

Why Not Polygamy?

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Is the legalization of polygamy inevitable in America? From 1965 to 2005, American courts struck down the traditional sex crimes of contraception, adultery, fornication, abortion, and sodomy as violations of modern constitutional norms of liberty, autonomy, and privacy. Traditional criminal laws against polygamy seem vulnerable to this same constitutional logic. If you add the religious freedom claims of Muslims, Fundamentalist Mormons and others, the case for polygamy seems especially ripe -- whether we like it or not.

Many liberals praise the nation's rise to enlightened sexual liberty. The anti-polygamists of today, they argue, are like the patriarchs, anti-abortionists, and homophobes of the past, clutching their traditional Christian morals at the cost of true liberty for all.

Many conservatives lament the nation's slide down the slippery slope of sexual libertinism. "State laws against bigamy, same-sex marriage, adult incest, prostitution, ... bestiality, and obscenity are all now called into question," Justice Scalia wrote dissenting in the *Lawrence v. Texas* case that protected sodomy.

Sorting out the case for and against polygamy is complicated. But it's not just a dialectic of modern liberty versus traditional morality. I argue that polygamy is dangerous because it harms women, children, and men alike, and will allow some religious communities to become a law unto themselves.

That's what Western history tells us. The West's prohibition of polygamy -- unlike many other traditional sex crimes -- are both pre-Christian and post-Christian. "Pagan" Roman emperors first made polygamy an "infamous" crime in 258, more than a century before they established Christianity. Enlightenment liberals disestablished Christianity, but still regarded polygamy as a betrayal of nature, utility, and fairness. Polygamy was a capital crime till the nineteenth century, and it remains a crime throughout the West today.

Western writers have long argued, and modern studies now document, that polygamy is unjust to women and children -- a violation of their fundamental rights and dignity, we now say. Young women are harmed because they are often coerced into early marriages with older men. Once pushed aside for a rival co-wife, women are reduced to rival slaves within the household. They are then exploited periodically for sex and procreation by emotionally detached husbands. They are forced to make do for themselves and their children with dwindling resources as still other women and children are added to the household against their wishes. If they protest their plight, if they resort to self-help, if they lose their youthful figure and vigor, they are often cast out of their homes -- impoverished, undereducated, and often incapable of survival without serious help from others.

Children are harmed because they are often set in perennial rivalry with other children and mothers for the affection and attention of the family patriarch. They are deprived of healthy models of authority and liberty, equality and charity, marital love and fidelity, which are essential to their development as future spouses, citizens, and community leaders. And they are harmed by too few resources to support their nurture, education, care, and preparation for a full and healthy life as an adult.

Men, too, are harmed by polygamy. Polygamy promotes marriage by the richest not necessarily the fittest men in body, mind, or virtue. In isolated communities, polygamy often leads to ostracism of rival younger men. Polygamy inflames a man's lust, for once he adds a second wife, he will inevitably desire more, even the wife of another. And polygamy deprives men of that essential organic bond of exclusive marital companionship, which ancients and moderns alike say is critical to most men's physical, psychological, moral, and even spiritual health.

The Western legal tradition has thus long called polygamy a "*malum in se*" offense ("bad in itself"). That category of offenses now also includes slavery, indentured servitude, obscenity, bestiality, incest, sex with children, self-mutilation, organ-selling, and more. These are activities that are just wrong -- or too often foster wrongdoing. That someone wants to engage in these activities voluntarily for reasons of religion, bravery, custom, liberty, or autonomy makes no difference. That other cultures past and present allow such activities also makes no difference.

While some religious communities and their members might well thrive with the freedom to practice polygamy, it is inevitable that closed, repressive, and isolated regimes will also emerge. And this, in turn, will lead to under-aged girls being duped into sex and marriages with older men, and to women and children trapped in sectarian communities with no access to protection from the state and with no real legal recourse against a church, temple, or mosque that is just following its own rules.

We prize liberty and equality in America too highly to court such a risk.

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