

Can U.S. law handle polygamy?

June 21 2011, By Jessica Martin

HBO's *Big Love* and TLC's reality-TV offering *Sister Wives* have thrust polygamy into popular culture in the United States. Estimates are that somewhere between 50,000-100,000 families in this country are currently risking criminal prosecution by practicing plural marriage.

Proponents and detractors of polygamy use [same-sex marriage](#) to support their arguments, but that's just a distraction, says Adrienne Davis, JD, an expert on gender relations and the William M. Van Cleve Professor of law at Washington University in St. Louis.

“While the gay analogy may make for splashy punditry and good television, it distracts us from the main legal issue — polygamy challenges the regulations inherent in the conventional two-person marriage,” Davis says. “Putting aside whether you think polygamy is ‘right’ or ‘wrong,’ it is important to look at whether U.S. law is up to regulating marital multiplicity.”

In her recent article, “Regulating Polygamy: Intimacy, Default Rules, and Bargaining for Equality,” published in the *Columbia Law Review*, Davis approaches polygamy as a problem of bargaining, cooperation and strategic behavior.

She proposes some default rules that might accommodate polygamy, while ensuring against some of its historic and ongoing abuses.

“Polygamy creates vulnerabilities and opportunities for exploitative behavior, some of which we have seen played out in distressing fashion

in recent high-profile conflicts, from Elizabeth Smart to Warren Jeffs and the raids on his Yearning for Zion compound,” Davis says.

She says that conventional family law, which limits its focus to “couples,” may not be up to the task of regulating polygamy, but a legal platform such as business law may address polygamy’s central conundrum: ensuring fairness and establishing baseline behavior in a relationship characterized by multiple partners, ongoing entrances and exits, and life-defining economic and personal stakes.

“Commercial partnership law has addressed these concerns through a robust set of off-the-rack rules,” Davis says. “There are already conceptual models for what might be thought of as plural marital associations. These include how new parties are admitted, how the association governs itself, and how people can leave.”

What about the kids?

Davis says that with regard to how marital multiplicity affects economic and emotional child support, it is unclear that polygamy generates more problems for children than the standard alternatives.

In 2008, the Centers for Disease Control and Prevention reported that over 39 percent of children were born to unmarried women.

“While some of these mothers will subsequently marry, others, particularly poor women, will not,” Davis says. “Instead, the fathers of their children will subsequently father children with other women, leading to multiple non-marital families, or de facto polygamy.”

In addition, a substantial percentage of married couples divorce and remarry, starting new families.

“These successive divorces and remarriages have led to what some have called serial polygamy, or polygamy on the installment plan,” Davis says.

She notes that competition among families for emotional and economic resources is not unique to what we might think of traditional polygamy.

“With regard to children, family [law](#) already accommodates intimate multiplicity, or what might be thought of as ‘de facto’ and serial polygamy,” Davis says.

“Is it better to channel legal energy into continuing to root out, repress, and punish polygamy, or into admitting it into the [marriage](#) pantheon? The answer may hinge on whether [polygamy](#) could be effectively regulated.”

Provided by Washington University in St. Louis

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