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## *The Problem with Polygamy*

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### ABSTRACT

Polygamy is a hotly contested practice and open to widespread misunderstandings. This practice is defined as a relationship between either one husband and multiple wives or one wife and multiple husbands. Today, “polygamy” almost exclusively takes the form of one husband with multiple wives. In this article, my focus will center on limited defenses of polygamy offered recently by Chesire Calhoun and Martha Nussbaum. I will argue that these defenses are unconvincing. The problem with polygamy is primarily that it is a structurally inegalitarian practice in both theory and fact. Polygamy should be opposed for this reason.

### I

Polygamy is a hotly contested practice and open to widespread misunderstandings. This practice is defined as a relationship between either one husband and multiple wives or one wife and multiple husbands. Today, “polygamy” almost exclusively takes the form of polygyny: one husband with multiple wives.<sup>1</sup> Polygamy is neither exclusively Western nor non-Western: it has been practiced by some Hindus, Mormons, Muslims, and other cultural and religious groups.<sup>2</sup> Furthermore, the Christian Bible notes several polygamous marriages, beginning with Adam and

Eve's grandson, Lamech (who was also the father of Noah), and including several important biblical figures, such as Abraham, David, and Solomon.<sup>3</sup> Nevertheless, the number of polygamous marriages is "relatively minuscule" despite the cross-cultural presence of polygamy (Gher 2008, 561).

The standard of debate over the permissibility of polygamy has been characteristically poor. Thus, for example, some proponents of polygamy argue that it is acceptable, in part, on the grounds that many in Western societies also cohabit with multiple partners, such as married men forming relationships with mistresses.<sup>4</sup> Proponents argue that such persons form relationships that involve "emotional commitments" that are "not easily terminated," not unlike polygamy. Therefore, in essence, a married man and his mistress are engaged in a polygamous relationship, and this does not appear to generate much hostility in the West.<sup>5</sup>

However, it is disingenuous to claim that because a not insignificant number of married men pursue extramarital affairs that these affairs are then unproblematic. There are a number of reasons why this view does not stand up to scrutiny. For example, these affairs are often seen as acts of betrayal. A polygamous marriage may be one where wives recognize each other as wives, but a monogamous marriage may often be one where wives do not recognize mistresses as having equal status. This view is also found in law where mistresses are normally not recognized as having any rights to inheritance from a deceased married lover unless explicitly noted in a will. Furthermore, adultery may no longer be illegal in Western societies and perhaps even widely practised, but adulterous affairs are most often performed secretly and hidden from the public's gaze whereas polygamous marriages are publicly recognized. Thus, polygamy and extramarital affairs are not the same, even if both involve multiple partners. Finally, an additional problem is that this defense of polygamy reduces marriage to only a sexual relationship. On the contrary, the institution of marriage encompasses far more than sexual relations, but extends to a host of other functions, such as property rights, family alliances, and the raising of children. Not only is it a mistake to view polygamy and extramarital affairs as the same, but it is also a mistake to view marriage in terms of sexual relations alone.<sup>6</sup>

Opponents of polygamy offer similarly unconvincing arguments. One example is the 1878 case of *Reynolds v. United States* where the U.S. Supreme Court denied Mormons an exemption from laws criminalizing polygamy because of their religious conviction.<sup>7</sup> First, *Reynolds* claims that polygamy is practised exclusively by "Asiatic" and "African" people: polygamy is thus "odious" and foreign to Western civilization.<sup>8</sup> Mormons are then wrong to attempt to introduce a non-Western practice into American society. This claim fails as polygamy is far from alien in Western culture, not least its practice by major biblical figures.<sup>9</sup> Secondly, *Reynolds* argues that polygamy was "injurious to public morals."<sup>10</sup> The problem with this argument is that the Court does not specify any supporting evidence and, instead, falsely takes the damage to public morals to be obvious.

Thirdly, the Court argues in *Reynolds* that sanctioning polygamy would be akin to legalizing acts such as “human sacrifice” or even *sati*, where wives are burned alive on the funeral pyres of their dead husbands.<sup>11</sup> However, the victims of human sacrifice do not consent to their murder, whereas polygamous partners normally do consent to their marriage. Human sacrifice is then unlike polygamy. Likewise, *sati* has long been illegal in India largely on the grounds that the consent of women is lacking (Nussbaum 2008, 195). Thus, both human sacrifice and *sati* are fundamentally unlike polygamy as only the latter involves consent. If we did sanction polygamy, then there is no reason to believe that it would lead to our sanctioning human sacrifice, *sati*, or similar practices.

In this article, my focus will center on powerful new limited defenses of polygamy recently offered by Chesire Calhoun and Martha Nussbaum. I will argue that these defenses are unconvincing because polygamy is a structurally inegalitarian practice in both theory and fact. I will conclude that, while Calhoun and Nussbaum provide an important new series of arguments in favor of a limited defense of polygamy, this defense is not ultimately successful. Polygamy should be opposed.

The article is structured as follows. Section 2 presents evidence from several studies of polygamy that women in polygamous marriages are at a greater risk of harmful effects. I then explain Calhoun’s and Nussbaum’s limited defense of polygamy in section 3. In the following section 4, I offer further arguments against their defenses arising from problems associated with the contemporary practice of polygamy. Finally, section 5 will focus on further worries with polygamy even if the practical problems in the preceding sections did not obtain.

## II

One argument against polygamy is that it is more likely to present harmful effects, especially toward women and children, than monogamy. There are several studies that appear to support this position.<sup>12</sup> For example, women in polygamous marriages are at higher risk of low self-esteem, as well as depression, than women in nonpolygamous relationships (Al-Krenawi et al. 2002; Slonim-Nevo and Al-Krenawi 2006). Other studies show that these women also enjoy less marital satisfaction and more problematic mother-child relationships (Al-Krenawi and Slonim-Nevo 2008). In addition, further studies demonstrate that women in polygamous marriages are especially vulnerable to depression after becoming pregnant, as their husbands become more likely to turn their attention to their other wives (Fatoye et al. 2004; Ho-Yen et al. 2007). Women in polygamous marriages are typically subservient to their husbands who hold their wives primarily responsible for child-bearing (Gher 2008, 584). These women are often unable to exercise any control over the addition of new wives by their husbands, contributing to feelings of

powerlessness and emotional abuse (Cook 2007; Hassounch-Phillips 2001). Women may also lack control over their ability to seek employment, as several studies have found that only a small fraction of women in polygamous marriages work outside the home (Al-Krenawi 2000; Elbedour et al. 2002, 257; Peterson 1999).

Furthermore, women in polygamous marriages have also been found to be at a greater risk of sexual diseases, including AIDS. For example, one study of 1,153 Nigerian men and women found that not only were men with three or more wives more likely to engage in extramarital sex but they also were at greater risk of contracting sexual diseases and infecting their wives than men with one or two wives. Thus, women were at greater risk from men with three or more wives, both as their wives and as extramarital sexual partners, than from men with one or two wives (Mitsunaga et al. 2005).

Studies have also found that children from polygamous families may be at a greater risk of several harmful effects. For example, there is “[c]onsiderable research that children of polygamous families experience a higher incidence of marital conflict, family violence, and family disruptions than do children of monogamous families” (Elbedour et al. 2002). Moreover, children from polygamous marriages are at a greater risk of both behavioral and developmental problems (Elbedour et al. 2003). There is also some evidence that young women from polygamous families perform less well in school than those in monogamous families (Elbedour et al. 2000). In addition, the Utah Supreme Court has recently stated that polygamy “often coincides with crimes targeting women and children[, including] incest, sexual assault, statutory rape, and failure to pay child support” (Strasser 2008, 88–89).<sup>13</sup>

Polygamy has also been linked to several negative effects regarding men. For example, some studies have shown that men are more likely to suffer from alcoholism which is thought, in turn, to perhaps arise from psychological problems with men from polygamous families (Olley 2004). Additionally, men in polygamous marriages are also more likely to fall below men in monogamous marriages in terms of educational attainment (Al-Krenawi and Lightman 2000).

This body of evidence makes clear that there is at least a *prima facie* case to believe that polygamy is linked to an increased likelihood of several harmful effects. These effects impact upon all members of a polygamous family, although women are at the greatest risk. This is not to conclude that women only face such effects in polygamous marriages. Rather, it is clear that women may suffer from these harmful effects in other social contexts as well (Calhoun 2005, 1040). Instead, my purpose here is only to argue that women face a greater risk in polygamous marriages than in monogamous marriages. Thus, polygamy is a structurally inegalitarian practice in fact given what we have learned from several studies because polygamy subjects women to greater risks of harmful effects than men, even if men suffer an additional risk of harm, too.<sup>14</sup>

## III

The standard argument against polygamy is that it subordinates women and fails to treat women as equals with men (Okin 1999).<sup>15</sup> For example, John Rawls argues that the state generally should take no interest on “fully voluntary” family arrangements for fear that taking an interest would illegitimately endorse one comprehensive doctrine over others as long as these family arrangements did “not result from or lead to injustice.”<sup>16</sup> For Rawls, an unjust family arrangement would be one that undermined “the equality of women” and failed to recognize that “wives are equally citizens with their husbands” with “the same basic rights, liberties, and opportunities as their husbands.”<sup>17</sup> Polygamy should then be forbidden by the state insofar as it fails to treat wives as equals with their husbands, denying women the same rights, liberties, and opportunities available to men. Therefore, polygamy represents an unjustified asymmetry of power between men and women: polygamy should be banned.<sup>18</sup>

Cheshire Calhoun and Martha Nussbaum are highly sympathetic with this view. For example, Nussbaum argues that polygamy is “a structurally unequal practice” (1999, 98). This inequality lies in the fact that polygamy as practised today normally permits only men to marry multiple wives and it does not normally permit women to marry more than one husband. In fact, Nussbaum argues that “the most convincing” argument against polygamy is that “men are permitted plural marriages, and women are not” (2008, 197). This asymmetry of power is unacceptable. In addition, structural inequality informs Nussbaum’s concerns with other issues affecting women. She argues that an “[a]symmetry of power plays a crucial role in the law of sexual harassment” (1999, 407 n. 4). Indeed, one of her arguments against female genital cutting is that it is “unambiguously linked to customs of male domination” (1999, 124). Likewise, polygamy also represents an asymmetry of power between men and women that appears similarly linked to male domination of women.

These arguments do not then lead Nussbaum to reject polygamy in all circumstances. Instead, these reservations against polygamy are conditional upon polygamy justifying the unequal status of women. If women shared equal opportunities to marry more than one husband, then the asymmetry of power between men and women might be broken. Thus, “if there were a sex-equal polygamy” that respected the consent of men and women equally, then such a polygamy would be justified (2008, 197).<sup>19</sup>

Similarly, Calhoun agrees that while there may be structural asymmetries in the practice of polygamy, the unequal status of women is not necessarily essential to the practice of polygamy. She would accept that polygamy is not justified if it were only polygyny in fact. However, polygamy would become justified if either a man or a woman could marry multiple partners. Polygamous marriages then need not entail an unequal status for women and polygamy can be justified (Calhoun 2005, 1038–40).

Polygamy might also be justified on the grounds of consent.<sup>20</sup> For example, when all parties consent to form a polygamous marriage, Nussbaum believes that polygamy is justified so long as there is no asymmetry of power present that would prevent women from choosing multiple partners (2000, 229; 2008, 129). Thus, for Nussbaum, polygamy is only objectionable when it is reserved only for men and where consent is lacking (2000, 229).<sup>21</sup> Polygamy is therefore not entirely unjustified, in principle.

Likewise, Calhoun agrees. She argues that contemporary liberal society does not tolerate any form of civil marriage that fails to assign “equal importance to the consent to all spouses, and which did not offer the exit option of divorce to all spouses” (Calhoun 2005, 1040). The implication of this view is that we should not oppose forms of civil marriage where the consent of all spouses is granted equal importance. Polygamy may offer the opportunity for such consent and, if so, it would be justified.

Neither Calhoun nor Nussbaum argues that polygamy cannot be objectionable. Both demand that polygamous marriages must recognize the equal status of women. Therefore, both men and women should be able to form polygamous marriages with multiple partners: it would be unacceptable to permit only men to marry multiple wives without permitting women to marry multiple husbands. Where such equal opportunities are lacking, polygamy is not justified. Furthermore, it is important that all persons in a polygamous marriage consent to the relationship. Where such consent is lacking, polygamy is not justified on this ground either. Thus, both Calhoun and Nussbaum offer a defense of polygamy within clearly defined parameters.<sup>22</sup>

#### IV

I believe that Calhoun’s and Nussbaum’s limited defenses of polygamy fail for several reasons. These reasons are independent of whether there are higher risks of harmful effects associated with polygamy, as discussed in section 2. Both Calhoun and Nussbaum argue that polygamy is unjustified if women are unable to marry multiple husbands. The first problem with this view is that contemporary polygamy is almost exclusively polygyny in fact (Parekh 2006, 290). Polyandry—where one woman has multiple husbands—is exceedingly rare.<sup>23</sup> Part of the reason is that many cultural and religious justifications for polygamy permit only men to marry multiple partners (Rehman 2007). Thus, even if equal opportunities were permissible by law for men and women to marry multiple partners, men and women would not be equal in terms of their actual functionings.<sup>24</sup> This is because the law may permit equal opportunities for polygyny or polyandry, but polygyny and polyandry would not be equal in fact. Consequences matter.<sup>25</sup> When we defend polygamy, our defense may justify both polygyny and polyandry in theory, but only

polygyny in actual practice.<sup>26</sup> Our defense of polygamy then is far more likely to legitimize the subordination of women rather than the equal treatment of women. Therefore, polygamy is unjustified (Parekh 2006, 285).

Of course, this objection to polygamy is conditional. If the consequence of permitting polygamy did not lead to polygynous marriages alone, but also to a significant number of polyandrous marriages, then this objection to polygamy would no longer hold (Parekh 2006, 292). Calhoun and Nussbaum may then reply that, if this picture is correct, we have only demonstrated that polygamy is unjustified as practised: we have not successfully argued that polygamy cannot be justified. In section 5, I will address whether polygamy is theoretically sound, even if it should remain problematic in practice.

However, in addition, Calhoun argues that “gender inequality is a contingent, not a conceptual, feature of polygamy” (2005, 1039). As we have already seen, one reason is that polygamy need not be gender inequalitarian if it permits both polygyny and polyandry. Here a second reason is that whether there is gender inequality may also be historically contingent. For example, it was the case that Mormon women in polygamous marriages in Utah enjoyed various rights and privileges unavailable to New England women in monogamous marriages in nineteenth-century America, such as rights to own property and the greater ability to divorce (Calhoun 2005, 1038).

The problem with this argument is twofold. First, it is unclear whether the benefits enjoyed by these women in Utah were the result of living in a polygamous marriage rather than a product of the unique social history of Mormonism. For example, these benefits have not arisen similarly for women in polygamous marriages living elsewhere at any other time. There is no clear evidence that polygamy helped engender these benefits above other competing factors.

Secondly, the argument that gender inequality is historically contingent cuts both ways. For example, Javaid Rehman argues:

Given the changes in the social, political and legal environment, the continuation of the practice of polygamy demands a substantial explanation. Many of its historic reasons within the Islamic world for justifying polygamous marriages (for example, the surplus of women and loss of men through battles and armed conflict) are no longer tenable. (2007, 115)

While gender inequalities may change over time due to evolving circumstances, changes do take place. If the current circumstances are such that gender inequality is far more likely to be the result of supporting polygamy, then perhaps polygamy becomes a practice that is both currently gender inequalitarian and unlikely to change for the foreseeable future given current conditions. Therefore, polygamy faces substantial justificatory hurdles even if we can imagine the possibility of its permissibility. Nevertheless, polygamy as practised is unlikely to allow for a situation where different consequences would obtain and where the equal standing of women would not be undermined (Parekh 2006, 292).

## V

Now let us suppose that polygamy was equally available for men and women in practice without any harmful effects. Furthermore, let us also assume that all persons in these polygamous marriages freely consent to these relationships. Both Calhoun and Nussbaum argue that polygamy may be justified where both conditions hold. In this section, I will argue that polygamy is problematic on the grounds that it threatens the equality between polygamous partners and it discriminates against nonheterosexuals. Each will be taken in turn.

In the previous section, I have argued that polygamy almost exclusively takes the form of polygyny where one man has several wives in fact. Thus, polygamy as a practice is normally a relationship among one man and multiple women. However, polygamy does not only threaten the equality between men and women, but also the equality among polygamous partners. For example, there is the problem with the asymmetrical ability to leave a polygamous marriage. Thus, a husband can divorce any (or all) of the other partners; a wife may only divorce him.<sup>27</sup> Only the husband can choose who will join or leave the relationship through either marriage or divorce. The wives can only choose to marry or divorce their husband, but they cannot choose who else might join or leave the polygamous marriage beyond their husband.<sup>28</sup>

There is then an asymmetry between the opportunities available for a husband versus any of his wives within a polygamous marriage.<sup>29</sup> Let us suppose that a husband has three wives: A, B, and C. While each wife may have consented to each person entering into a polygamous marriage with a shared husband, this is where her consent ends. Each wife may only either agree to all fellow polygamous partners or divorce her husband and leave behind his other wives. Instead, only the husband alone may agree to marry or divorce each wife. As a result, the husband may choose to divorce wife A or rather both wives B and C.

This asymmetry exists whether a polygamous marriage is polygynous or polyandrous. Both polygamous forms entail either one man or woman with multiple partners of the opposite sex. The multiple partners similarly enjoy fewer asymmetrical opportunities than the single husband in a polygynous marriage or a wife in a polyandrous marriage. Therefore, polygamy may not only threaten the equality between men and women in practice (sections 2 and 4), but polygamy also threatens the equality between polygamous partners. If we argue that we should “assign equal importance to the consent to all spouses” including “the exit option of divorce to all spouses” (Calhoun 2005, 1040), then polygamy is unjustified because spouses lack equal options to divorce.<sup>30</sup>

Polygamy also discriminates against nonheterosexuals. Polygamy takes the form of either polygyny (one man with multiple wives) or polyandry (one woman with multiple husbands). Both polygyny and polyandry exclude non-heterosexuals. All forms of polygamy then presuppose that polygamous marriages are heterosexual



marriages. If we defend polygamy, then we would have to make available opportunities that would include heterosexuals and exclude nonheterosexuals. Polygamy should then be opposed.

It is not clear that Calhoun and Nussbaum should disagree. For example, Calhoun argues that same-sex marriage advocates may find support in the history of polygamy (2005). While this may remain true, it is also the case that polygamous marriage problematically excludes same-sex marriages with multiple partners. Nussbaum argues that all human beings must be able to exercise several capabilities, including the capability to affiliation. However, this capability forbids discrimination on the basis of sexual orientation (Nussbaum 2000, 79). Thus, polygamy violates the capability to affiliation as it discriminates on the basis of sexual orientation in excluding nonheterosexuals.

One nonmonogamous family structure that may appear more preferable is polyamorous relationships, sometimes referred to as “the postmodern polygamy” (Gher 2008, 572; Sheff 2005). “Polyamory” is a relationship of multiple men and women. These relationships may take the form of one man with several female partners, but they may also take the form of two men and several female partners or even several women with no men.<sup>31</sup>

Polyamory may have several advantages over polygamy. For example, polygamy engenders an asymmetrical power relationship among a man and his wives: he may divorce any or all his wives, but his wives are free only to divorce him and unable to divorce other wives. A polyamorous relationship offers more equal opportunities for divorce than polygamy as all have an equal voice in how the relationship develops. Furthermore, only polyamorous relationships offer more equal opportunities for marriage as only polyamory is inclusive of nonheterosexuals. In fact, a polyamorous relationship may consist only of nonheterosexuals. If our concern is with symmetrical power relationships where all parties freely consent, then polyamory may appear to be more acceptable than polygamy.<sup>32</sup>

The promise of polyamory may be found in its greater inclusiveness, permitting both heterosexuals and nonheterosexuals opportunities to form relationships with multiple partners. However, the primary problem with polyamory is not unlike what we have seen with polygamy. Virtually all polygamous marriages are polygynous in fact. There is no evidence that polyamorous relationships are less likely to lead to polygyny similarly.<sup>33</sup> Thus, polyamory remains problematic for much the same reasons that the current practice of polygamy is problematic. Polyamory is not a clearly preferable alternative to polygamy.

In this section, I have assumed that polygamy need not be structurally inegalitarian in practice whether because there is evidence that women in polygamous marriages are at greater risk of suffering harmful effects (section 2) or because polygamy is almost always polygyny in fact (section 4). Nevertheless, polygamy has been found to be structurally inegalitarian in theory even if practical problems did not obtain. This is grounded in inequalities concerning participation in a polygamous marriage. Whether or not the marriage is polygynous or polyandrous, the

multiple married partners always lack equal opportunities to exit. Moreover, all forms of polygamy discriminate against nonheterosexuals as they are excluded from opportunities to form polygamous marriages and nor are polyamorous relationships less problematic. Thus, polygamy is structurally inequalitarian in unavoidable respects even if we bracket the structural asymmetries associated with the current practice of polygamy.

## VI

In this article, I have focused on Calhoun's and Nussbaum's limited defenses of polygamy. I argued that these defenses are unconvincing on at least two grounds. The first ground is that polygamy is a structurally inequalitarian practice in fact. I have provided at least *prima facie* evidence that polygamous marriages subject women to a greater risk of harmful effects. Furthermore, I have argued that polygamous marriages are most often polygynous marriages in fact. Therefore, women lack the equal opportunity of men to form polygamous marriages with multiple partners of the opposite sex in practice.

The second ground is that polygamy is a structurally inequalitarian practice in theory. I have argued that polygamy not only threatens the equality of men and women in fact, but also the equality of polygamous marriage partners as the latter have asymmetrical opportunities to divorce. Finally, I have argued that polygamy is further structurally inequalitarian insofar as it discriminates against nonheterosexuals.

Therefore, while recent work by both Calhoun and Nussbaum provide an important new series of arguments in favor of a limited defense of polygamy, this defense is not ultimately successful. Polygamy is a structurally inequalitarian practice in theory and fact that should be opposed.

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## NOTES

1. Polyandry—where one wife is married to multiple husbands—can be found in sparsely populated rural areas, such as Bhutan, Mongolia, and Tibet. Polyandrous marriages form a significantly small number of polygamous marriages.
2. The widespread practice of polygamy across the globe by different cultural and religious groups suggests that arguments against, or in favor of, the practice need not necessarily serve as an endorsement of any one cultural or religious group over another.
3. See Genesis 4:19, 23, 25:1–2; 1 Samuel 25:43–4; and 1 Kings 7:8.
4. Proponents also argue that husbands are more faithful to their wives in polygamous, rather than monogamous, marriages although this assertion remains unproven (Mitsunaga et al. 2005).
5. For further criticism of these views, see Parekh 2006, 283.
6. I am very grateful to Alison Jaggar for pushing me on this point.
7. *Reynolds v. United States*, 98 U.S. 145 (1878). See *Braunfeld v. Brown*, 366 U.S. 599, 605 (1961); *Davis v. Beason*, 133 U.S. 333 (1890); and also Ariz. Const., Art. XX, par. 2; Idaho Const., Art. I, §4; N.M. Const., Art. XXI, §1; Okla. Const., Art. I, §2; and Utah Const., Art. III, §1. My criticisms of *Reynolds* are in agreement with Nussbaum's analysis (see Nussbaum 2008, 191–98).
8. See *Reynolds v. United States*, 98 U.S. 145, 164 (1878) and Nussbaum 2008, 195.
9. See footnote 3 above. Additionally, there is nothing intrinsically wrong with a practice solely in virtue of its being alien.
10. *Musser v. State of Utah*, 333 U.S. 95, 103 (1948).
11. See *Reynolds v. United States*, 98 U.S. 145, 166 (1878) and Nussbaum 2008, 195.
12. I cannot hope to offer an extensive examination of the full scientific literature on polygamy and any related harmful effects. Instead, I will only highlight some key studies with the aim of presenting at least a *prima facie* case that there is reason to believe that there are higher risks of harmful effects resulting from polygamous marriages than found in monogamous marriages. This is not to claim that monogamous marriages lack these effects.
13. *State v. Green*, 99 P.3d 820, 830 (Utah 2004).
14. I do not deny that there is pervasive gender inequality that may also arise in monogamous marriages. Instead, my argument is that the inequalities and related harms discussed in this section are less in monogamous marriages than with polygamous marriages.
15. See Fichte 2000, 274: “Polygamy is predicated on men's belief that women are not rational beings like men, but only tools for the man, lacking a will or rights of their own.”
16. Rawls 1999a, 587, 599; 1999b, 147, 161; and see 2001, 163.
17. See Rawls 1999a: 587, 587 n. 38, 596 n. 60, 597; 1999b: 147, 147 n. 38, 157 n. 60, 159; and 2001, 10, 166–67.
18. This is not to say that men and women otherwise lack an asymmetry of power. Instead, my argument is that the unjustified asymmetry is *more* with polygamy.
19. It is worth noting that, while she attempts to defend America's views on religious freedom in *Liberty of Conscience* (2008), Nussbaum may find that the United Kingdom scores better than the United States on the issue of polygamy. While polygamy remains illegal, UK courts have recognized polygamous marriages enacted elsewhere for several decades. Thus, for example, Lord Justice Salmon argues that: “it is plain from the authorities to which I have referred that there are purposes for which a polygamous marriage will be recognised as a valid marriage in this country, and also that in some statutes the word ‘wife’ may be construed as covering a polygamously married wife” (*Iman Din v. National Assistance Board*, [1967] 2 Q.B. 213, 220). (See *Hussain (Aliya) v. Hussain (Shahid)*, [1983] Fam. 26.)
20. See Kautilya, *Arthā-Shāstra*, in Radhakrishnan and Moore 1957, 203: “Any kind of marriage is approvable, provided it pleases all those that are concerned in it.”
21. See Nussbaum 2008, 186: “the concept of consent could be hazy” and women were often pressured to accept their husbands' demands for further wives. Nussbaum also notes that *The Book of Mormon* is not unambiguous in its promotion of polygamy (2008, 184–85).

22. One objection to this section is that Calhoun and Nussbaum defend polygamy only insofar as it should be legally permissible. The objection lies in the fact that bad practices may remain legally permissible: we can argue for permissibility even for bad practices. The problem with this objection is that they argue for more than legal permissibility. For example, Calhoun argues that the “legal recognition of polygamous marriage is incompatible with a liberal, democratic, and egalitarian society” (2005, 1027). Not only should polygamous marriages be granted legal recognition, but the history of popular opposition to these marriages may helpfully inform how we might overcome opposition to the legal recognition of same-sex marriage. Nussbaum primarily focuses on the right to free religious expression guaranteed by the U.S. Constitution and polygamous marriage (see 2008, 184–98). Both Calhoun and Nussbaum do argue for the legal recognition of polygamy on specific conditions. However, neither argues that polygamy may be no more than legally tolerated because it cannot be morally or politically justified. Therefore, this objection fails.
23. Perhaps the most well-known polyandrous marriage was Draupadi’s marriage to five Pāṇḍava brothers (see *The Mahābhārata* 1975).
24. By using “actual functionings,” I refer to a range of functions that marriage may satisfy in addition to the function of a sexual relationship.
25. See Sen 1999, 66: “To ignore consequences in general, including the freedoms that people get—or do not get—to exercise, can hardly be an adequate basis for an acceptable evaluative system.”
26. Not everyone agrees with this conclusion. For example, see Carens and Williams 1998 and a critique of their views in Barry 2001, 396 n. 96.
27. This leads Barry to argue that “[t]he whole idea of egalitarian polygamy is manifest nonsense” (Barry 2001, 369–70 n. 96).
28. I am most grateful for very helpful comments on this section by Alison Jaggar and an anonymous referee.
29. This asymmetry extends beyond one’s sexual partners in a relationship to include one’s partners in raising children, holding property rights, and other functions that marriage may satisfy.
30. One objection might be that all partners appear to have equality with respect to divorce. Thus, the husband can divorce all those that he is married to (e.g., his wives) and each wife can divorce all those that she is married to (e.g., the shared husband). This is true. However, it is also true that a polygamous marriage should not be viewed as a relationship between only two people. Instead, the wives may only be married to a shared husband, but together they do form a larger nuclear family. Only the husband is able to choose who is a married member of his nuclear family. His wives are each a member of a polygamous marriage where they have unequal exit options concerning their nuclear family as a polygamous family than their shared husband. This remains the case even if each wife is married only to a shared husband and any other wife.
31. On polyamory, see Leith 2006. It is worth noting that there does not appear to be any movement in favor of, nor against, polyamorous marriage. Thus, I refer to polyamory in terms of “relationships” and not “marriage.”
32. See *Sweatt v. Painter*, 339 U.S. 629, 635 (1950): “[e]qual protection of the laws is not achieved through indiscriminate imposition of inequalities.” See also *Romer v. Evans*, 517 U.S. 620, 633 (1996).
33. For criticisms of polyamory, see Klesse 2006.

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