes to sexual beliefs and behavior. Rejecting the law of monogamy that allows one partner's jealousy to trump another's outside sexual desires and experiences,³¹⁰ polys feel that jealousy should be overcome to make room for more sexual and loving possibilities.³¹¹ Rather than assuming that a philandering partner should curb

305. *See id.*

306. *See supra* text accompanying note 217. Of course, there are other women with experience in polygynous marriages who paint a very different picture. *See, e.g.,* Carmen Thompson & Celeste Fremton, *Memories of a Plural Wife*, *GOOD HOUSEKEEPING*, Mar. 1, 1999, at 118. Tapestry of Polygamy is a Salt Lake City-based organization "offer[ing] assistance to women and children leaving polygamy." *See A Circle of Survivors: The Women Behind the Tapestry*, *GOOD HOUSEKEEPING*, Mar. 1, 1999, at 118. The group's members "wear purple ribbons to symbolize their support of those still trapped in polygynous families." *Id.*

307. Hall, *supra* note 291, at 58.

308. *See, e.g., supra* notes 209–10 and accompanying text.

309. Hall, *supra* note 291, at 58.

310. *See supra* text accompanying note 45.

311. *See, e.g., ANAPOL, supra* note 127, at 49–52 ("Jealousy can be a potent reminder... letting us know we're heading in the wrong direction, for jealousy is the opposite of love.... Nearly everyone in our monogamous society learns early in life that lovers have exclusive rights. We are conditioned to believe that if our beloved is interested in someone else, we may be replaced. But this expectation of loss is learned, not hard wired, in both men and women. Imagine a culture in which your partner's attraction to another signified opportunities for greater pleasure and intimacy."); RONALD MAZUR, *THE NEW INTIMACY: OPEN-ENDED MARRIAGE AND ALTERNATIVE*

her wandering impulse.³¹² Then, polys more often proceed from the assumption that the jealous partner should work through his jealousy. As discussed below, some polys report that they never feel jealous;³¹³ more typically, though, polys acknowledge jealousy and seek to understand and work through it. As noted earlier, Anapol advises, "Let jealousy be your teacher."³¹⁴ Some poly writers use the term "compersion" to describe a particular alternative or supplement to jealousy: "Compersion . . . [is the] feeling of happiness in knowing that others you love share joy with each other, especially taking joy in the knowledge that your beloveds are expressing their love for one another. The opposite of jealousy."³¹⁵ Polys generally aim to develop and expand their compersion, while understanding, working through, and getting past jealous responses. In this way, they reject the common belief that jealousy signifies love, and they invert the standard hierarchy that lets jealousy trump desires for extrarational sexual experience.

IV.

THE PARADOX OF PREVALENCE

The previous discussion identified several elements of the puzzle of polyamory's place outside the political debate over marriage. First, the expectation of monogamy has a strong hold on this country's fantasies and institutions. Second, that expectation is widely unfulfilled. Third, for some people, polyamory exists as a viable relationship form with an articulated set of ethical aspirations. In light of all this, I return to the question posed at the beginning of this article: Why is the possibility that same-sex marriage might lead to multiparty marriage such an effective rhetorical scare tactic for the opponents of same-sex marriage? In this Part, I argue that the widespread resistance to the idea of marriage among more than two people is actually the result of monogamy's frequent failure. In a sense, the threat of polyamory stems from its apparent prevalence.

LIFESTYLES 101 (1973) (offering a typology of forms of jealousy in order to help people overcome it and to "work toward eliminating it in relationships"); CELESTE WEST, LESBIAN POLYFIDELITY 112 (1996) ("It is important to emphasize that in polyfidelity jealousy is drained of the fierce poison of betrayal. Our jealousy is not embittered by broken monogamous vows. Since polyfideles are committed to one another's sexual freedom, we can only assume that each woman, in acknowledging the right to her desires, may possibly act on them." (emphasis omitted)), *id.* at 136 ("The idea is to accept that your [jealous] feelings aren't so hot [and] to get on with your best purposes in life. Your attention may jump erratically back to jealousy, especially at first, but the mind's disc simply cannot hold two tracks at once . . .").

312. *Cf. supra* text accompanying notes 41–48.

313. *See infra* text accompanying notes 404–07.

314. *See supra* note 267 and accompanying text.

315. Los Angeles Poly Support, *What Is Polyamory?*, at <http://www.laps.org/whpoly.html> (last visited Apr. 26, 2004); *see also* The Polyamory Soc'y, *Compersion Index*, <http://www.polyamorysociety.org/compersion.html> (last visited Apr. 26, 2004) (crediting the San Francisco Kerstan Commune with coining the term).

Before explaining this argument, I consider in Section A some other possible reasons for outsiders' response to polyamory. I conclude that these reasons may contribute in some way to the response, but no one reason adequately explains it. Drawing on sexuality theory developed around homosexuality, Section B explains the distinction between universalizing and minoritizing conceptions of identity, locates polyamory as a universalizing discourse, and draws lessons from gay politics to explain how common ground with the mainstream could be a political liability for polyamorists. Section C presents a strand of poly thinking and writing that is minoritizing, and considers its implications for disagreements about the definition of polyamory.

A. Possible Factors in the Response to Polyamory

There must be some readers who, before reading this article, already believed polyamory to be a viable relationship model deserving the same public respect as monogamous dyads. And there may be a few readers who, not having heard of polyamory before, now believe that polyamorists deserve legal recognition and protection in all imaginable contexts, such as marriage, custody, and employment.³¹⁶ But I imagine these readers are few. Rather, I suspect that most readers have serious reservations about the idea of polyamory as an acceptable social practice, and would still hesitate to respond, "Why not?" or, "Who cares?" to conservatives' warnings that same-sex marriage will lead to legalized polyamory.³¹⁷ While Part III responded to the common perception that

316. In a recent survey, responding polys reported that employment nondiscrimination was one of their three highest priority legal issues. *See infra* note 415. One lawyer contributor to *Loving More Magazine* suggests that talking about one's poly lifestyle might prompt a hostile environment sex harassment claim. Rita Kisser, *Is It Harassment If You Say You're Poly?*, 1 BEST OF LOVING MORE 34 (1997). To prevent harassment claims, she advises that the "safe thing to do is say nothing and live your life in the closet." *Id.* at 35. But since most people are not "comfortable" being closeted, she lays out a "continuum of behavior from acceptable to unacceptable." *Id.* Speaking philosophically is most acceptable. She describes the least acceptable option as follows: "Most unacceptable is to volunteer sexual details, invite a co-worker to attend a workshop or party, or invite someone to join you and your partner for a threesome in the hot tub." She adds, "It's probably not poly people who do this, but there are a number of cases with a threesome theme." *Id.* Based on my research, no federal or state cases support the claim that the suggestion of a threesome is, by itself, sufficient grounds for a successful harassment suit.

317. Contrast the response to the polygamy analogy—i.e., efforts by gay marriage proponents to distinguish the two and further efforts by conservatives to align the two—to the widespread response to Scalia's threat that *Lawrence* might lead to the invalidation of state laws proscribing masturbation. *Lawrence v. Texas*, 123 S. Ct. 2472, 2490 (2003) (Scalia, J., dissenting). *See, e.g.,* Jan Glidewell, *Let States Unite People and Religions Marry Them*, ST. PETERSBURG TIMES (Fla.), Aug. 8, 2003, at 1 ("The degree of hysteria with which the recent Supreme Court decision striking down antisodomy laws is symbolized by the dissenting opinion written by Justice Antonin Scalia, down antisodomy laws is symbolized by the dissenting opinion written by Justice Antonin Scalia, who feared that the decision would legalize, among other horrors, masturbation. Come on, There's a state where masturbation is illegal? Where?"; Amperasad, *Passing Thought on Scalia's Dissent*, at http://www.amperasad.com/blog/week_2003_06_29.html (June 30, 2003) ("You know, we live in a remarkable age when a member of the Supreme Court—the member who is probably the most admired by conservatives, who is often credited by left and right alike as one of the sharpest conservative minds in the nation—writes that the Court shouldn't have ruled Texas' anti-

polyamory is preposterous and trivial, this Section briefly discusses five further reasons for the negative response to the practice. Of varying plausibility, each of these deserves more sustained discussion than what follows. The purpose here is not to refute these criticisms and concerns. Instead, the purpose is to show why they cannot fully explain the largely negative response to polyamory.

First, some may think that a monogamous couple is the most efficient unit for family formation. For instance, some may expect a larger foundational unit to lead to shirking and excessive grabbing, as in a house of college students where everyone takes more than he or she contributes, so that important household work never gets done, dishes pile up, and so on.³¹⁸ To avoid these dead weight losses, the group may need to engage in a great deal of negotiating and monitoring, leading to high transaction costs.³¹⁹ Given the poly commitment to processing everyone's emotions, polyamory may generate disturbing visions of relationship by committee. But the efficiency arguments can also go the other way. Polyamorous households can benefit from economies of scale and specialization of labor.³²⁰ And to someone who enjoys processing,³²¹ more conversation may not be a cost but a valued good.

Second, polyamory may prompt an egalitarian objection that the traditional form of polygamy involves one man dominating multiple wives.³²² From a feminist perspective, traditional polygyny looks like the archetype of the

Sodomy law unconstitutional because such a ruling might get in the way of state laws outlawing masturbation. Why is Scalia worried about preserving the states' rights to outlaw masturbation? Why would anyone worry about that? It's masturbation, for pity's sake! Is there anywhere a less harmful action, with less reason for government concern, than masturbation?" (emphasis omitted); Roger L. Simon, *Was Antonin Scalia Auditioning For Saturday Night Live...*, at <http://rogerltsimon.com/archives/00000242.htm> (June 27, 2003) ("Was Antonin Scalia auditioning for Saturday Night Live... when he wrote in his dissenting opinion to yesterday's rejection of anti-sodomy laws by the Supreme Court that it might lead to the legalization of masturbation? ... Pretty funny, Antonin—you just might open SNL if you keep it up!"); (emphasis omitted); *This Week with George Stephanopoulos* (ABC television broadcast, June 29, 2003) (statement of Fareed Zakaria) ("George, let me suggest to you this is the same slippery slope argument—[how do you rule out things like bigamy or bestiality?] And it's true, whenever [you] draw a line there's a danger of slippage. There's also, of course, danger of slippage on the other side. That is to say, if you say it is all right for state legislatures to make criminal private intimate acts between two gay men, shouldn't it also be all right for them to make criminal masturbation or [miscegenation], interracial sex? This is Kennedy's point in, in the Supreme Court majority opinion and Scalia, to his credit, is honest enough to [say] that, yes, he would like it to be all right and constitutional for states in America to say interracial sex is in fact banned and criminal. So, there's, there's a slippery slope on both sides of the argument").

318. See Robert C. Ellickson, *Property in Land*, 102 YALE L.J. 1315, 1396 (1993).

319. *Id.*

320. See, e.g., Westley, *supra* note 84, at 71; *supra* text accompanying notes 214–24; see also Strassberg, *supra* note 8, at 503 (asserting that the economic efficiency of polyamorous relationships can make them financially difficult to exit); cf. Ellickson, *supra* note 318, at 1395 (noting the possible efficiencies of multimer household, including efficiencies of scale, specialization of labor, and increased dwelling space).

321. See *supra* note 209 and accompanying text.

322. See *supra* text accompanying note 121.

oppressive patriarchal family writ large.³²³ But economists and legal scholars, as well as practitioners of polygyny such as Elizabeth Joseph, have made the opposite claim: polygyny may actually benefit women.³²⁴ Gary Becker has argued that polygyny benefits women because their potential income is greater than it would be under monogamy.³²⁵ Carol Rose and others have proposed that polygynous marriage could give women more market choice, so that no woman has to marry a "loutish" (lazy) man.³²⁶ Relatedly, in light of the widespread imprisonment and impoverishment of African-American men, Adrienne Wing has suggested that some African-American women might prefer polygynous marriages to not finding an appealing husband at all.³²⁷ Moreover, Bonnie

323. See, e.g., Bergmann, *supra* note 113; Iversen, *supra* note 44, at 518 (observing that "[o]ne cannot truly apply the term 'feminist' to the Mormon plural wives because feminism and patriarchal religion are incompatible"); Collin O'Connor Udell, *Intimate Association: Resurrecting a Hybrid Right*, 7 TEX. J. WOMEN & L. 231, 283 (1998); cf. SARAH BARRINGER GORDON, *THE MORMON QUESTION: POLYGAMY AND CONSTITUTIONAL CONFLICT IN NINETEENTH-CENTURY AMERICA* 47–49 (2001) (describing the popularity of comparisons between polygamy and slavery in nineteenth century novels and political rhetoric). This criticism overlaps with the argument that polygyny necessarily leads to despotism rather than democracy. See, e.g., Strassberg, *supra* note 8; Maura I. Strassberg, *Distinctions of Form or Substance: Monogamy, Polygamy and Same-Sex Marriage*, 75 N.C. L. REV. 1501 (1997); Udell, *supra*, at 283.

324. See *supra* Section III.B.3.

325. See GARY S. BECKER, *Polygamy and Monogamy in Marriage Markets*, in A TREATISE ON THE FAMILY 80, 81–104 (1991). But see Bergmann, *supra* note 113, at 145 (arguing that Becker's economic analysis must be "grossly incomplete" because it appears to prove a conclusion that "we know to be false"—that polygyny is better for women than monogamy); Westley, *supra* note 84, at 72 (arguing that Becker ignores various benefits of monogamy such as stability and nurturing and fails to recognize the potential pitfalls of a polygynous society in which poor men may resort to violence to obtain wives).

326. See, e.g., Carol M. Rose, *Women and Property: Gaining and Losing Ground*, 78 VA. L. REV. 421, 432 (1992) (pointing out that, under a system of one-man/one-woman marriage, some women will end up with "loutish" husbands who do not share in household duties, and observing that "even though they phrased it somewhat differently, some nineteenth-century Mormons thought that the [men's] greater propensity for loutishness was a pretty good reason for plural marriage, where the [men's] greater propensity for loutishness was a pretty good reason for plural marriage, where the more cooperative [men] got lots of wives and the less cooperative ones presumably got none"); see also Julie Dunfee, *"Living the Principle" of Plural Marriage: Mormon Women, Utopia, and Female Sexuality in the Nineteenth Century*, 10 FEMINIST STUD. 523, 529 (1984) (reporting nineteenth-century Mormon women's praise of polygyny's potential for pairing the few "good men" with the many "good women").

327. Adrienne Katherine Wing, *Polygamy from Southern Africa to Black Britannia to Black America: Global Critical Race Feminism as Legal Reform for the Twenty-First Century*, 11 J. CONTEMP. LEGAL ISSUES 811, 858 (2001) ("In my view, African Americans today face conditions in which *de facto* polygamy can flourish. A disproportionate number of our men are unavailable for marriage—due to early death, imprisonment, high unemployment, and internment. More of our young women have obtained higher educations than the young men. Socially, we as Black women, like most women, have been reared to want men of an equal or higher social status. We have also been socialized to prefer our own men, to men from other racial/ethnic groups. A wealth of well employed and educated Black women seek a small pool of 'suitable' men. The net result is that the few men have a surplus of women from which to select. They can be either *de facto* polygamists or womanizers. They can have children with multiple women and support none of them. Since the Civil Rights movement, more black men than women have taken advantage of the opportunity to date or marry outside the race, an act that could have resulted in a lynching in the past. The net result is that only 35% of Black women are married, compared to 60% of white

Homig has urged that the institution of polygamy can sometimes create conditions for solidarity among women, whereas monogamy "isolates women from each other and privatizes them."³²⁸ Feminist arguments therefore may cut both ways.³²⁹ And even if multiparty relationships may sometimes be detrimental to women, particularly in their traditional polygynous form, this must not be true in all cases; as discussed earlier, some polyamorists specifically embrace the practice of nonmonogamy as part of a feminist commitment to self-possession.³³⁰ In this light, feminist objections cannot entirely ground the opposition to multiparty marriage, unless one is also inclined to oppose marriage altogether on the ground that its traditional form oppresses women.³³¹ And even this sort of feminist opposition to marriage would not necessarily explain a negative response to the idea of nonmarital relationships of more than two.

Third, the negative response to polyamory may also stem from the view that these relationships are not physically or psychologically healthy. Polyamory may inspire concerns about sexually transmitted diseases (STDs).³³² Like other sexually active people, polyamorists face risks that a partner is infected, and to the extent that polys have more partners than people in couples, they might have more cause for concern about STDs than some sexually active people. On the other hand, in a polyamorous subculture that aspires to honesty about sexual practices, informed communication about sexual health may be particularly valued,³³³ and the social consequences of lying about sexual behavior and sexual

women, and 67% of Black children are born out-of-wedlock compared to 25% of white babies. In the U.S. Constitution, Blacks were counted as three-fifths of a person for representation purposes. Today, some lonely women remain ready to have a much smaller piece than three-fifths of a man." (footnotes omitted).

328. Bonnie Homig, *Complicating Culture*, BOSTON REV., Oct/Nov. 1997, at 30, 31.

329. See, e.g., Iversen, *supra* note 44, at 518-19 (describing how Mormon polygyny was both feminist and anti-feminist).

330. See *supra* Section III.C.4.

331. Cf. JOHN STUART MILL, ON LIBERTY 104 (1986) (1859) ("No one has a deeper disapprobation than I have of this Mormon institution [of polygamy]; both for other reasons, and because, far from being in any way countenanced by the principle of liberty, it is a direct infraction of that principle, being a mere riveting of the chains of one half of the community, and an emancipation of the other from reciprocity of obligation towards them. Still, it must be remembered that this relation is as much voluntary on the part of the women concerned in it, and who may be deemed the sufferers by it, as is the case with any other form of the marriage institution; and however surprising this fact may appear, it has its explanation in the common ideas and customs of the world, which teaching women to think marriage the one thing needful, make it intelligible that many a woman should prefer being one of several wives, to not being a wife at all.").

332. See ANAPOL, *supra* note 127, at 28 ("Many people these days are fearful of choosing a polyamorous lifestyle because of concerns about exposing themselves to AIDS or to sexually transmitted diseases such as herpes . . .").

333. Cf., e.g., F.C.I. Hickson, P.M. Davies, A.J. Hunt, P. Weatherburn, T.J. McManus & A.P.M. Coxon, *Maintenance of Open Gay Relationships: Some Strategies for Protection Against HIV*, 4 AIDS CARE 409, 411, 414, 416 (1992) (reporting, in a study of 387 homosexually active men, that 72.7% of the men in nonexclusive relationships (who made up 56.3% of those in men, that 72.7% of the men in nonexclusive relationships (who made up 56.3% of those in relationships) had "some agreement between the partners as to the nature of sex with third parties"

health may be particularly great.³³⁴ Moreover, promises of sexual exclusivity in monogamous relationships may give monogamists more reason to have unprotected sex or to lie about their sexual behavior.³³⁵ People in ostensibly monogamous relationships are caught in a bind if they contract infections; even if they want to protect their other half from the physical harm of contagion, they risk inflicting emotional harm and losing the relationship if they reveal their infected status, and thus, their sexual dalliances.³³⁶

The question of whether polyamory could have negative psychological effects on participants is hard to answer. Maura Strassberg has argued that polyamorous relationships may be coercive or oppressive, particularly when the relationships are closed ("polyfidelitous") and involve more than three or four people.³³⁷ But coercion and oppression, of course, afflict bilateral relationships as well as multiparty ones.³³⁸ I have found little data the psychological effects

and the "most common type of rule amongst these couples concerned safer sex").

334. See, e.g., Vexen Crabtree, *Human Sexuality: Poly*, at <http://www.vexen.co.uk/human/poly.html#paid> (last updated Mar. 1, 2001) ("A person is not accepted into a poly group if they do not take issues like pregnancy and protection seriously. There is a very high awareness of the dangers of sexually transmitted diseases within poly groups . . .").

335. See, e.g., David Wyatt Seal, Gina Agostinelli & Charlotte A. Hannett, *Extradyadic Romantic Involvement: Moderating Effects of Sexuality and Gender*, 31 SEX ROLES 1, 19 (1994) (observing that "most young adult heterosexuals believe that involvement in an 'exclusive' dating relationship gives them immunity from exposure to HIV/STDs," leading them to frame "safe sex" in the context of pregnancy prevention rather than disease prevention, and thus to use oral contraceptives and discontinue use of latex condoms); David J. Mack, Note, *Cleansing the System: A Fresh Approach to Liability for the Negligent or Fraudulent Transmission of Sexually Transmitted Diseases*, 30 U. TOR. L. REV. 647, 665 (1999) (reporting that a recent study of STD infection found that "because perceived risk is generally lower in monogamous relationships, married people are less likely than their single counterparts to use condoms" (citing Betsy Payn et al., *Men's Behavior Change Following Infection with a Sexually Transmitted Disease*, 29 F.A.M. P.L.N. PERSP. 152, 153 (1997))); see also Elizabeth Larsen, *Poly Sex for Beginners: Swinging Makes a Comeback Among GenXers*, UTNE READER, Nov./Dec. 1998, at 20, 20-21 (noting that "[m]any polyamorists make the point that, since their extramarital activities aren't secrets, the likelihood of contracting an STD from their partner(s) is lower than that of many monogamous couples who may be unknowingly infected by a straying partner who never fesses up" and mentioning poly reports of "safe-sex circles" in which "each member is tested and new members are not admitted until a period of months go by and they still test negative" (internal quotation marks omitted)).

336. See, e.g., ANAPOL, *supra* note 127, at 28 ("A closed circle, whether of two or six or twenty, healthy, trusted partners can make polyamory just as 'safe' as monogamy, perhaps more so since the couple who have sworn to be monogamous may be more likely to lie about outside affairs and less likely to frankly discuss their sexual histories with prospective lovers than those who are openly polyamorous."); Mack, *supra* note 335, at 661-62 (discussing the role of "secrecy" in the transmission of sexually transmitted diseases according to a recent report by the Sexuality Information and Education Council of the United States); see also McPherson v. McPherson, 712 A.2d 1043, 1044 (Me. 1998) (describing the lawsuit of a woman against her former husband for "infect[ing] her with a sexually transmitted disease he acquired through an extramarital affair").

337. Strassberg, *supra* note 8, at 496-99, 508-09.

338. To illustrate the coercive possibilities of polyfidelitous relationships, Strassberg cites the example of the Kerista cult that existed in San Francisco from 1971 to 1991, in which certain participants tried to urge new members on one another through peer pressure, and the group punished certain members for disagreeable behavior by withholding sex from them. *Id.* at 497-

of open relationships. There are a few studies comparing open relationships and closed relationships among gay men, which show equal or greater relationship longevity in open relationships and mixed results on whether reported relationship satisfaction is different or the same.³³⁹ These are, however, preliminary empirical efforts. Moreover, it is hard to know the possible effect of living in a nonmonogamous relationship in the context of a culture that frowns upon such relationships.

Strassberg also worries, like the judge in the Divilbiss case, that children will be damaged by exposure to polyamory.³⁴⁰ Some people may well be concerned that polyamorous relationships are less stable or structured than monogamous ones and would thus cause harm to any children the participants might have. Of course, many people in polyamorous relationships may not have children, which would eliminate this concern. But for those who do, more information is necessary to evaluate the validity of the concern.³⁴¹ As with the concern about the effects on the participants, some participants in polyamorous relationships perceive those relationships as healthy for the children involved; others perceive the relationships as unhealthy.³⁴² Speculative arguments can be

502. Strassberg finds this situation to be more coercive and unhealthy than a monogamous one, as "the punished individual lost any possibility of sex," but the rest of the group members continued to be able to have sex with each other. *Id.* at 502. This reasoning, however, cuts both ways because members of monogamous couples have the power to make unilateral and unreasonable decisions to cut out sex for the other person, a decision that only harms the withholder if he or she values sex more than the negative emotion fueling the withholding. This is a coercive situation that may be avoided in polyamorous relationships, where one person's decision to withhold sex does not deprive another of the possibility of sex.

339. See, e.g., David Blasband & Letitia Anne Peplau, *Sexual Exclusivity Versus Openness in Gay Male Couples*, 14 *ARCHIVES OF SEXUAL BEHAV.* 395 (1985) (finding, in a study of forty gay male couples of which approximately 57.5% reported an open relationship and 42.5% reported a closed relationship, no differences between the open and closed relationships in reported affection, respect, love, or longevity); Lawrence A. Kurdek & J. Patrick Schmitt, *Relationship Quality of Gay Men in Closed or Open Relationships*, 12 *J. HOMOSEXUALITY* 85, 95-96 (Winter 1985/1986) (reporting, based on self-report measures by forty-nine gay male couples in open relationships and seventeen gay male couples in closed relationships, that *inter alia* the couples in open relationships lived together significantly longer than those in closed relationships, that the couples in closed and open relationships reported equal satisfaction on some measures (respect/perceived similarity, agreement, satisfaction with affection and sex, and shared activities), and that the couples in closed relationships reported greater satisfaction along several measures (greater affiliative/dependent need, more favorable attitude toward the relationship, and less tension in the relationship)).

340. See Strassberg, *supra* note 8, at 509-20; see also Westley, *supra* note 84, at 72 (arguing that stability and nurturing of a monogamous family benefit children and thereby help create an effective labor force).

341. See Strassberg, *supra* note 8, at 559-60. There is one study of the extent to which parents in open relationships disclose their relationship details to their children, which concludes that most parents do not fully inform their children of their involvements. See James Watson & Mary A. Watson, *Children of Open Marriages: Parental Disclosure and Perspectives*, 5 *ALTERNATIVE LIFESTYLES* 54 (1982).

342. For a discussion of factors that may affect the well-being of a child in a polyamorous family, see Strassberg, *supra* note 8, at 511-17 (discussing an interview with a psychologist who felt she was harmed because her parents were "swingers" who engaged in casual sex with many different people, including some who sexually abused her (citing Ryan Nearing, *But What About*

made either way.

For instance, relationships might be less stable because there are more participants or because participants are open to other relationships. On the other hand, openness to other possibilities could prevent relationships from ending because of outside attraction or sex and might generally permit a flexibility that allows a relationship to survive through changing needs and desires. In terms of child-rearing approaches, polyamory might seem loose and unstructured, but the aspirations articulated by polyamorists include some structuring concepts like consent and honesty, and, as discussed earlier, some polys are highly attentive to boundaries.³⁴³ In terms of attention to children, some might worry that polys would be too engaged with one another to care adequately for the children. On the other hand, more hearts and hands might contribute positively to the care of children; along these lines, some polys have suggested that polyamory provides the "village" that Hillary Clinton and others have said it takes "to raise a child."³⁴⁴ What harm means in this context, whether it might occur, and what the policy consequences might be are all difficult questions. Without clarifying information, people may well be concerned about children in these situations. Since many people never have children and discussions of polyamory typically do not center on children, however, I would posit that possible effects on possible children are not foremost in most people's minds when they react negatively to the idea of polyamory.

Fourth, and relatedly, some argue that polyamory is incompatible with real love. This objection comes in two principal forms: those in polyamorous relationships cannot love one another equally or they cannot love one another enough. But comparisons to other types of relationships suggest that there is no obvious reason that relationships involving more than two are necessarily unequal. For instance, as discussed in Part II, although people sometimes speak of having a best friend, friends are generally thought able to love more than one friend equally. Friendships may take different forms without necessarily being valued disproportionately. Similarly, few people object to the idea of parents' having multiple children on the ground that the parents won't be able to love two or more children equally. Rather, parents are generally thought able to love multiple children the same amount, even if reality does not always reflect that ideal.

Moreover, even if some friends or children are loved more than others, it is not clear that the other friends or other children are not loved enough. Indeed,

the Kids?, 24 *LOVING MORE MAG.*, 10, 10-13 (Winter 2001)). For a description of interviews with parents in alternative relationships, including polyamorous relationships, who characterize their children's development as healthy, see PATRICK CALIFA, *When the Playroom Becomes a Nursery: S/M-Fetish People Who Choose to Parent, in SPEAKING SEX TO POWER: THE POLITICS OF QUEER SEX* 46, 50-53 (2002).

343. See *supra* Section III.C.

344. Strassberg, *supra* note 8, at 560 & n.549 (citing Lady Alia-anor Ravenhart, *Help! I'm Going to Have a Baby! Part Two*, 9 *LOVING MORE MAG.*, 10, 11 (Spring 1997)).

friendship is generally presumed not to be exclusive, even though most people have varying levels of closeness to different friends. As discussed earlier, feeling jealousy about a friend's other friends is generally not considered a sign of true friendship.³⁴⁵ On the contrary, where such jealousy exists, indulging it by insisting that a friend drop other friends would seem antithetical to the generosity and other-regarding feelings expected of friends. Among siblings, though jealousy about parental love may even be common, the legitimacy of parents' having multiple children is not called into question on this basis. Parents with multiple children are typically deemed able to love their children enough, even if they do not in every case love them in identical ways or even identical amounts. Thus, while some people might prefer monogamy because they feel that romantic love is uniquely defined by twoness, and thus reject the relevance of these analogies for themselves, this personal feeling does not seem an adequate objection to relationships formed by *other* people who have a different view of love, namely, a view in which romantic love shares certain properties of other types of relationships such as friendship.

Fifth, polyamory may tap into anxieties about other social taboos. For instance, Judith Butler has suggested that a deep anxiety about incest underlies our response to all sexual and familial taboos.³⁴⁶ The judge's comments in the Divilbiss case indicate that he could not escape the image of all three partners in bed together—a practice that was not part of their relationship—and of the child in bed with the three of them.³⁴⁷ Whether or not incest is the taboo into which

345. See *supra* text accompanying notes 41–48.

346. Butler writes:

Consider that the horror of incest, the moral revulsion it compels in some, is not that far afield from the same horror and revulsion felt toward lesbian and gay sex, and is not unrelated to the intense moral condemnation of voluntary single parenting, or gay parenting, or parenting arrangements with more than two adults involved (practices that can be used as evidence to support a claim to remove a child from the custody of the parent in several states in the United States). These various modes in which the oedipal mandate fails to produce normative family all risk entering into the metonymy of that moralized sexual horror that is perhaps most fundamentally associated with incest.

JUDITH BUTLER, *ANTIGONE'S CLAIM* 71 (2000).

347. Over the protests of April Divilbiss's attorney that the three members of this triad were not actually sleeping together, but rather, April was sleeping with each man separately, the judge persisted in asking:

THE COURT: Well, at some point in time when the child walks into the bedroom and there is mother in bed with two guys, now what is the child going to say about that?

Transcript, In the Matter of A.M., No. K1719 (Juv. Ct., Memphis and Shelby County, Tenn., Apr. 16, 1999). And the judge could not escape the specter of incest:

THE COURT: Well, it hasn't been shown that the child is in bed with everyone but the child is in the same household. And if the child is in the same household and seeing this going on, at some point in due time, the child is going to become aware of it.

Id. So somehow the idea of the child seeing all of them in bed together is intimately bound up with the possibility that "the child is in bed with everyone." Though one can read the judge to be asserting merely that the child need not be in bed with them to walk in on them, the implication of his legal rhetoric—"it hasn't been shown that . . ."—suggests the possibility that one *could* show it, and that one might have reason to try to show it. The form of his statement evokes a classic form

many other taboos collapse, as Butler suggests, one could hypothesize about why incest might haunt discussions of intimate group sex within a family. Classically, parents are two, and children may be more than two. Our only model for permissible sexual relations within a nuclear family is the parents. For this reason, the idea of sex among three or more family members may evoke the idea of siblings—the horizontal family relationship that can involve more than two—rather than parents. In this way, sex within polyamorous families might prompt an image of sibling incest. But this is, perhaps to a greater extent than the other concerns, mere speculation.

Anxieties about homosexuality and bisexuality, on the other hand, bear a more concrete relationship to the response to polyamory. Mutual sex among three or more people necessarily involves some homosexual or bisexual relations, since any group of people larger than two involves at least two of the same sex. Sex between two people is either different-sex or same-sex, heterosexual or homosexual. Sex among three people (or more)—where all three sleep together or each of them sleeps with each of the others—cannot be strictly heterosexual, since there are only two sexes.³⁴⁸ Thus, an obvious part of the resistance to polyamory among straight people is disapproval or lack of interest in same-sex sex. Gays need not have the same resistance to the idea of polyamory since polyamory can be exclusively gay. (As "monosexuals," however, gays presumably share with straights a lack of interest in multiparty sex among men and women together.³⁴⁹) The gay or bisexual element in some

of prosecutorial closing statement, "While it hasn't been shown that the defendant knifed his wife to death, a bloody knife was found next to her body with his fingerprints all over it." The form of the statement answers the question it implies. We may thus read the judge's comments here to suggest that incest is the endpoint feared most in the transgression of "normal" family boundaries. This revulsive turn occurs even in a polyamorous family that resists the image of group sex.

348. If all three are one sex, then there is same-sex sex; if two are one sex and the third is another sex, then there is some same-sex sex and some different-sex sex, including what might be called bisexual behavior. The principle is both obvious and not obvious, as indicated by its presence in the familiar children's riddle: If you have thirty socks in a drawer, twenty black and ten white, what is the maximum number of socks you must pull out of the drawer to guarantee a matched pair? The answer is, of course, three.

349. A closer look at this aspect of the response to polyamory may illuminate a phenomenon of gender politics, "bisexual erasure." Kenji Yoshino, *The Epistemic Contract of Bisexual Erasure*, 52 STAN. L. REV. 353 (2000). A comparison between two simple models of group sex points toward different perceptions of male and female bisexuality. In the situation of group sex involving one man and two women, I would posit that outsiders are more likely to assume that the women are engaging in the threesome for the man's sake; outsiders often assume the man is getting more out of it. In part because people often do not believe people are *really* bisexual, they are more likely to assume the women are straight, and having sex with each other because the man wants it. (Not surprisingly, pornography created for straight males reflects and reinforces this assumption.) By contrast, in a scenario of group sex among one woman and two men, I think outsiders would be more inclined to assume that the men are actually gay, but not yet acknowledging their homosexuality, and the woman is an excuse for them to have sex with each other. Thus, bisexual erasure resolves itself in favor of heterosexuality in the case of (potentially bisexual) women, whereas in the case of (potentially bisexual) men, bisexual erasure results in homosexuality. This peculiarity might be explained by assumptions about power and desire: men are assumed to have more of both. In both situations, the men are seen to be getting what they