

Polyamory in Black: A Companion Justification for Minimal Marriage

(prepared for the Lecture Series in Social Rights and Relationship Goods)

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Abstract

Recently, American marriage has been scrutinized by philosophers and political theorists. For example, Elizabeth Brake has argued that marriage should be reformed because it unduly discriminates against friendships and other forms of caring non-monogamous relationships. Alternatively, Tamara Metz has argued that marriage should be abolished because it violates the principle of liberal neutrality. On Metz's view, marriage rests on comprehensive moral doctrines that posit marital relationships as having a distinctive moral standing. While each of these rationales do just fine in problematizing American marriage, in this talk I offer and defend an additional and equally compelling rationale for minimal marriage. I argue that the dyadic condition on American marriage functions to uphold anti-Black racism in a post-civil rights era America.

Introduction

In liberal societies, it is reasonable to expect that people will have different views on what makes life worthwhile. Without compelling reasons not to do so, people should be able to think and act how they please as they pursue their conception of a flourishing life. Rawls' lasting contributions to liberal theory include his notions of "public reason" and "liberal neutrality", respectively. In *Political Liberalism*, Rawls argues that basic institutions and public policy must be neutral in the sense that they can be endorsed by citizens generally as within the scope of a public political conception and that the state is not to do anything intended to favor or promote any particular comprehensive doctrine rather than another or give greater assistance to those who pursue it.¹

Among the principle legal functions of marriage in today's United States is the adjudication of third-party benefits.² Marriage also, whether advertently or inadvertently, confers validity and legitimacy over certain intimate relationships and not others. As it currently stands, marriage functions only to protect and privilege those relationships that are presumed to be monogamous—i.e., relationships of two and only two relata.

In the past several decades, scholars of marriage have questioned the legitimacy of American marriage. Specifically, they have questioned whether or not it violates liberal neutrality. Political theorist Tamara Metz has argued that marriage violates liberal neutrality because it is a comprehensive social institution that wrongly confers ethical status to marital relationships. She concludes, therefore, that the liberal state should no longer recognize marriage as a legal category.³ Others like Simon Cãbuela May have argued that liberal societies can support a marriage institution without violating liberal neutrality because it provides instrumental reasons surrounding the

¹ (Rawls 1993, 192-193)

² (Case 2004)

³ (Metz 2010)

“presumptive permanence” of relationships.⁴ Still, others like Elizabeth Brake have argued that marriage unjustly discriminates against caring intimate relationships such as friendships and polyamorous relationships in America, and that it must be reformed based on this consideration.⁵

Brake’s allusion to the discrimination faced by polyamorous folks in the U.S. is timely. Since 2006, scholars have begun to explore and analyze the systemic privileges, benefits, advantages and disadvantages of polyamory.⁶ In 2010, Deborah Anapol estimated that roughly one out of every 500 adults in the United States are polyamorous.⁷ More recent studies have pointed out that, as of 2019, roughly 60% of Americans have heard of the term ‘polyamory’ via mass media and between 4-5% of the U.S. population are currently involved in relationships that are consensually non-monogamous; 2.4% of this population was African American. Suffice it to say that polyamory is on the rise in America and among African Americans.

In past decade, diverse scholars including Kim TallBear and Justin Clardy, have resisted the tendency to cast individual-based challenges to American marriage and monogamy, and instead have issued challenges to monogamy that closely examine systemic privileges and benefits, particularly around issues such as nationality, race, class, gender, and sexuality. These scholars advance that erasing important histories and intersections enable and facilitate casual use of racist and colonialist tropes throughout polyamorous theorizing.

Tending to the history of marriage in the United States reveals deleterious impacts on Black subjects in America since they first graced the shores of Jamestown, Virginia. For example, Black slaves were forced to “marry” in bondage.⁸ Shortly after the abolition of slavery, in America’s Reconstruction period, former slaves were forced to marry as a means of naturalizing Black citizens and relieving the state of dependents that, without marriage, it would be responsible for. Anti-miscegenation laws prohibiting Blacks from marrying whites were struck down only in 1967 in *Loving v. Virginia*. Black same-sex lovers were allowed to legally marry in 2015, and Black polyamorists still cannot marry as such.

In this paper, I offer a companion justification for minimal marriage by arguing that the numerical constraint making marriage between two and only two people—i.e., that legal marriage protects only those relationships that are presumed to be monogamous—unduly squanders and complicates Black polyamorists’ pursuit of a flourishing life. Thus, I also argue that this numerical constraint upholds anti-Black racism in a post-civil rights era America.

Liberal Neutrality and Public Reason

One way to think about the concepts of public reason and liberal neutrality is to contrast Rawlsian liberalism with moral legalism and liberal perfectionism. In the view of liberal perfectionism, a society’s laws should be framed in a way that respond to judgements about which human goods are

⁴ (May 2016)

⁵ (Brake 2012)

⁶ (Noël 2006), (Rambukkana 2015)

⁷ (Anapol 2010)

⁸ Historians such as Terra Hunter and Dianne Stewart note that these marriages under slavery were often forced and used as a means for increasing a plantation’s slave holdings through forced breeding. The quotation marks are employed here to designate that these marriages did not have legal status, and therefore, no legal protection. Thus, many of these “marriages” were subsequently dissolved by the domestic slave trade.

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worthwhile for its members to have. In other words, there is nothing, morally or politically speaking, that should prohibit liberal states from promoting the good, even if the good is subject to disagreement. In the view of legal moralism, insofar as the state functions to preserve society, the state should legally protect that society's moral norms. This is the most effective way, according to legal moralists, to prevent a society from disintegration. For Rawls, the laws and policies in a liberal society should not be drawn from religious doctrines, or comprehensive moral views. The trouble with legal moralism and liberal perfectionism are that, in one way or another, they endorse norms that are so drawn.

Liberal societies are characterized by a plurality of practices—people have different views on what makes life worthwhile. On the Rawlsian picture, liberalism seeks to resolve competing moral, religious and cultural commitments by accommodating them all. In deciding public matters, citizens must give reasons that they could reasonably expect others with different conceptions of flourishing (perhaps drawn from commitments to different moral or religious doctrines) to accept. That is public reason. Rawls writes that “The idea of public reasons specifies at the deepest level the basic moral and political views that are to determine a constitutional democratic government's relation to its citizens and their relation to one another.”⁹ Public reasons are the reasons that we can reasonably expect members of even a diverse and pluralistic society to accept—they do not depend on moral or religious doctrines. They are narrowly defined and primarily concern the political.

Whereas public reason introduces one constraint on how public policies and institutions are to be framed, liberal neutrality introduces another. Similar to public reasons, liberal neutrality also prohibits conceptions of the good that are drawn from comprehensive moral or religious doctrines. In *Political Liberalism*, Rawls writes that “basic institutions and public policy... are neutral in the sense that they can be endorsed by citizens generally as within the scope of a public conception” and that “the state is not to do anything intended to favor or promote any particular comprehensive doctrine.”¹⁰ In liberal societies, in other words, there must not only be a separation of church and state but also a separation between the state and comprehensive moral doctrines as well. Liberal neutrality requires the state to remain neutral between the various conceptions of flourishing that its citizens have. It cannot hold or appeal to any particular view to justify its laws, policies, or institutions.

Liberal writers have crafted examples that help show these concepts a bit more clearly. Consider cases of religious establishment where the state confers a special advantage on a particular religion that it does not confer on others. This conferral would mark a departure from neutrality. The thought is that the exclusion of other religious establishments could only be justified by an appeal to some conception of flourishing that marks one particular religion as especially valuable. The state would fail to remain neutral between differing conceptions of flourishing.

These notions—i.e., public reason and liberal neutrality—are at the heart of liberalism. They also contour the terrain around marriage discourse in political philosophy. In their arguments for upholding, disestablishing, or reforming American marriage, critics have relied on these notions in vital ways to make their case. If marriage is to remain a part of the liberal state then it must satisfy these conditions. It is to those arguments that I now turn.

⁹ (Rawls 1997)

¹⁰ (Rawls 1993, 192-193)

Problematizing American Marriage

In a paper titled, “Is Marriage Incompatible with Political Liberalism?”, Alison Toop offers a helpful way of thinking about how liberal theorists have opposed marriage in recent years. In an attempt to defend marriage in its present form, Toop organizes liberal objections to marriage into two claims:

Strong Incompatibility Claim: a political institution of marriage is in principle incompatible with political liberalism.

and

Weak Incompatibility Claim: the *current* political institution of marriage is incompatible with political liberalism.¹¹

Recent arguments making the strong incompatibility claim come from Claire Chambers and Tamara Metz, respectively.¹² For each of them, the institution of marriage violates political liberalism in principle though their rationales have subtle differences. For Metz, marriage ought to be resisted on grounds that it is a comprehensive social institution. As such, marriage makes a value judgment that liberal societies should not make—particularly, that an amorous, dyadic, monogamous, marital relationship makes for lives that are better off than ones without it. Preserving the legal category of “married” thus confers an ethical status to marital relationships and the liberal state, she argues, should not be doing this. Therefore, legal marriage should be abolished.

On this view, marriage can be likened to practices that reflect commitments that are culturally comprehensive such as “sweet sixteens” or “Quinceañeras”. These respective practices are cultural celebrations that ceremoniously mark a “coming of age” for teenagers in their respective cultural traditions. If the state were to confer special privileges and advantages on these practices it would reflect particular political commitments and thus depart from the position of neutrality. Therefore, liberal societies have reasons to resist such conferral.

Marriage is engaged in this problematic conferral process, Claire Chambers argues, because it includes the acquisition of a specific legal status (i.e., “married”) and a bundle of legal rights and privileges contained therein.¹³ Parties to a legal marriage in America acquire tax and inheritance rights, rights to financial support, more affordable access to healthcare, hospital and prison visitation rights, entitlements to immigration eligibility, and next-of-kinship rights, just to name a few. For Chambers, bundling holistic statuses, such as “married”, “involves the state in making value judgements about better and worse ways of life in marking one type of relationship out as the most fundamental”; it falsely assumes that all the most important needs are met within the marital relationship.¹⁴ Therefore, the institution of marriage should be abolished.

These arguments turn on the fact that marriage violates neutrality (although Metz’ argument suggests that it also violates public reason) because it involves the state in ways that express positive

¹¹ (Toop 2019)

¹² (Metz 2010), (Chambers 2017), (Chambers 2013)

¹³ According to legal scholars, there are roughly 1,100 laws in the U.S. (many of which articulate rights) defined in terms of marriage.

¹⁴ (Chambers 2013, 135-136)

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value judgements on marital relationships that are unwarranted. Critics have questioned whether marriage's bundling involves the state in this way.¹⁵ It could be that marriage doesn't assume that our most important needs are met within the marital relationship; after all, the state makes rights and privileges related to, say, child rearing and property owning, attainable to its citizens through other avenues as well. Marriage, they claim, is just one route to attaining these rights and duties among others.¹⁶ Further, critics also point out that it might be more efficient for the state to provide rights and duties for these relationships because many people will have their needs fulfilled within marital relationships. As such, marriage's bundle of rights and duties can be seen as primarily responding to the trend of having one's needs fulfilled. The thought here is that the justification for bundling rights and privileges in terms of efficiency does not express or appeal to a particular conception of the good; it merely responds to a contingent sociological fact about the way that individuals order their lives.

Even if it is true that rights and privileges addressing some of our life's most important needs are provided outside of marriage, there are some that are not (e.g., immigration rights). The ones that are available outside of marriage can also be more cumbersome to access. The state's commitment to conferring bundles of rights through marriage can still be questioned on this basis—especially if, as it turns out, there is nothing particularly distinctive about the relationships that it protects (i.e. amorous, marital, dyads that are presumed to be monogamous). Why not leave all citizens to access these bundles outside of marriage? Why not extend the rights and privileges that are typically reserved for spouses in a marriage to all Americans? Or, at least, to all amorous or caring relationships? What about the amorous monogamous dyad is *special*, in other words?

What about the thought that marriage's bundle of rights and duties responds to the trend of having one's needs fulfilled within marital relationships? First, critics fail to tend to the growing numbers of people engaging with polyamory and other consensual non-monogamies.¹⁷ Even if a marital institution is compatible with liberalism, it is far from clear that it is compatible in its present form. If it is simply responding to the ways people's amorous relationships trend in the U.S., its dyadic condition should be revisited.

There is another deep question about whether efficiency is the right appeal for American marriage. Brake has argued that marriage generates normative pressures that shape people's choices regarding which amorous relationships they choose for themselves. If Brake is right, then marriage might be causing, rather than responding to, relationship trends. Furthermore, efficiency can produce negative effects with the potential for social disorder. For example, the rewards arising from marriage bundles get more and more unequal as efficiency improves, creating stark asymmetries in social and political capital, power, and material resources for those whose lives deviate from socially-sanctioned amorous relationships (i.e., relationships that are presumed to be monogamous) and are subject to marginalization and oppression. Polyamorous scholars in the past several decades have been cataloguing the social, political, and material disadvantages faced by polyamorists and the central role

¹⁵ (Toop 2019)

¹⁶ (Toop 2019)

¹⁷ Earlier in this paper I made mention of the fact that roughly 5% of Americans are involved in consensually non-monogamous relationships. There are limits to tracking people's engagement with consensual non-monogamies such as polyamories, however, as researchers haven't quite figured out how to count folks' involvement (e.g. what are the contours of "consent" in consensual non-monogamy?). Also, social stigma against non-monogamy in its many forms may mask higher numbers than what actually gets reported.

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of marriage in creating and sustaining that disadvantage.¹⁸ Thus, efficiency may be disallowed by liberal societies if it violates the *difference principle* which permits inequalities in the case that they are to the greatest benefit of the least advantaged and worse off.

I find rationales in favor of the strong incompatibility claim of deep intrigue. However, I do think that rationales can be offered that uphold marriage's compatibility with liberal neutrality. Simon Cãbuela May offers a compelling proposal where marriage protects relationships of what she calls "presumptive permanence."¹⁹ Marital relationships on this view are marked by a lifelong commitment at the outset and this is what is distinctive about them. This commitment amplifies both the risks, beneficial and detrimental, and consequences marital relationships have as a type of caring relationship.²⁰ I'm convinced that the presumptive permanence of marital relationships provides a neutral basis for identifying marriage as a distinctive type of caring relationship and compatible with state recognition through institutional means. The presumptive permanence of a relationship, it would appear, resists the endorsement of a particular philosophical conception of flourishing and proceeds from reasons that we can reasonably expect members of even a diverse and pluralistic society to accept because it does not depend on moral or religious doctrines.

This brings us to the weak incompatibility claim—namely, the *current* political institution of marriage is incompatible with political liberalism. A compelling rationale for this is drawn from Elizabeth Brake's work on amatonormative discrimination. Amatonormativity involves the false assumption that monogamous, romantic (and usually heterosexual) relationships that lead to marriage are the ideal form of intimate relationship and a universal goal for all people.²¹ Brake stresses the extent that other forms of caring relationship are indeed valuable and can function in the way that are thought typical of the romantic relationships that marriage protects. For example, the caring that takes place between friends bears strong resemblances to the caring that takes place between romantic lovers. From this, she argues that treating amatonormative relationships as special sites of value generates a particularly pernicious kind of unjustified discrimination.

The harm of amatonormative discrimination is borne by polyamorists—and more specifically, Black polyamorists—in inimitable ways. In the next section, I go into more detail about how the monogamous restriction of marriage upholds anti-Black racism in American society. For now, though, suffice it to say that polyamorous relationships—or intimate caring relationships, not excluding love and sex, with more than one person at a time with the knowledge and consent of all parties involved—lack the same kinds of social and political recognition that monogamous relationships have.²² The current bundles that marriage offers can only be acquired by those relationships that are presumed to be monogamous and this comes at a cost to polyamorous folks. On a political level, these costs range from discriminatory housing policies to legally imposed penalties for adultery. In America, "cheating" in a marriage is punishable by fine or jail time in 21 states.²³ Non-married folks, including polyamorists, also have their economic opportunities squandered as they are routinely paid less than their married counterparts and marital status mediates their Social Security entitlements in America.

¹⁸ (Rambukkana 2015), (Sheff 2013) (Klesse 2016)

¹⁹ (May 2016)

²⁰ Ibid.

²¹ (Brake 2012, p. 88)

²² (Clardy 2018)

²³ Lee, Joli, "In Which States is Cheating on your Spouse illegal?", Detroit Free Press, [link], accessed September 15th 2022.

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The harms are also psychological and social. Writing about her own experiences, feminist philosopher Carrie Jenkins writes, “it is impossible to avoid the psychological impact of amatonormativity—the idea that if you’re not in romantic love, or at least looking for it, then you’re doing life wrong. While I don’t agree with that on an intellectual level, the internalized attitude is hard to dislodge.”²⁴ Jenkins (who is also polyamorous) and others, have also highlighted the fact that folks whose lives deviate from the norm of monogamy are persistently policed, punished, and shamed via social mechanisms like “slut shaming.”²⁵ In a parallel discussion to the one we find in Patricia Hill Collins’ *Black Feminist Thought* on “controlling images” (e.g., “hoochie”, “side-chick”, “jezebel”, etc.), Jenkins adds that women who deviate from monogamous norms have denigrating labels such as “slut” and “whore” imposed on them by members of the society whose lives do not deviate from it.²⁶ Other polyamorous scholars have pointed out how these stigmas have particularly denigrating effects for Black polyamorous men and women.²⁷

In view of the weak incompatibility claim, Brake’s argument presupposes that these harms associated with marriage are contingent and that there can be a non-discriminatory version of marriage that she calls “minimal marriage.”²⁸ Minimal marriage provides a framework for marriage that avoids amatonormativity and offers support for caring relationships including polyamorous relationships because it allows individuals to select from a reduced set of rights currently exchanged in marriage and assign them to whomever they want to support their caring relationship.²⁹ In other words, minimal marriage would only include rights (e.g. status designation for third-parties, care-taking leave, immigration rights, burial rights, bereavement leave, etc.) that recognize and support caring relationships with polyamorous relationships among them.

Minimal marriage, in my view, is what the liberal state requires of marriage and its polyamorous compatibility proves to be a fine alternative to marriage’s present form in American society. Most relevant for our concerns is that:

Unlike current marriage, minimal marriage does not require that individuals exchange marital rights reciprocally and in complete bundles: It allows their disaggregation to support the numerous relationships, or care networks, that people may have. Minimal marriage would allow a person to exchange all her marital rights reciprocally with one other person or distribute them through her adult care network. It thus supports the variety of relationships excluded by amatonormative marriage law: friendships, urban tribes, overlapping networks, and polyamory.³⁰

In its rejection of amatonormative marriage law, minimal marriage straightforwardly rejects constraints on marriage that are monogamous, dyadic and otherwise mononormative.³¹ Brake’s criticism of marriage’s monogamous criteria, however, is aimed at how amatonormative discrimination impacts all of a society’s members who deviate from the monogamous standard. On her view, this discrimination is problematic because it is founded on false assumptions about

²⁴ (Jenkins 2017, 103)

²⁵ (Jenkins 2017), (Clardy 2018)

²⁶ (Collins 2002)

²⁷ (Clardy 2018), (Clardy 2021)

²⁸ (Brake 2010), (Brake 2012)

²⁹ (Brake 2012, 7)

³⁰ (Brake 2012, 161)

³¹ Mononormativity is the dominant discourse of monogamy which is reproduced and perpetuated in everyday conversation and saturates mainstream media depictions. The term was coined by Ana Ritchie and Meg Barker.

valuable relationships, and as such, violates liberal neutrality and does not offer public reasons. Fine enough as this is, it does not detail whether or how this standard is involved in a history of anti-Black racism in America. In the next section, I illuminate this history in an attempt to offer a companion justification for minimal marriage. Barring Black polyamorists from a right to declare presumptive permanence through marriage rests on rationales that, from the vantage point of Black polyamorous Americans, are not racially neutral. Thus, the preservation of marriage in its present state perpetuates a racist social history. More to come on this in the next section.

Polyamory in Black: A Companion Justification for Minimal Marriage

a. A truncated History of Race and Non-monogamy

There is a tendency among contemporary scholars that study Black love and relationships, to focus on marriage and marriage-like relationships.³² This is not a new phenomenon. At the turn of the 20th century, W.E.B. DuBois, E. Franklin Frazier, and Daniel Monihan believed that legal monogamous Christian marriage was central to racial uplift for Black folks. Around the same time, Anna Julia Cooper's work was actively questioning prevailing logics that required self-abnegation of women in the pursuit of the Western marital ideal.³³ Contemporary scholars are troubled by the fact that marriage rates among Black folks have been cut in half from 61% in 1960 to 30% in 2019.

Philosophy has not contributed much at all to understanding how racialized folks, and specifically, African Americans experience erotic love. The void prompted Anika Simpson to explore whether Black love was “dead”.³⁴ Black love is not dead, but the inordinate focus on monogamy, marriage, and marriage-like relationships—or what Ana Ritchie and Meg Barker call “mononormativity”—is enough to make it appear so because it renders non-monogamous Black relationships, such as Black polyamories, invisible. Recently, Simpson and Paul Taylor have developed a concept they call *marital shade* to describe the regulatory shadow cast over Black relationships by the institution of American marriage.³⁵ If marital shade is cast over all intimate Black relationships, the darkness is deepest where Black polyamorists stand.

Despite their growing numbers and speckling of representations in mainstream media, not a lot is known about polyamory in Black. By “polyamory in Black”, I mean the belief in or practice of having multiple intimate caring relationships (not excluding relationships of erotic love and sex) at the same time, with the knowledge and consent of all parties involved among Black folks. One distinctive feature of polyamory that marks its departure from its more socially accepted counterpart, monogamy, is that polyamorous relationship structures often include more than two people, all of whom consent to these structures.

While the language of polyamory came on the scene in the 1990s, the theory and practice of intentional non-monogamy in the U.S. has developed since the late 1800s. Writers have remarked on how anti-polygamy sentiments were tied to such controversies as slavery, women's rights, citizenship, democracy and the separation between church and state throughout American history.³⁶

³² (Stewart 2020), (Hunter 2017), (Banks 2012)

³³ (May 2017, 42)

³⁴ (Simpson 2013)

³⁵ (Simpson and Taylor 2021)

³⁶ (Den Otter 2015, 33), (Ertman 2010), (Goring 2005), (Lenhardt 2014)

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Our present focus, however, requires that we pay keen attention to those non-monogamies that are marked Black. If it can be shown that the monogamous condition on marriage is involved in anti-Black racism, then a companion justification for disestablishing the current situation of marriage emerges—namely, it perpetuates anti-Black racism.

The discourse surrounding Blacks and non-monogamies in the 19th and 20th century situates them as antithetical to both whiteness and American society. In “Race Treason: The Untold Story of America’s Ban on Polygamy”, Martha Ertman discusses how the U.S. Supreme Court justified criminalizing plural marriages through racist tropes.³⁷ In the first landmark case upholding statutes banning plural marriages, *Reynolds v. United States*, the supreme court reasoned that plural marriages were “odious among the northern and western nations of Europe,” “almost exclusively a feature of the life of Asiatic and of African people.”³⁸ According to Ertman, on this view “polygamy was natural for people of color, but unnatural for White Americans of Northern European descent. When Whites engaged in this unnatural practice, antipolygamists contented, they produced a ‘peculiar race.’”³⁹

For context, when *Reynolds* was being decided, the U.S. was still comprised partly of independent states. The largely Mormon state of Utah was being viewed as committing two separate acts of treason: (1) Operating a theocratic government state and (2) Betraying the white race by engaging the racialized practices of polygamy. Throughout the period, polygamist Mormons (a predominately white church) were routinely portrayed as barbaric, Black, and/or Asian to convey messages of chaos, foreignness, and despotism.

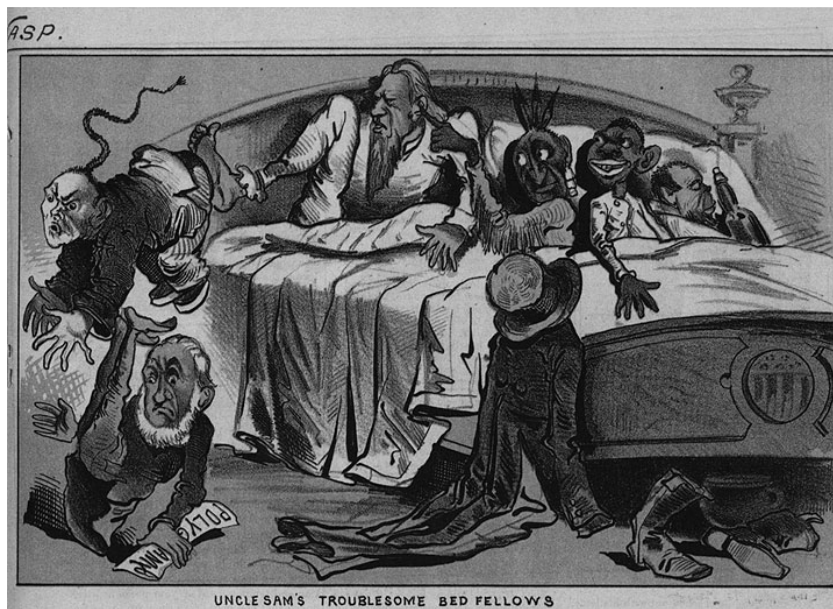


Fig. 1 (*Uncle Sam's Troublesome Bedfellows*, The WASP, Feb. 8 1879)

³⁷ (Ertman 2010)

³⁸ (Ibid)

³⁹ (Ibid, 289)



Fig. 2 (*The Elders' Happy Home*, CHIC, Apr. 19th, 1881)

This point is illustrated by two images “Uncle Sam’s Troublesome Bedfellows” (Fig. 1) and “The Elder’s Happy Home” (Fig. 2). In the first image published just weeks after the *Reynolds* opinion, America’s “Uncle Sam’s Troublesome Bedfellows”, Mormon, Chinese, Native American, and Blacks are characterized as “Troublesome Bedfellows” and the Mormon figure clutches a paper with “polygamy” written on it, linking resistance to plural marriage with fears of White racial contamination and denigration. In “The Elders’ Happy Home”, a polygamous Mormon family is depicted rambunctiously—numerous wives and children scream and fight while their patriarch does nothing. As if the scene was not chaotic enough, paying keen attention to the single Black child in the cradle (although none of the wives appear Black) completes the suggestion that polygamy “Blackens” the entire scene and creates a situation where White domestic ordering gets replaced by inexplicable miscegenation and chaos. The Black child’s presence points at the ways that visibility aligns with a kind of hypervisibility—as an oppressed racial subject, the child’s humanity gets obscured and ignored while the child’s presence is simultaneously difficult to ignore to the racially perceiving subject. Mormon passage into whiteness must first pass-through monogamy.

On another front, as Kim TallBear notes, monogamy and the nuclear family have been central components to the project of settler colonialism.⁴⁰ Simpson and Taylor add that “The marital contract was one of the key instruments for re-ensnaring the formerly enslaved in emancipation’s wake.”⁴¹ As such, for Black folks and Native Americans, assimilation into the national body was also facilitated by monogamy⁴² and monogamous marriage. Aside from the being linked with racist anti-polygamous imagery, some Black folks were forced into non-monogamous relationship structures as a consequence of the domestic slave trade or for the purposes of increasing a plantation’s slaveholdings and some others chose to exist in non-monogamous relationships of their own choosing. Hence, a variety of Black non-monogamies existed in the immediate years following the Civil War. Consider the following passage from Dianne Stewart:

⁴⁰ (TallBear et. al 2018)

⁴¹ (Simpson and Taylor 2021, 57)

⁴² I keep this distinction here to emphasize the extent that marriage-like relationships are privileged socially as well.

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Unexpected love triangles and other prickly scenarios presented themselves in the immediate post war years for many. In some instances, Black women resolved such surprises by choosing to remain married to the same man, not necessarily as cowives but as co-mothers. After “months making her way” from Alabama to South Carolina to be reunited with her husband and some of her children lost to her through the domestic slave trade, Dorcas Cooper was satisfied to remain in a polygamous relationship when she recognized how well her husband’s new wife had taken care of her children...Cooper in fact, “liked” her husband’s second wife, Jenny, “and would not let anybody say anything against her.” The two women resided comfortably “in the same house with their spouse until cooper passed away.”⁴³

Thus, some marriages deviated from monogamous customs and included plural marriages and, as Terra Hunter notes, a variety of alternative courtships (e.g., “sweethearts”⁴⁴) and marital arrangements. Despite the role played by the institution of slavery for designing intricate polygamous unions among Black folks in America, historical record shows Freedman’s Bureau agents extending little regard for these relationships. Bureau agents believed that any arrangement that deviated from monogamy contaminated marriage while positioning Black women and children to become state dependents—a rationale reflected in Ronald Regan’s 1976 presidential campaign which cast Black women as “Welfare Queens”—as one agent recounted “Whenever a negro appears before me with 2 or 3 wives who have equal claim upon him,...I marry him to the woman who has the greatest number of helpless children who otherwise would become a charge on the bureau.”⁴⁵

Other legislative barriers and penalties were raised for Black non-monogamists as well. In Georgia, the “Act to prescribe and regulate the relation of Husband and Wives between persons of color” instructed Black folks with two or more spouses, to select *only one* to marry “immediately after the passage of this Act by the General Assembly...If such man, thus living with more than one woman, or such woman living with more than one man, shall fail or refuse to comply with the provisions of this section, he or she shall be prosecuted for the offense of fornication, or fornication or adultery, or, fornication and adultery, and punished accordingly.”⁴⁶ The blatant disregard of these Black polygamous unions, as Black historians explain, created vast material disparities, for example in their capacities to build wealth or sustain families.

In my view, it is reasonable to believe that the anti-polygamous and racist climates of the 19th century created a hotbed for attitudes and policies which are resistant to non-monogamies and are

⁴³ (Stewart 2020, 65-66)

⁴⁴ Remarkably, Blacks in bondage developed a range of relationships in response to the presence of what Tera Hunter calls “the third flesh” in their relationships. When they chose to enter into intimate relationships, they did so on a spectrum that ranged from openly acknowledging their vulnerability and defining them in more informal and short-lived terms. The gradations of intimacy they generated were therefore, quite complex and illegible to those evaluating them through conventional lenses of heterosexual marriages. Importantly, among these intimacies was what they called being “sweethearts”— “a short-term connection adopted by young people and those who were unable to claim any semblance of a stable life, often as a result of being sold or moved around often. They were essentially lovers and not necessarily monogamous. Hunter’s history of Black marriage in the 19th century reveals the fact that many slaves engaged in a succession of marriages and partnerships throughout their lives as death and distance intruded their needs for caring companionship. The noxious effects of enslavement included the existence of a number of bigamous relationships for enslaved persons existing amid relationships with unauthorized beginnings and inexact endings.

⁴⁵ (Stewart 2020, 64)

⁴⁶ (Stewart 2020, 68)

rooted in anti-Black racism. American histories catalogue how marriage has propped up privileges (e.g., citizenship and state support) for those presumed monogamous that depend on the subjugation of non-monogamies. History braids monogamy and monogamous relationships with whiteness and white supremacy. The racialization of anti-polygamist sentiment requires us to ask whether marriage's monogamous condition continues to support white supremacist values.

b. The present state of play

In my view, bans on plural marriages today are relics of a 19th century view that racialized, stigmatized, and subjugated intimate relationship styles that deviated from monogamy. Straightforwardly, despite the power that The United States Supreme Court has to expand its definition of marriage to include multiple persons without acting unconstitutionally, it has not tried a case on plural marriage since the 19th century. What of the unrecognized and dismissed descendants of Black plural marriages and family arrangements that slavery destroyed? What obligations, if any, does the state have to Black polyamorists?

It is remarkable that the growing tolerance of sexual minorities that led many Americans to reject the view that marriage has to be between a man and a woman, has not yet led to a majority view that people should be allowed to marry more than one person at a time. In *A Defense of Plural Marriage* Ronald Den Otter posits that in the minds of many Americans, “a numerical limitation differs significantly from one based on sexual orientation and is consequently much easier to defend...For some of them it is obvious that the constitutional right of marriage cannot be extended beyond couples.”⁴⁷ Despite what he calls a “checkered past” (including the subordination of Black monogamies and non-monogamies, prohibitions on interracial marriages, subordination of women, intimate partner violence, child abuse and neglect, or other sociopathic behaviors) with different or same-sex monogamy there are only a few contemporary scholars who maintain that we should reform traditional marriage or that it should be abolished altogether. When a legal system in a liberal society does not make room for plural marriage, it compromises the liberty of those who are denied the option of marrying the person(s) of their choice. Harm is thereby issued at the hand of the state—particularly, Black polyamorists and other non-monogamies may not be able to have as good a life as they could have had or achieve their most important ends.

In addition to the indictments against marriage mentioned earlier (i.e., that the present form of American marriage violates the principle of liberal neutrality and does not offer public reasons), in failing to recognize plural marriages, the institution also violates the principle of liberal equality or the difference principle. In upholding a monogamous condition that has been inherited from a legacy of white supremacy, the present form of marriage is integrally and persistently involved in race-based systems of oppression. Black polyamorists who desire to be treated as equals under civil marriage are denied an equal right to choose the kinds of intimate relationships that will make their life go best. In their prohibition, the state acts as an ethical authority that marginalizes their intimate relationships and, in doing so, diminishes their lives. In asking for the right to marry plurally, polyamorists are asking that the state treat the marital relationship that they want to form equally; they are also requesting that the state treat their liberty to be their own judge of who their partner(s) are going to be—perhaps for the rest of their lives (i.e., marital relationships are presumptively permanent).

⁴⁷ (Den Otter 2015, 34)

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One might object that the state does not prohibit the formation or existence of Black polyamorous relationships in its territories. It is not illegal to *be* or to *practice* polyamory in the United States, they might say. However, this objection misses the point. The point is that restricting legal recognition to monogamous intimate relationships forestalls the possibility for these relationships to be marital. Polyamorists could not become polygamists if they wanted to. Thus, this introduces undue burdens on Black polyamorists that are not borne by their white or monogamous counterparts.

For Black polyamorous relationships to exist and simultaneously be denied legal recognition by the institution of marriage, is to relegate these intimate caring relationships to a realm of public, social, cultural, and political invisibility—it creates patterned opportunities for misrecognition to occur, for example, when Black polyamorous men are stereotyped as “players”⁴⁸ and Black polyamorous women as “hoes”⁴⁹ or “side-chicks”⁵⁰. To be clear, my claim that marriage’s monogamous condition is involved in a racialization regime, is not to say that these denials are unique to race (e.g., white polyamorists also cannot marry as such), it is to say instead, following Simpson and Taylor, that racialization regimes tend to mobilize these denials in particular and distinctive ways, and indeed ways that have been studied exhaustively in critical race theory and antiracist cultural work.⁵¹

Simpson and Taylor explain that racialized invisibility takes on at least four forms: *denial of presence* (or the refusal to accept or register the fact that racialized others do in fact exist in the world), *denial of moral personhood* (or the simultaneous acceptance of the presence of a racialized other and denial of the racialized other’s agency to object to mistreatment), *denial of perspective* (or denial of the validity of the racialized other’s view on social arrangements that might differ from one’s own), the *denial of plurality* (or the assumption that race is somehow all encompassing). Each of these denials overlays the existence of Black polyamorists through marriage. Furthermore, the bundle of rights presently associated with American marriage create material asymmetries between monogamists and non-monogamists. Thus, the failures of recognition of Black polyamorists “give content and shape to white supremacy not simply as an ideology, set of discourses, or social, but also as a set of concrete political arrangements in political systems shaped by capitalism.”⁵² They place state power behind certain approaches to intimacy and family life and behind the determination not to accept alternative approaches. As a result, it creates and sustains material inequalities that do not work toward everyone’s advantage—they do not benefit those who are the worst off relative to the state. Contrarily, these inequalities benefit those already in positions of hegemonic power at the expense of those who are worse off.

In acknowledging only those relationships that can be presumed to be monogamous, marriage plays a role in choosing and enforcing its preferred models of human intimacy. In the period after the Civil War, the state reified the power behind the hegemonic marital regime and assigned clear marital stakes to choices about intimate relationships and family structure. Thus, monogamous American marriage implicates a variety of choices related to the ethics of citizenship as well—who counts as a productive citizen (and thereby is worthy of state support) and who gets framed as a part of the narrative of unproductive burdens borne by the state.

⁴⁸ (Clardy 2018)

⁴⁹ (Clardy 2021)

⁵⁰ (Simpkins and Tafari 2019)

⁵¹ (Simpson and Taylor 2021, 47)

⁵² (Ibid, 50)

While the rationales that object to American marriage which appeal to its violations of the principle of liberal neutrality or public reason are useful, the monogamous condition on American marriage's role in promoting a white supremacist racist regime provides a companion for minimal marriage—namely, violates the principle of equal liberty or the difference principle.

Some Objections

I will briefly consider two objections to my position that marriage's involvement upholding a racist regime generates a companion rationale for minimal marriage. This list is not exhaustive, however, for the sake of space I consider the two objections that have emerged most frequently in conversations and workshop spaces where this project has been being developed.

a. Why minimal marriage and not abolition?

One might object that insofar as marriage is involved in upholding a racist regime, the liberal society is better off without an institution of marriage altogether. Keeping the institution of marriage leaves a relic of its racist history behind, and we are therefore better off eliminating it. This logic resembles the logic employed by racial elitivists who advance that insofar as race is a social construct and a progenitor of particularly pernicious forms of inequality and race-based oppression, we are better off without it. Don't we owe it to non-monogamists and particularly Black polyamorists to eliminate the institution?

I maintain that the discrimination and oppression that Black polyamorists face is not merely historical but is ongoing. As the American society is both amatonormative and mononormative marriage and marriage-like relationships are highly valued symbols of status and social & political power. Plural marriage is still a crime in the United States in 2022. This means that the material inequalities Black polyamorists experience are present and persistent. I favor a view of minimal marriage that sees it as a part of a reparative scheme for righting the wrongs incurred by Black polyamorists. In other words, minimal marriage would, in part, work to rectify past state discrimination both symbolically and materially. Thus, I am inclined to understand minimal marriage as a project engaged in building a better social order—one where the costs of building a more equitable world should be distributed more to those who have inherited the moral and political liabilities of past (and ongoing) injustices.⁵³ I have serious worries that abolishing the institution of marriage in a moment's notice hangs Black polyamorists out to dry. Reforming American marriage to reflect minimal marriage issues a public apology and enlists marriage in a scheme of reparations due to Black folks, but Black polyamorists, specifically.

b. Black Polyamorists Don't Desire Legal Protections

One might point out that polyamorists are reluctant to seek legal changes. So, the question about extending marriage rights to polyamorists as such, turns on whether or not polyamorists even desire legal protections at all, let alone the ones that marriage provides. They might also point out that a language and agenda that centralize the importance of rights for polyamorists might compromise the potentiality for polyamory to occupy a more radical queer subject position and thereby, it is a less radical transformative politic.

⁵³ (Táiwò 2022)

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In some places, polyamorists have spoken up about the importance of securing political protections around employment harassment and discrimination. In 1996, a survey with more than 200 respondents showed 68% of polyamorists favored civil group marriage with 32% opposing it.⁵⁴ Furthermore, the recent shifts in local governments of Somerville and Cambridge Massachusetts, respectively, reflect an increase in an expressed desire for the protection of civil marriages for plural unions. In 2021, three polyamorous men in California fought (and won) to have their polyamorous relationship recognized by having all of their names included on their child's birth certificate. This shows that the political landscape among polyamorists is diverse and it reveals that polyamorists are not, at current, a monolith. That the class of polyamorists does not universally desire marriage protection poses no challenge to the push toward minimal marriage any more than the fact that not all monogamists desire to marry does. It instead meets the requirements of liberalism to extend equal opportunity for accessing the institution and its bundle of rights and privileges to those polyamorists who do desire the legal protections that marriage affords.

The objection might be modified to say that it's not, strictly speaking, prohibited for polyamorists to marry. The objector might point out that strictly speaking, some polyamorists are married dyadically while having other relationships outside of the marriage with the knowledge and consent of everyone involved. "Marriage", so the story goes in the minds of these folks, "can be anything you make/want it to be." This objection, however, misses how when this happens, acute asymmetries are created within polyamorous relationship(s) as a result. For example, parties to the marital dyad would have different rights and privileges than those who are not involved in the legal marriage. This circumstance might well breed a culture of exploitation on behalf of the marital dyad in the direction of those partners who are not protected by the marriage in the same way. This is an outcome that should be avoided.

Conclusion

This paper has argued that while objections to American marriage that are rooted liberal neutrality and public reason go some way in showing the need for marriage to be reformed, there are other objections to be found by considering the institution's involvement in a racist regime. In restricting the bundle of rights associated with marriage to those intimate relationships that are presumed to be monogamous, marriage picks out a particular kind of intimate relationship to preserve at the expense of other valuable relationship types—e.g., polyamorous relationships. It was shown how state and cultural resistance to non-monogamy in America was tied to racist tropes that frame non-monogamy among Black folks as threatening to both Whiteness and the liberal state. As such, the present state of American marriage violates the principle of liberal equality and the difference principle. In other words, the destruction of (and in other cases, the preclusion of the formation of) Black non-monogamies has created material differences in capital, power, and resources that the state owes it to Black non-monogamists to rectify. One way the state can meet this obligation is by reforming marriage to reflect the terms of minimal marriage as this is the most comprehensive set of rights and restrictions that the institution can preserve without compromising liberal values.

⁵⁴ (Emens 2004, see footnote 316)

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