

Just the Two of Us? Polyamorous Families and Human Rights Protection

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Abstract

Despite the presence and prevalence of human rights documents aimed at granting, securing, and protecting rights to the family, some familial organizational methods are excluded from the discourse. The language of the human rights framework on the issue of family rights is dyadic in nature, meaning that the language only allows for, and protects, relationships stemming from couples. This acts as a gatekeeping mechanism, excluding polyamorist families from the discussion altogether. Human rights are inalienable and the state has a responsibility to maintain and protect those rights. When the state refuses to protect the rights of some while privileging others, the situation becomes a human rights issue. This paper challenges biases in human rights discourse and the ability of the state to be inclusive of all families in its protection of the family, and provides suggested methods to combat this discriminatory ideology.

Just the two of us, and baby makes three, His and Hers towels, the “other” woman. Hegemonic forces and discourses that support monogamous relationships and the purity of such relationships creep into our Western everyday language until we begin to accept and reproduce the idea of monogamy – the practice of romantic feelings shared between two people only – as morally right and good for society. Stemming from this, the “family” has evolved into a special bond shared between two romantic partners and the assumed children that they share, biologically or otherwise. This narrow conceptualization of the family excludes countless people from the way we define family at the

individual level and the institutional level, including polyamorous relationships, or relationships based on consensual non-monogamous romantic bonds (Emens, 2004; Ve Ard & Veaux, 2005; Haritaworn, Klesse & Lin, 2006; Sheff, 2011). It is at this macro, institutional level where rights are defined and granted. When human rights discourse – which is intentionally vague to allow for inclusion – still leaves out certain groups of people, we need to have serious discussions on expanding the language of what is accepted, and who is included.

Before we explore the realm of family rights and who is granted rights and left out of the conversation, we must first establish definitions for terms used in this paper. Language is a powerful tool, as we will learn throughout this discussion, and can serve as a gatekeeping mechanism to simultaneously include some groups, while excluding others. When we examine documents, we must always consciously wonder why certain words are used, specific concepts are included, and other ideas remain unmentioned. The power of the archive is such that it controls the dissemination of knowledge (Foucault, 1972). Therefore, a valid critical analysis must include an evaluation of the framework around which an idea or topic is developed.

As the Human Rights Education Associates (n.d.) dictate in their online teaching resources regarding family rights, the very idea of the family itself is defined in the introduction as “the fundamental and natural unit of society [that] requires the full protection of the state”. Although this language seems vague enough to include the polyamorous family unit, their language use overall is dyadic in that it refers specifically to rights enjoyed by *couples*. Polyamorous families are defined, in part, by the fact that the bonds shared are between more than two consenting people at one time (Emens, 2004; Ve Ard & Veaux, 2005; Haritaworn, Klesse & Lin, 2006; Sheff, 2011). These families will be discussed in this paper.

There is much confusion in the perception of polyamory. Many people confuse the consensual love between multiple people with non-monogamy, polygamy, polygyny, polyandry, and bisexuality.

Non-monogamy refers to open relationships that allow for more than one sexual relationship at a time (Ve Ard and Veaux, 2005). Polygamy, conversely, is an umbrella term that refers to either the practice of having more than one wife at a time (polygyny), or the practice of having more than one husband at a time (polyandry), which indicates unequal power dynamics within the relationship (Ve Ard and Veaux, 2005). Bisexuality is a sexual orientation that refers to people who are attracted to both men and women; they are not necessarily polyamorous or attracted to men and women *at the same time* (Oswolt, 2009). While recent studies support the fact that most women in polyamorous families identify as bisexual, a large majority of polyamorous men are heterosexual; almost no gay men and women are involved in polyamorous families (Sheff, 2011). Many people have internalized negative perceptions of some of these identities and practices, specifically polygamy in relation to Mormonism and the public distrust and fear of the relationship structure; when they hear “polyamory” they assume that the practice of polygamy is synonymous concept (Kurtz, 2003; Emens, 2004). Because of this confusion and the negative social stigma associated to many of these terms and identities, many people conflate negative imagery with polyamory.

A relationship as vulnerable as that of the family requires protection. Human rights discourse allows for the freedom to found a family, but the same documents aimed at discussing the inalienability of human rights also neglect to use language that reflects certain people, privileging families that stem from couples over extra-dyadic relationships. The United States, to give a specific example, also neglects to extend the same privileges to polyamorous partners and families that it grants to monogamous couples and families (Emens, 2004; Sheff, 2011; Goldfeder & Sheff, 2013). In this paper, I will discuss why the human rights framework should be expanded to include polyamorous families, and what the United States can do include all families into its protections codified by law.

Human Rights, Law, and Polyamorous Families

In enjoying no protection from United States law, polyamorous partners are left out of legal, economic, and social protections and privileges. Resulting from a culture that values monogamy as opposed to other non-traditional familial structures and lifestyles, discourses and regulations framed in dyadic language has been codified into United States law. Because the state has a responsibility to protect the inalienable human rights of its citizens, the United States is in violation of the articles stipulated by the 1948 Universal Declaration of Human Rights (UDHR) and other normative frameworks. The UDHR guarantees freedom from discrimination in Article 2, the right to equality before the law in Article 7, the right to marriage and a family in Article 16, and the freedom of belief and religion in Article 18 (United Nations General Assembly, 1948).

Ironically, advocacy related to the rights of the family – including resources developed by the Human Rights Education Associates – actually drastically limits these rights, or at least privilege some families over others. Although HREA (n.d.) highlights that the family is defined as the “fundamental and natural unit of society and requires the full protection of the state,” which is to be enjoyed by all peoples, the organizations’s language continues the trend of working within a dyadic framework. This reflects hegemonic compulsory monogamy codified into human rights documents, which are then codified into national law. The language of this document must be expanded to include non-dyadic families, resulting in less discrimination on the behalf of United States legal institutions. Perhaps with this expansion to protect human rights and dignity, the culture will see a noticeable shift from state intervention on marriage as the end goal of romantic relationships.

Unfortunately, there is a lack of any large body of work concerning academic research on polyamory. This fact is due, in part, to the recentness of the term (Emens, 2004). Although the practice is not new, the terminology is, and is often associated with various starting points in the twentieth century (Emens, 2004; Barker & Ritchie, 2006; Barker & Ritchie, 2007; Bennett, 2009; Cardoso & Cascais,

2013). The fact that polyamory is so hugely stigmatized in United States society also plays a role in the hesitation to openly identify as polyamorous (Emons, 2004; Sheff, 2007; Sheff, 2011; Goldfeder & Sheff, 2013). A workable sample of case studies relating to poly-families and their relations with the law, however, does exist and will be utilized to discuss polyamorous families as a serious issue of human rights.

Elizabeth Emens (2004) presents and analyzes several cases and general interactions with the state to discuss the relationship between polyamory and the legal institutions of the United States, for instance. One case from Tennessee in 1999 involved the state going so far as removing a child from a triad, or a polyamorous relationship structure involving three consenting adults. In this particular triad, the biological mother of the child in question, April, became pregnant and soon a single mother as the biological father skipped town. She then married her husband, Shane, and fell in love with his friend, Chris. The three decided to move in together and share the rearing of April's daughter, Alana (Emens, 2004). In a somewhat progressive stance, MTV had aired a program about polyamory in 1998 that featured this particular family. The triad made an appearance on the special program, discussing their relationship and their strategies to maneuver around hegemonic monogamy in their everyday lives. Alana's paternal grandmother saw the program, and immediately took legal action against April, filing for the removal of the child based on the subjective immorality of April's lifestyle. Neglecting to follow state regulations on findings and procedures, the judge removed Alana from April and the triad's custody. Herbert Lane, the judge presiding over the trial, even refused to hear four court-appointed expert reports on why the child should be returned to the mother's care. Lane ruled that the child be placed with the Department of Children's Services with extended visits to the paternal grandmother's home until April "resolve[d] her situation" (Emens, 2004). This clearly shows the cultural fear of non-dyadic relationships, especially concerning the presence of children.

Polyamorous families do not fall in line with normative ideas of the family, meaning that instead of two parents raising a child or children, the task falls upon three or more adults, regardless of their biological relation to the child. The fact that this familial structure does not represent the monogamous norm frightens many people, academic and laymen alike (Kurtz, 2003; Corvino, 2005). Research shows, however, that polyamorous methods of raising children are not detrimental to child development in the child rearing process, and may in fact be healthier than two-parent households in some cases (Goldfeder & Sheff, 2013; Shoener, 2014). Recent research on domestic violence between heterosexual, monogamous couples illustrates the danger and privilege of two-parent houses, and praises the prospect of non-traditional parenting methods. Yet clergy and those in charge of upholding the law (such as judges), often “show greater concern for the maintenance of a two-parent family than for the safety of the mother and her children” (Shoener, 2014). This “greater concern” often translates to victims of domestic violence feeling pressure to stay with their batterer, providing an unhealthy and unsafe environment for the children involved (Shoener, 2014). As the case study from Tennessee illustrates, these discriminatory policies also carry grave implications for polyamorous families, even when domestic violence does not represent the key issue.

A major and daunting goal for polyamorous activists will be to attempt to de-stigmatize the role of polyamorous parents. As noted above, little research has been performed on polyamorous families, and even fewer documents have been published on the effects of polyamorous parenting on children and youth. Research that is published, however, shows that (contrary to popular belief) polyamorous parenting does not harm the development of children; children actually enjoy many benefits from polyamorous childrearing techniques. These children enjoy the care and supervision provided by multiple adults, and the availability of more than two parents allows for the endless needs of children to be met without parents burning out and becoming frustrated and insensitive (Goldfeder & Sheff, 2013).

Beyond the aspect and issue of children in families and the access to rights and protections surrounding them, polyamorous families struggle with things that most monogamous couples (with the option of marriage) ignore. In one case study analyzed by Emens (2004), members of a quad relationship (with four members) developed strategies to work against state-backed discrimination. Two members of the quad, a man and a woman, disclosed in an interview that they decided to marry each other “to get health insurance basically” (Emens, 2004). This shows that the two members recognize the ways in which state intervention on romantic unions between two people privileges the couple in ways beyond custodial battles. Although the two are not committed solely to each other, they legally formed this bond to enjoy basic human rights, such as the right to health. Clearly this strategy of working within the broken, dyadic framework satisfies some privileges for the man and woman discussed, but at the cost of potentially spiritually separating them from their four-partner relationship.

Next Steps

The information presented in this article hopefully will add to the existing research of other authors to clear some common misconceptions of polyamory and poly-families. More importantly, this information should be utilized as a framework to understand why the issue of polyamory is a family rights issue unprotected by the dyadic language of the Rights of the Family, and by the cultural norms codified into law. The dominant message of this paper is that the language in human rights documents, specifically those that deal with the rights of the family, must be expanded beyond dyadic language to be more inclusive of all families. A document that alleges to acknowledge that it is not “prescriptive as to the types of families and marriages that are acceptable, recognizing tacitly that there are many different forms of social arrangements around the world” cannot, in the same document, make references to couples exclusively as a familial structure (Human Rights Education Associates, n.d.). An

improvement to the situation of polyamorous families who suffer from a lack of human rights protection because of their lifestyle must be applied, then, to the document that attempts to protect these rights. Expanding on human rights documentation, the United States must evolve from its culture of compulsory monogamy, or at least from codifying this idea into law. Rather than protecting families, the United States government and companies operating under this government offer “significant, non-trivial benefits (such as hospital visitation rights or health insurance) merely to married persons” (Parsons, 2008). This practice of servicing to married folks implicitly acts in discriminatory ways to privilege those who can marry – broadly speaking, heterosexual couples – and to deny privileges that make marriage attractive to those who do not have legal access to the institution – most non-heterosexual couples and polyamorous partners and families. In accordance with the Universal Declaration of Human Rights, the United States should reframe its policies to align with human rights standards.

From a more long-term perspective, I believe that eventually the United States and other countries need to move away from state backing of marriage itself because the institution drastically discriminates and forces people to allow for the presence of the state in their romantic union (Card, 1996; Parsons, 2008). Marriage in its current state, specifically in relation to the privileges that accompany vowing eternal love to each other in the presence of a judge or other legally recognized official, encourages people to remain married to each other even if they fall out of love or the relationships turns into a dangerous environment, simply because of the benefits reaped while legally joined in matrimony (Card, 1996; Parsons, 2008; Shoener, 2014). Although this may be seen as a radical view, a critical examination of this social institution may drastically improve the state of family rights in terms of protection, recognition, and freedom from discrimination.

The language of family rights must to be expanded to include *all* families, not simply families with monogamous roots. To do this, we must educate the public on what polyamory actually entails; the

concept is full of misconceptions by public interpretations. Next, we must work to remove the stigma surrounding these families that stems from, but is not rooted in, the misconceptions noted earlier in this paper. A critical look at monogamous privilege and the ways in which the state discriminatorily grants privileges to those who demonstrate it is necessary for these types of conversations. Beyond recognizing the ways in which institutions like marriage and governmental units privilege monogamy, and certain types of monogamy at that, we must reflect upon the very concept of marriage itself. Upon realizing the inner workings of its discriminatory practices and the ways in which it actually has evolved into an endpoint forced upon romantic unions by the state, we must question whether marriage is something we should strive for as a means of obtaining parity, or as a means of solidifying love in general.

The framework presented by feminist theorist Audre Lorde will help to create a potential shift in discourse on marriage, or at least a welcomed critical discussion. She writes, in one of her many essays, that “the master’s tools will never dismantle the master’s house” to discuss the idea of genuine change (Lorde, 2007). By this famous statement, she means that patriarchal systems and notions – the master’s tools – will never alleviate the oppressive patriarchal system – the master’s house. This statement can apply to the topic at hand, working for change in regards to polyamorous family rights. Although one may be deterred by low-hanging, more easily attainable goals, such as state-sanctioned legalized matrimony which reproduces ideas of compulsory monogamy, this will only “allow us to temporarily beat [the master] at his own game, but... will never allow us to bring about genuine change” (Lorde, 2007). Working within the same oppressive discourse that restricts both marriage and human rights will, unfortunately, never bring about genuine change. To combat this, we must not be afraid of taking the initiative and working tirelessly to reframe the discourse in solidarity and in the fight for human rights.

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