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An Imperfect Union:  
The family lives of polyamorists and the law

By

KRISTIN S. MCCARTY  
DISSERTATION

Submitted in partial satisfaction of the requirements for the degree of

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in

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DAVIS

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Committee in Charge

2020

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## Abstract

Scholars of marriage and family recognize the changing social importance of family relationships in contemporary American society. Due to the acceleration of these changes in the second half of the 20th century and into the 21<sup>st</sup> century, the meanings and boundaries of “family” are being called into question now more than ever. Much of the discussion derives from a monogamous perspective, that is, either a heterosexual, or a gay or lesbian couple. This framework does not include another family form gaining popularity, which is the families of polyamorists. How do polyamorists—who may be involved in two or more simultaneous, romantic relationships—approach family-building? Furthermore, how do they operate and navigate treacherous and often hostile legal territory in their family-building endeavors?

Drawing on two sets of in-depth interviews with 31 polyamorists, I find that their family-building behaviors do not look radically different from traditional, monogamous families. They often create family units similar to the nuclear family by delineating the degree of commitment to each of their partners. To do this, polyamorists implement hierarchies by choosing one individual to be their “primary” or “nesting” partner, retaining others as “secondary” or “tertiary” partnerships. These hierarchies can be deliberate *or* applied inadvertently through decisions about social and/or legal responsibilities—an approach I call an “*unintentional hierarchy*.” However, intriguingly, this behavior differs from the polyamorist ideology of egalitarianism, a model they aspire for across *all* their relationships.

Applying a feminist theoretical perspective, this research examines this paradox by exploring the role of law in the family lives of polyamorists. To understand how polyamorists experience interactions with socio-legal institutions in their families and how they may or may not resist, avoid, or implement legal ideas, I examine the role of what socio-legal scholars call

“legal consciousness.” Legal consciousness is an interpretive approach to studying the law that developed among socio-legal scholars to explain how the law sustains its hegemonic power. I argue that the inconsistencies found within the families of polyamorists are also mirrored in their experiences of the law. Polyamorists deride the state for acting as a source of control in their family lives while simultaneously seeking state protections for their families. These conflicting relationships between polyamorists, the law, and legality help explain the prevalence of hierarchies within the family lives of polyamorists. Moreover, this research continues the work of socio-legal scholars to underscore the ways that legal ideas and discourse shape the behaviors of marginalized populations, which has implications for the nature of legal consciousness and the way we understand the reproduction of law's legitimacy and power. This research contributes to the sociology of families as well as the legal consciousness literature by expanding our understanding of how non-traditional families are created and how they utilize but are also constrained by the law.

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# Chapter 1

## Introduction

Unfortunately, we still have a lot of room—the whole thing about separation of church and state is not a real thing. It's something that they tell people to make them feel better. Religion very much runs this country and how it views coupling and life and things like that. Even though our generation is changing in that aspect.

-Tyrone

The law is powerful, in part, because of its ability to establish and shape ideas and meanings, especially as they pertain to families. The U.S. privileges families based on heterosexual marriage. However, conservatives and progressives cannot agree on who should have access to the rights that marriage grants. On June 26<sup>th</sup>, 2015, the Supreme Court of the United States determined that the Due Process Clause and the Equal Protection Clause of the 14<sup>th</sup> Amendment to the United States Constitution guarantee same-sex couples the right to marry (*Obergefell v. Hodges* 576 US, 2015). This landmark decision left dissenters with many concerns about the future of marriage law.<sup>1</sup> Indeed, with this Supreme Court decision, it becomes increasingly difficult to see the legal difference between the right to same-sex marriage and the right to plural marriage (*Den Otter* 2015). However, this ruling was very close (5-4, in favor) and is far from being settled.

Polyamory is a type of non-monogamy gaining popularity in the United States. Polyamorists are sexual minorities whose family lives are greatly impacted by these types of Supreme Court rulings. This dissertation explores how and why the families of polyamorists are formed, paying particular attention to the role of law in non-traditional family life. It asks: How are the families of polyamorists constituted? How do they operate and navigate within this

hostile legal territory? To answer these questions, I spent over three years conducting in-depth interviews with polyamorists. In doing so, I uncovered some of the ramifications of the common assumption that families should be defined by marriage. Moreover, it became clear that, for many non-traditional families, this arrangement belies the principles of liberty and equality upon which the United States was founded.

In addition to examining how the families of polyamorists are formed, this dissertation explores how they function as patterned reactions to the hegemony of law. In particular, I investigate the ways that the ideology of egalitarianism—essential to the definition of polyamory (Strassberg 2012)—interacts with the law and how these interactions play out in everyday family lives. My research complements recent studies suggesting that polyamorists define families similar to the LGBT+ community (Sheff 2014a); however, I also expand upon this research by focusing on the role of the law and legal consciousness in shaping the family-building beliefs and behaviors of polyamorists. In applying the legal consciousness framework to the case of polyamory, I contend that intersectionality plays a vital role in our ability to understand the relationship between the everyday family lives of sexual minorities and the law. Furthermore, I argue that, though polyamorists strive to build their families on the foundation of equality, they are limited in their ability to do so because of the hegemony of traditional, mono-normative ideologies within law and the pervasive influence that those ideologies have on our daily lives.

### **What is polyamory?**

It is critical to note that polyamory is a “burgeoning sexual story” (Barker 2005:75), meaning that polyamorists participate in an iterative process to construct new language that describes their lives. Consequently, as polyamorous experiences come to be better understood by polyamorists and researchers alike, new terms are developed, and old terms are refined or

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<sup>1</sup> See Chief Supreme Court Justice John Roberts’s dissenting opinion in *Obergefell v. Hodges* 576 US (2015).

repurposed. Thus, the terms used in this dissertation have undergone and continue to undergo a revolving door of evaluation and re-evaluation by members of the polyamory community. Many of them ignite fiery debates amongst polyamorists who may have different working definitions or may oppose their use entirely. These differences will be highlighted when relevant and I will explain the way that each participant defined or described a term. These types of debates highlight an important fact: there is not *one* polyamorous experience. Instead, we are better served by understanding polyamory as a class of related *experiences*.

My participants practice *polyamory* and call themselves *polyamorists*. According to academic researchers devoted to the topic, polyamorists openly engage in multiple romantic, emotional, and often sexual relationships. Polyamory is defined as “consensual, openly conducted multi-partner relationships in which both men and women [all genders] have negotiated access to additional partners outside of the traditional two-partner couple” (Sheff 2014a:1).<sup>2</sup> Thus, regardless of gender, each person should be entitled to multiple partners, all parties are aware of the non-monogamous nature of the relationship, and all parties are of legal age and fully able to participate in all aspects of decision making as it pertains to their relationships. Gender equity is necessary and one of the major factors that sets polyamory apart from other forms of non-monogamy, regardless of the gender composition of relationships. Autonomy, egalitarianism, and democracy are essential to the definition of polyamory (Strassberg 2012).

Polyamory differs from several other non-monogamous practices. However, it is most often conflated with polygamy. Our nation has a long and dramatic history pertaining to polygamy, and in recent years those feelings have been brought to the surface by such news

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<sup>2</sup> Elisabeth Sheff (2014a) has produced one of the only sociological analyses of the families of polyamorists to date and her book, *The Polyamorists Next Door*, is cited frequently.

sensations as Warren Jeffs and the Fundamentalist Church of Jesus Christ of Latter-Day Saints scandals. By definition, polyamory is not polygamy because all of those involved are not legally or civilly married to one another.<sup>3</sup> In much of the world, often for religious and cultural reasons, polygamy is practiced as polygyny—one man is married to multiple women and in these instances, the women do not have access to multiple partners and are not allowed to have sexual relationships with each other (Kilbride 1994).<sup>4</sup>

Polyamory differs from infidelity or swinging as well. It is not infidelity because all parties are aware of and consent to the structure of the relationship, including bringing in new partners. Polyamory focuses on honesty and (ideally) full disclosure to all participants in the network of relationships and to those affected by them (Sheff 2014a). A person may claim to be polyamorous, but their relationships are not polyamorous if the people they are dating believe the relationship is sexually and emotionally monogamous. Polyamory is not swinging or an open marriage because these types of relationships are often intended to provide more sexual variety, excitement, and pleasure for an otherwise monogamous couple. Instead, polyamory places emphasis on long-term, emotional and romantic intimacy with all parties involved, even though it is non-exclusive. Polyamorists may also participate in swinging or have open relationships, but they should be understood as three distinct practices.

Polyamorists have coined several terms that describe the structure(s) of their relationships. A person who identifies as polyamorous but is currently single and seeking polyamorous relationships is *poly-single* (Sheff 2014a:6). Similar in name but vastly different are people who identify as *solo-poly* (see Appendix B: Glossary). They don't follow any formal relationship structure or timeline and consider all loving relationships—romantic and platonic—

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<sup>3</sup> However, a polyamorist may be married to *one* of their partners.

<sup>4</sup> The other form of polygamy is polyandry, which refers to one woman who is married to multiple men.

to be equal. People who are solo-poly reject *escalator relationships*. An escalator relationship follows a traditional relationship narrative, which means progressing forward incrementally (e.g. going from dating, to living together, to getting married, then having children, etc.). Someone who is *mono-poly* is dating a polyamorous person but is monogamous and only dating that polyamorous person. A *vee* is a relationship consisting of three people in which one person has intimate relationships with the other two, but the second two people are non-lovers, or *metamours*. When all three adults in the relationship are romantically involved, the relationship is a *triad*. A *quad* is a group of four adults who are all romantically involved with each other, both heterosexually and/or homosexually depending on the configuration of the couples. Quads often form when two couples join (Sheff 2014a). A group of five or more romantically-involved adults may be referred to as a *moresome* or a *tribe*. Two people in a couple that identifies as polyamorous but are currently only romantically involved with each other will often refer to themselves as *functionally monogamous*. *Polyfidelity* promises sexual exclusivity within a closed group of three or more people. Some polyamorists may refer to their close network of polyamorous friends and relationships as their *polycule*.

Within these relationship structures, some polyamorists will categorize the degree of commitment to each of their partners based on numerous factors. For example, those who have negotiated the exchange of bodily fluids during sexual encounters, such as foregoing the use of a condom, are *fluid-bonded*. This is often reserved for relationships that are considered to have a high commitment level. Many polyamorists begin their journey in the context of a couple, whether that be in a marriage or long-term dating relationship. Some polyamorists use terms like *primary*, *secondary*, *tertiary*, or *nesting* partner to signify these differences in commitment levels. *Primary* partners most often consist of long-term partners who share finances, live

together, may have children, and may be legally married or not. Some polyamorists are strongly opposed to the primary/secondary/tertiary terminology and may prefer *nesting partner* to differentiate between those partners whose lives are closely intertwined with their own and those whose lives are not. *Secondary* partner may indicate a similar level of intimacy as a primary partner, but they tend to keep their lives more separate than primary partners. A *tertiary* relationship is commonly the lowest commitment level, is allotted less time and energy, and may not be as emotionally intimate. Intriguingly, these ranked distinctions are not accepted or used by all polyamorists. Many of my participants considered this type of hierarchical language unethical and viewed it as inherently unequal.

### **Why study polyamory?**

The American sexual revolution of the 1960s and 70s completely changed the face of intimate relationships (Stacey 1996; Tolman 2002). Americans began to *more openly* engage in non-monogamous relationships. Scholars have argued that women's legal rights and the push for equality in relationships were necessary foundational components for the acceptance and spread of consensually non-monogamous practices (Anapol 2010). This cultural shift encouraged social scientists to study swinging and open marriages (Sheff and Tesene 2015), as well as communes (Strassberg 2003) and "alternative" relationships (Popenoe 1993; Weston 1991).

In the mid-1970s, several articles were published that taught social workers and psychologists how to deal with clients in open marriages and how to approach open marriage in a constructive way by accentuating communication and managing jealousy (McLuskey 1997). Other research that centered swinging and open marriages generally focused on issues that could help practitioners better serve their clients, such as psychological profiling and issues of race and

class (McLuskey 1997). In the 1980s and 90s, research in this area slowed substantially but the practice of non-monogamous relationships continued (Sheff 2011).

In the last two decades, polyamory has gained some media attention. Showtime aired a reality television series from 2012-2013 called “Polyamory: Married & Dating” and polyamory received a publicity boost when self-help author, Steve Pavlina, announced he was going to try polyamorous relationships in 2009. Although the practice is slowly becoming a part of the cultural lexicon, it is still difficult to ascertain the exact number of people practicing polyamory in the United States. A 2012 survey estimated that more than 500,000 Americans are polyamorous and that this number is consistently growing (Fleckenstein, Bergstrand, and Cox 2014).<sup>5</sup> Several other attempts have been made to estimate the number of Americans practicing one or more forms of consensual non-monogamy, of which polyamory is one.<sup>6</sup> Pappas (2013) estimates that between four and five percent of the U.S. population is consensually non-monogamous. Leading polyamory scholar Elisabeth Sheff (2014b) supports the findings of an independent Australian researcher, Kelly Cookson, who estimates that between 1.2 and 2.4 million Americans have tried consensual, sexual non-monogamy. These very different estimates are due to several factors: 1) It can be difficult to determine what types of consensual non-monogamy to count, 2) Even when a researcher decides who to count, it can be a challenge to find these populations as they may be closeted or call themselves something other than polyamorous or consensually non-monogamous, 3) There is no reliable way to count polyamorous people because ongoing demographic surveys like the GSS and Census do not ask about monogamy. Nevertheless, most experts agree that there are at least several hundred

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<sup>5</sup> This estimate comes from a survey published by *Loving More Magazine*, which, according to their website, is a “national nonprofit organization, educational website, online community, and magazine dedicated to support and education of polyamory and polyamorous issues.”

<sup>6</sup> Polyamory, swinging, and open relationships/marriages are all considered forms of consensual non-monogamy.

thousand practicing polyamorists in the United States today (Fleckenstein et al. 2014; Pappas 2013; Sheff 2014b).

Of those polyamorists surveyed in 2012, nearly 66% indicated that they would be open to legally marrying more than one partner and a majority thought that no single relationship type should be privileged over others (Fleckenstein et al. 2014). Furthermore, several of my participants feared facing discrimination at the hands of their employers, landlords, and family court judges. Each of these issues raised suggests that polyamorists are often in contact with the legal system in their efforts to build families. Thus, these potential barriers—legal recognition; discrimination; legal rights, privileges, and responsibilities—are part of an important story that details the family-building behaviors and experiences of polyamorists and other sexual minorities in the United States.

### **What is unique about polyamory?**

Non-monogamy exists in the gay community (Bettinger 2005) and the lesbian community as well (Munson and Stelbourn 1999). Interestingly, there is debate about whether polyamory is a sexual orientation that should be included under the LGBT+ umbrella. As it stands, gender and sexuality researchers and members of the LGBT+ community maintain that polyamorists are in a grey area (Carey 2013) and there is some discussion about if inclusion in this community would even benefit polyamorists (Klesse 2014a).

Legal scholar Ann Tweedy is in favor of inclusion and argues that polyamory is an identity, that polyamorists face discrimination, and that “polyamory shares some of the important attributes of sexual orientation as traditionally understood” (Tweedy 2011:1514). Those important attributes of sexual orientation, outlined by Butler (1993), include being primarily relationship-based, having a substantial performative element, and being conceptually unstable.



This consideration is important because sexual orientation is a protected class in many states, which presents certain legal protections and rights. If polyamory were considered a sexual orientation, it would extend legal status to polyamorists. By contrast, there are scholars who oppose including polyamory in the category of sexual orientation. They claim that it would do more harm than good because it may unnecessarily limit the discussion around polyamory by reinforcing rigid boundaries around identity (Klesse 2014a). Furthermore, it could disconnect polyamory from other non-monogamous identities that may otherwise support the polyamorous agenda (Klesse 2014a).<sup>7</sup>

What we know for certain is that polyamorists face significant discrimination and stigma when navigating the social world (Sheff 2014a). The institutionalization of marriage and the way that monogamy has been normalized are the most important factors that sustain marriage as a dominant ideology (Aguilar 2013). The state conflates these two factors by making monogamy an essential part of legal marriage (Duggan and Hunter 1995), which serves to reproduce it as a hegemonic discourse and practice. Aguilar (2013) has termed this phenomenon “mono-normativity.”

### **Family Formation Theories & Feminist Theoretical Approaches to Examining Families**

This research uses a feminist theoretical perspective to examine the family building beliefs and behaviors of polyamorists in the United States. Feminist sociologist Myra Marx Ferree (1990) argued that previous theories of family change fail to explain the increasing diversity of family forms that emerged in the second half of the 20<sup>th</sup> century. Furthermore, feminist scholars (Coontz 1992; Skolnick 1991; Stacey 1990) acknowledged the increasing heterogeneity of emergent family forms and explored family relations that extended beyond bio-legal relationships. This perspective proposes that “the” family should be extended to include

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<sup>7</sup> Other non-monogamous identities include swingers, those in open-marriages, etc.

both traditional notions of biological and legal family as well as families of choice (Cherlin 1999; Weston 1991). Feminist scholars dispute “the ideology of the monolithic family and the notion that any one family arrangement is natural, biological, or functional in a timeless way” (Goldberg and Allen 2007:354).

Functionalists and social conservatives created the separate spheres perspective after examining the rise of the modern nuclear family (Burgess 1916; Goode 1963; Parsons 1949) and the so-called decline of the modern nuclear family in the 1990s (Blankenhorn 1995; McLanahan and Sandefur 1994; Popenoe 1993; Waite, Goldscheider, and Witsberger 1986). In the 1980s, feminist theorists countered this notion of separate spheres, which is the suggestion that men belong in the public sphere and women belong in the private sphere. Feminist theorists argued that rather than existing as a separate, isolated sphere in contrast to the marketplace, families are fully integrated into wider systems of economic and political power. Feminist research has long paid close attention to gendered power relations between men and women in families and is especially concerned with how women are framed in these contexts—most often in a subordinate role, such as the caregiver (Butler 1990). Thus, feminist scholarship also emphasized the diverging and often conflicting interests and power of men and women, challenging notions of presumed family solidarity (Smith 1987). This feminist conception of family provides a more complete framework for understanding the family-building beliefs and behaviors of polyamorists. A feminist perspective contends that the structure, content, and definition of families are changing. They argue that the traditional, nuclear family model is being expanded to include a multitude of relationship types, including biological relationships and non-biological relationships. Furthermore, a feminist perspective makes no assumptions about these relationships.

## **Research Framework: Examining the Legal Consciousness of Polyamorists**

In Chapters 3 and 4, the focus turns toward examining the legal consciousness of polyamorists in the United States. Legal consciousness is an interpretive approach to studying legality (Ewick and Silbey 1998). It developed among socio-legal scholars to explain how the law sustains its hegemonic and institutional power across contexts and throughout time and space (Silbey 2008). It tracks the presence of law *in* society and examines the constitutive relationship between the law and society, in both directions. Thus, contemporary legal consciousness scholarship is most interested in legal culture and law in “everyday life” (Sarat and Kearns 1993).

Contemporary studies of legal consciousness explore how the law, broadly understood, infiltrates the consciousness of ordinary people. These studies not only investigate how and to what extent the law shapes people’s thinking, behaviors, and sense of identity, but also how their understanding and experiences with the law are converted into actions that then establish how they relate to the law (Baumle and Compton 2015). The research explores “how we the people might simultaneously be both the authors and victims of our collectively constructed history” (Silbey 2005:335). Legal consciousness is frequently used for investigating the place of law in everyday life. Ewick and Silbey (1998), who created one of the most popular frameworks for understanding legal consciousness, argue that legal consciousness is culturally-based.

In this research, the term “legal consciousness” refers to the meanings that people give to the law as they operate in their daily lives (Ewick and Silbey 1998; Marshall and Barclay 2003; Nielsen 2000; Silbey 2005). To come to this understanding of legal consciousness, Ewick and Silbey (1998) conducted 141 in-depth interviews and found that everyone encounters legality during the course of many everyday tasks, such as when using crosswalks, filling out forms, etc.

In these daily, indirect interactions with the law as well as during direct interactions with official law, people are guided by shared understandings of legality. This constitutes a legal consciousness, which is experienced and constructed collectively (Ewick and Silbey 1998; Silbey 2005). Ewick and Silbey identified some of the shared meanings about the law that constitute legal consciousness in the United States and discovered three different schemas: “before the law,” “with the law,” and “against the law.”

In the “before the law” schema, the law is seen as impartial, objective, and remote, existing outside of the individual, derived from a legitimate moral authority. Individuals who express this understanding of the law feel as though they have very little influence over legal outcomes and don’t believe the law can be manipulated. They experience the law as a force outside of themselves and are most likely to reinforce the status quo of legal structures through their adherence to and belief in the power of official law (also known as “the law on the books”).

In the “with the law” schema, the law is seen as a game that is shaped by individual self-interest and resources. Those who express this understanding of the law believe it is “contingent and malleable” (Baumle and Compton 2015). Individuals believe that they can use their individual privilege and resources to work on their behalf within the existing legal structures in order to achieve legal outcomes that are favorable to them (Baumle and Compton 2015).

In the last schema, “against the law,” the law is seen as an oppressive power to be resisted. People with this understanding of the law reject its legitimacy and view the legal system as an adversary. Acts of resistance can include traditional approaches of seeking to challenge and change official law through the judicial system as well as challenging the moral authority of legal actors themselves. Additionally, acts of resistance may be more subtle daily subversions of

the intentions of official law, such as using the law in way that it wasn't intended but that is still technically considered legal (Baumle and Compton 2015).

Several scholars have engaged with Ewick and Silbey's theory. Nielsen (2000) studied offensive public speech and found that different races and genders had varying experiences with it, which determined their attitudes about how offensive public speech should be handled legally. Nielsen's findings support the notion people who occupy at least one marginalized social position are more likely to express an "against the law" form of legal consciousness (Hull 2003). Interestingly, Hull's (2003) study complicates Nielsen's findings. Hull examined the legal consciousness of gay and lesbian couples as it pertains to marriage and found that, "rather than seeking to avoid and evade legality in their everyday lives, most same-sex couples seem to embrace legality for its practical and symbolic resources, even as they stand 'against the law' in their opposition to the exclusion of same-sex couples from the institution of legal marriage" (Hull 2003:629). Wilson (2011) analyzed the ways that abortion activists construct legality and found that, though we may expect these marginalized social actors to resist the or seek to change the law, their interviews revealed that they end up reproducing the law's legitimacy and power.

Using legal consciousness as a framework, the law can be understood as an interactive process. Meanings of legality are in constant circulation and people either accept, modify, or reject them. Thus, existing understandings of legality can then be reinforced, or new meanings can become institutionalized, which gives individuals agency in constructing what is conceived of as "legal" (Baumle and Compton 2015). What that means for this research is that polyamorists are not passively acted upon by the law; rather, they are active agents in the process of shaping their legal prospects and play a part in either furthering or restricting their family-building possibilities.

## **The Current Research**

This research is based on two sets of semi-structured, in-depth interviews with 31 polyamorists across 39 months, starting in October 2015. My primary means of recruitment for the initial interviews was a call for participants distributed through various Internet channels, including Facebook and MeetUp groups when moderators of those groups approved. Nineteen of my 31 total participants are a result of this sampling method. I found the rest of my interviewees through a mix of snowball and convenience sampling. Often, one person would respond to my online posting and when I showed up to the interview they would have one or more of their partners with them who would then also agree to be interviewed.

The initial interviews took place between October 2015 and March 2016. In total during this initial round, I conducted in-depth, semi-structured interviews with 30 polyamorists over the age of 18 who had been practicing polyamory for at least two years at the time of the interview (see Appendix C for sample characteristics). I sampled from four densely populated cities in California: Sunshine City, Techtown, Ag Valley, and Treeville. The four locations were selected because they offer variety in geographical region and population density. I interviewed 22 polyamorists individually and eight sets of polyamorous couples or triads to make up my total initial sample of 30. Interviews were most often conducted in-person, usually in the interviewee's home or in a public place that they selected. One was conducted over Skype. The interviews lasted between 40 and 95 minutes, apart from two interviews that lasted less than 30 minutes. Each interview had four sections: participant demographic characteristics, history with non-monogamy, relationship structure(s), and family life.

To ensure that my participants and I were operating under the same definition of polyamory, I first offered them Sheff's (2014a) definition at the beginning of the interview. I

then asked if they defined polyamory in a distinctly different way. Some emphasized certain aspects of Sheff's definition over others, but all stated that the definition presented agreed with their understanding of polyamory. Each interview was audio-recorded and transcribed. These interview transcripts are the data from which I drew my initial conclusions.

The follow-up interviews took place between March 2018 and January 2019. I attempted to contact each of the 30 polyamorists that I interviewed initially for a follow-up interview. Polyamorists were contacted through their initial point of communication from 2015 or 2016, which most often meant through email. In the end, I was able to secure 15 follow-up interviews. During the course of follow-up interviews, one of my participant's partners became interested in being interviewed. She is the only polyamorist I interviewed during the second round of interviews who did not give an initial interview. Thus, I conducted 15 follow-up interviews and one new interview in this second round. Additionally, when one of my participants arrived at the coffee shop for his follow-up interview, he had with him his current, monogamous girlfriend. She is *not* polyamorous and though he is currently in a monogamous relationship with her, this participant still identifies as polyamorous. They completed his follow-up interview together. In total, across both rounds of interviews, I interviewed 31 polyamorists and one partner who does not identify as polyamorous.

This second set of interviews lasted between 60 and 160 minutes each. Interviews had six sections: identity and orientation, family structure and daily functioning (including the division of labor in the household, finance management, living arrangements, and descriptions of their relationship with each partner), what they perceive as disruptions to their daily functioning, interactions with the law (including any and all interactions that they had with legal institutions throughout the course of their lives), perceptions of the law (including political views), and

reaction to and explanation of my preliminary findings. This last section of the interviews was very important to me. As a scholar in the feminist tradition, I am committed to challenging the traditional power dynamic of interview methods. I wanted to ask for help and allow space for the polyamorists I interviewed to assist my understanding of the contradictions I found in the first set of interviews. In this final section, I asked how the interviewees made sense of hierarchies in the families of polyamorists and relationships and what purpose they think these hierarchies serve. This second set of interviews was also audio-recorded and transcribed, but with the help of three undergraduate research assistants.

### *Data Analysis*

Across all of the interview data, all respondents and the people they discussed were assigned pseudonyms to preserve confidentiality. Initial interviews were coded using grounded theory (Emerson, Fretz, and Shaw 1995; Glaser and Strauss 1967). For this analysis, I used a multistage progression to code and analyze the data using Dedoose. This involved open coding my interviews to identify significant themes that arose and then coding a second time to group and refine themes.

The second stage of analysis utilized a multistage process to code and analyze data in Dedoose called “flexible coding” (Deterding and Waters 2018), which involves a process of index and attribute coding, followed by a second round of coding to group and refine significant themes. In this stage, I initially coded only the follow-up interviews to develop and refine my codebook. My primary coding involved identifying categories of legal consciousness—drawing on Ewick and Silbey's three schemas. I then developed more focused coding to identify themes pertaining to relationship and family management, decision-making, and characterizations of the



law. Lastly, using that codebook, I analyzed the initial interviews again to look for instances where stories about the law may have presented there as well.

### *Positionality*

As a scholar in the feminist tradition, a discussion of my methods would not be complete without also considering my positionality. As a white woman with institutional support granted by the University of California, I was afforded a very real level of privilege and legitimacy that allowed me to do this research. Women studying topics that involve an element of sexual practice, especially those “popularly regarded as deviant,” often face sexualization (Hammond and Kingston 2014:335) in the field and women are more likely to experience sexual harassment regardless of the topic of research (Hanson and Richards 2019). My experiences with this were relatively minor—such as one interviewee stating, “Would I hit on you? I don't know. Would you say no? I don't know. Would you say yes? I don't know.”—and benign, such as another emailing me after the fact trying to set me up with her son. I believe that this was due, in part, to the fact that all of my participants were or are polyamorists. In my experience, polyamorists tend to be excellent at navigating conversations about other people’s boundaries and fully committed to respecting them. This is a skill several described as being necessary when managing multiple romantic relationships and one that I witnessed firsthand during these boundary-testing moments. Nevertheless, I am certain that my colleagues of color who study similar topics pertaining to sexuality and sexual practices have much different experiences. Furthermore, it is also likely that the perceived “legitimacy” I was deemed to embody as a result of support from the University came into play when testing my boundaries as well.

Interestingly, I encountered more moments of discomfort during interactions with other scholars, peers, and faculty than with my interviewees. My participants were happy to discuss

their relationships and sexuality; yet, the topic of polyamory often seemed to make individuals within the academy uncomfortable. In turn, this made it uncomfortable for me to discuss my research openly. My experience has been that, in the social sciences today, there is a trend toward studying topics that are personal. I have witnessed faculty reactions to “me-search” and the assumptions that underlie them. In fact, during my first year as a graduate student, one professor made a comment in front of a graduate seminar insinuating that I participate in threesomes.

These moments that occurred within the walls of the academy were especially difficult to manage because I am a first-generation college and graduate student from a working-class background. While it was easy to appear “legitimate” in the eyes of my participants, I felt delegitimized by these moments with my peers and colleagues. It took years before I gained enough cultural capital to successfully manage these encounters, yet they still affect the way I talk about my research today. I often feel I must be cautious about the way I describe my work, emphasizing the theoretical importance while downplaying the community from which I sampled in order to appear more “legitimate.” It is something that I have grappled with while doing this research because, in my opinion, research on polyamory and the families of polyamorists is intrinsically valid and important. Yet, this opinion is not always shared by others. Thus, I frequently feel like I am walking the line between standing strong with my viewpoint and navigating respectability politics. Ironically, this process of attempting to appear legitimate is one that my participants also undertake in their interactions with the law, which further emphasizes the way that polyamory is viewed by the broader society.

While it was clear to me how my research was viewed by some in the academy, it was also obvious that most people assumed I was polyamorous, including my participants. I was

aware of polyamory and became interested in studying it because of my involvement in other counter-cultures and the social circles that developed out of those. There is quite a bit of overlap between polyamory and other counter-cultures (Bauer 2010). I was able to do this research, in part, because of this prior knowledge, and I was able to move through the polyamory community relatively seamlessly as a result.

I don't recall ever being asked directly by a participant if I was polyamorous. I was sometimes asked why I study polyamory, which I can only assume was a low-stakes way of asking if I am polyamorous, to which I would reply, "I'm a researcher interested in diverse family arrangements and I'm invested in upholding the rights of all people to live their lives how they wish, given that they aren't harming anyone else." I felt that this statement was vague yet direct. Many interviewees made some kind of indirect comment to let me know they assumed I was polyamorous or that I was interested in the idea of being polyamorous. It is fair for them to be curious. They are, after all, sharing some of the most intimate details of their lives with me. But because they didn't directly ask if I was polyamorous, I didn't feel the need to offer more information. If they had asked, I likely would have responded with something equally as vague, not because I wanted to avoid the question, but because I didn't yet know the answer. I believe sexuality is dynamic and fluctuates throughout a person's life. In my experience, it is a complicated question and I think most polyamorists would agree.

## **Chapter Overview**

In the following chapters, I draw on this interview data to describe and explain how the families of polyamorists are formed and to illuminate the relationship between those formations and the law. Chapter 2 begins the discussion by examining the meaning and content of family among polyamorists. I argue that polyamorists must negotiate a complex set of social and legal

discourses during their quests to build families. As a result, the families of polyamorists don't look significantly different than traditional, nuclear families of monogamous couples. I identify three major approaches that polyamorists use when structuring their families—"deliberate hierarchies," "unintentional hierarchies," or the lack of any hierarchy at all, which is most utilized by solo-polyamorists and/or relationship anarchists.

And yet, these formations are somewhat of a contradiction because polyamorists are ideologically opposed to inequality within their relationships (Strassberg 2012). I argue that these hierarchies, utilized by over four-fifths of my participants, are largely the result of polyamorists being compelled to make family-building decisions within a system that does not support or recognize non-monogamy. Thus, in Chapters 3 and 4 I argue that the law and legal consciousness help explain this contradiction and shed light on the ways that polyamorists navigate legal territory that is not at all sympathetic to their family-building efforts.

Chapter 3 examines how polyamorists experience and make sense of the tensions that they encounter between themselves, their families, their relationships, and the state. I argue that polyamorists who implement hierarchies tend to think about rights, protection, and interference as mutually exclusive functions of the state. The polyamorists in my sample described specific tensions between the state as an agent of protection and the state as an agent of control. I argue that the way polyamorists interpret this contentious relationship contributes to the pervasiveness of hierarchies amongst the families of polyamorists.

In Chapter 4, I analyze the role that legal consciousness plays in explaining the family configurations of the polyamorists in my sample. By applying the dominant legal consciousness framework developed by Ewick and Silbey (1998), I show that, while the polyamorists in my sample have the race and class privilege to be able to resist the law with relatively few

consequences, the law maintains its hegemonic power and influence in their lives, which results in hierarchical family formations. Furthermore, I demonstrate how mono-normative legal ideologies and official law can affect the ways that marginalized social actors understand, interpret, and enact their “legitimate” family-building options.

In Chapter 5, I conclude by returning to the overarching question that this dissertation seeks to address: how are the families of polyamorists formed and how do they navigate hostile and treacherous legal territory? In answering this question, I discuss the nature of the families of polyamorists and what the prevalence of hierarchies within them suggests about their relationship with the law and legality. Then, I demonstrate the ways that legal consciousness can be used to explain the family-building behaviors of polyamorists. Lastly, I broaden the discussion to examine what these findings mean for our wider understanding of the relationship between the law and families in the United States.

## Chapter 2

# Unintentional Hierarchies: Polyamorists and the Families They Choose

We get some crap for that in the [polyamory] community because the majority voice seems to think that there should be no hierarchy, and everyone is on an equal playing field. I just don't agree with that because there are some realities involved there that often aren't addressed.

-Brooke

The institutions of marriage and family rapidly transformed in the last half of the 20<sup>th</sup> century (Sheff 2014a) and continue to change into the 21<sup>st</sup> century. As a result of the remarkable diversity of family forms and content in the contemporary United States, it is difficult to describe a “typical” American family (Stacey 2011). Traditional American sociological thought considers the family unit to be one element of a broad kinship network that links ancestors and descendants. Yet, new and diverse forms such as same-sex families, blended families, and single parents can disrupt that notion.

Most family research assumes a monogamous framework. Scholars have noted that one form of nontraditional family has been left understudied—the families of polyamorists (Noel 2006; Ritchie and Barker 2005; Sheff 2014a). This chapter begins to fill that lacuna by focusing on the family-building beliefs and behaviors of polyamorists in the United States. I offer a deeper understanding of these alternative family practices and add another intricate layer to the sociology of family by analyzing the ways that polyamorists negotiate conflicting sets of cultural, legal, and ethical discourses.

In this chapter, I address a key question for understanding the changing family landscape in the United States: *How* do polyamorists define and form families? Although respondents

defined the practice of polyamory by placing emphasis on the fundamental component of equality between all partners, which is in keeping with standard characterizations of the practice, I found that the actual family-building behaviors of polyamorists often conflict with this ideology. Further, I argue that the family-building behaviors of polyamorists, from the outside, do not look radically different from traditional, monogamous, heteronormative families. My research demonstrates the centrality of examining the role of the law and legal ideology in understanding how the families of polyamorists are created and shaped, especially when they are compelled to make decisions within a system that doesn't consider non-monogamy a viable option.

### **Defining the Families of Polyamorists**

While scholars have continued to actively engage in debates about the definition of "family," even feminist stances have largely ignored the families of polyamorists. For example, in their book, *In the Name of the Family: Rethinking Family Values in the Postmodern Age*, in which she defends family diversity, Judith Stacey (1996) reasoned that the nuclear family model of the past is becoming obsolete in modern society. Several scholars have conducted pioneering research on gay and lesbian families (Carrington 1999; Gianino 2008; Goldberg 2006; Murphy 2001; Wilson 2007) and feminist scholarship argues for a "chosen family" model (Weston 1991). Weston (1991) found that gay men and lesbians create a chosen family, which consists of friends, partners, former partners, and select biological family members. Some of Weston's respondents preserved connections with their previous partners post-break-up, consciously constructing familial relationships even if they didn't remain romantic partners and this continued contact often turned into sibling-like relationships (Weston 1991).

Yet, much of the research maintains a monogamous perspective. Vaccaro argues that most of the literature on gay and lesbian families is “written from a perspective that assumes family equates to two-parent, nuclear households” (Vaccaro 2010:426). Furthermore, they argue that scholarly literature that claims to widen the scope of family studies by highlighting and challenging heterosexism in parenting or calling for language that includes queer families, most often does so within a nuclear and monogamous family framework (Vaccaro 2010). However, in their research, Vaccaro (2010) presents the narratives of five queer individuals who created multi-parent families together by parenting children with other queer individuals with whom they weren’t romantically involved. While the body of literature on queer families continues to grow, the sexual experiences of non-monogamous individuals have been persistently overlooked.

Scholars have only begun to show serious interest in the families of polyamorists in the last two decades. One of the world’s leading experts on polyamory is sociologist Elisabeth Sheff who has published several scholarly articles on this topic. Sheff (2011) compared the families of polyamorists with those of “lesbigays” and found that they share more similarities than the families of polyamorists share with heterosexual families. Sheff’s (2011) findings support Weston’s (1991) “chosen family model” for the case of polyamorists because they continue to include former partners in their chosen families even after the romantic relationship has ended. Additionally, Sheff has sought to understand the particular issues facing polyamorous parents (Goldfeder and Sheff 2013) as well as their parenting strategies (Sheff 2009). Legal scholar D. Marisa Black (2006) interrogated the possibilities for social and legal change that the families of polyamorists may inspire with their resourceful use of private contracting and business models for family structuring under the law. And yet, the families of polyamorists still stand largely untouched by mainstream social scientific inquiry.



Sheff has produced the most substantial analysis of polyamorous families with children to date: *The Polyamorists Next Door: Inside Multiple Partner Relationships and Families* (2014a). The book is based on a 15-year qualitative, ethnographic, longitudinal study of polyamorous relationships. The book lays out the advantages and disadvantages of polyamorous families and describes their daily lives and is more of an informational and practical resource for those interested in polyamory. This chapter builds on Sheff's pioneering work and engages a feminist theoretical framework to further analyze the family-building behaviors of polyamorists in the United States. Do the polyamorists in my sample define their families similarly to the polyamorists in Sheff's sample? And if so, how do the families of polyamorists appear structurally? Do they rely on existing frameworks or do they create their own?

#### *Chosen vs. Biological*

Confirming Sheff's (2011) conclusions, my participants placed more emphasis on their "chosen" families over their biological families and regularly stated that they were closer to their chosen families. They often cited only considering their blood relatives "family" out of obligation. This notion of obligation becomes especially important when considering how polyamorists structure their chosen families. Their responses echo Weston's (1991) findings about the importance of chosen families for gays and lesbians and corroborate Sheff's (2011) findings that polyamorists define family in a similar manner to "lesbigays."

Of the thirty polyamorists I interviewed initially, ten identified as bisexual, eight identified as straight, five identified as pansexual, three identified as queer, three identified as

heteroflexible, and one identified as asexual.<sup>8</sup> Regardless of sexual orientation, most of my respondents expressed having issues with their biological families from a young age. Numerous participants stated that their biological families had rejected them after they came out. Others explained that their biological parents had psychological and/or emotional disturbances that rendered them inadequate parents. Thalia is a white, bisexual woman in her late 40s. Thalia grew up in Utah with Mormon parents who did not accept her lifestyle or sexual preferences. She commented on the moment when she recognized that a family of choice was a viable replacement for her biological family who had “fallen down on the job.” She states: “I realized that you can choose people to be your family and support system. I truly think that the family that you choose is your *real* family. If you choose them, that means a lot more than the people you have to accept because they are part of your family from birth.”

Gael is a white, heteroflexible, genderqueer individual in their early 40s with five romantic partners. They live with their partner of over a decade and their two-year-old daughter in a home that Gael owns in the greater Techtown area. Gael is highly educated and a very active member of the polyamorous community where they live, often hosting events and giving talks about how to successfully navigate a polyamorous lifestyle. Though their parents were not disapproving of Gael’s romantic choices, and in fact had an open marriage themselves, Gael had clearly given the topic of family a lot of thought as well:

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<sup>8</sup> *Pansexuality* is a sexual orientation that does not limit sexual attraction to one biological sex, gender, or gender identity. People who are pansexual often feel gender and biological sex are not determining factors in the sexual attraction that they experience for others. “*Queer*” is a term that was used interchangeably with “gay” in the past. However, in recent years this term has come to mean something more complex. In general, those in my sample who identify as queer don’t feel they are entirely straight or entirely gay and use “queer” to mean that they fall somewhere on the sexuality spectrum that cannot be adequately described by any other term. *Heteroflexibility* is a sexual orientation characterized by being attracted to the opposite sex most of the time but also being attracted to the same-sex often enough to make the person feel that they aren’t entirely straight but not bisexual either. *Asexuality* is a sexual orientation characterized by a marked lack of sexual attraction. While it may seem counterintuitive for a polyamorist to be asexual, this particular interviewee highlighted the fact that polyamory is about multiple loving relationships and that love and sex should not be conflated with one another.

In some ways the poly structure is my dating life and my family and my inner social group all at the same time. It's an interesting transition into a socio-sexual kind of space where the bonds of romance and sexuality intersperse with the normal bonds of what we think of as friendship and family. We have our partners and their partners and exes and people we want to sleep with. These people can all become a part of the family.

Most of the polyamorists I interviewed shared a similar feeling. When asked “at present, who do you consider to be a part of your family?” nearly every interviewee listed a group that included friends, lovers, metamours, and ex-lovers. While this sounds very similar to Weston’s (1991) findings about gay men and lesbians, there are some very stark differences between the social positioning of the LGBT+ community and the polyamorous community regarding monogamy and homonormativity.

For example, Yazmin is a white, woman in her mid-40s who identifies as heteroflexible, has three children fathered by her ex-husband, and had three partners at the time of her initial interview. Yazmin was especially eloquent in summarizing her opinion about the plight of polyamorists versus that of the gay community:

Heteronormativity is pervasive in American culture. Part of the way that gay relationships have been accepted is by buying into heteronormativity but changing it to homonormativity that just looks like heteronormativity. It is still two people. It is still that conceptual, unattainable ideal of lifelong monogamous partnerships. That's how they've been able to gain acceptance because they really don't look much different from mainstream married, nuclear family America. All of sudden, those ‘crazy sluts’ in the poly community want to come in and upset that [idea].

While the LGBT+ community has made enormous strides toward political and social acceptance in recent years, being a polyamorist is still heavily stigmatized and the two groups should not be conflated. While both groups are sexual minorities, several interviewees believed that the LGBT+ community sees polyamory as a threat to the legal and social status that they have fought hard to gain because they challenge the dominant mononormative model for relationships and families.

### **Hierarchical Family Structures**

I asked participants to describe who they consider to be a part of their family and how they make these determinations. While they described their family structures, a clear pattern emerged. Twenty-five of my initial participants relied heavily on hierarchies to organize their families. Participants either 1) embraced and intentionally used hierarchies, 2) unintentionally implemented a hierarchy by delineating the level of commitment to each partner based on the amount and type of obligation to them, or 3) did not use hierarchies at all. All of the participants who implemented a hierarchy, either deliberately or unintentionally, did so in a couple-centric manner. That is, one partner had priority over others. These primary partners were often the only partners that shared certain integrative life experiences and commitments such as legal marriage, home ownership, financial commingling, cohabitation, childrearing, and health-related obligations (e.g. being co-insured under one partner's health insurance or being assigned end-of-life or emergency medical decision-making responsibilities). Furthermore, primary partners frequently negotiated rules and boundaries for their primary partner's secondary or tertiary relationships.

### *Deliberate Hierarchies*

The polyamorists I interviewed who want or choose to opt-in to the benefits of marriage and state-recognized family forms often utilized a hierarchical structure. I call these situations—when a hierarchy is intentionally and thoughtfully implemented—a deliberate hierarchy. Thirteen of my initial participants—four men, six women, and two non-binary individuals—utilized a deliberate hierarchy. Additionally, one woman expressed using deliberate hierarchies in her past relationships, though she did not at the time of her initial interview, and one man explained that he planned to use a similar model in the future, though he was currently single.

I interviewed Brooke and Thalia together in the home that they own. Brooke and Thalia are a legally married couple and refer to each other as primary partners. Brooke is in her mid-40s and Thalia is in her late 40s. Both identify as white, bisexual, women. They regularly have loving, romantic relationships as a triad (dating a person together) or as separate vees in which one or both have partner(s) outside of the marriage. They lived with two of their five children—a six-year-old son that they raise together and an adult son in his mid-20s from one of Thalia’s previous relationships. Two of their other children are adults and live on their own and one young child was adopted by a family friend. At the time of their initial interview, they were functionally monogamous and seeking additional partners. Brooke and Thalia have been romantically involved for well over a decade and spoke openly about the way they carefully construct their relationships and family, especially considering their children:

Brooke: We look at it like this. We've been together for 14 years. We've raised three children and have another now. We have bills, a house, cars, and day-to-day living. Neither one of us feels that it's appropriate to bring someone into the relationship who would have an equal say in our life when they are not involved to that extent.

Thalia: There's no equity there. We're not going to date someone for two years or three years and tell them to come join the family. They're going to be vetted for a long time.

Brooke: We get some crap for that in the [polyamory] community because the majority voice seems to think that there should be no hierarchy, and everyone is on an equal playing field. I just don't agree with that because there are some realities involved there that often aren't addressed.

Brooke and Thalia acknowledged that their guidelines for new sexual partners are more relaxed, but because they have children and other legal obligations, they have very high standards for who they allow to enter their family. Consequently, there is incongruity between how they operate in their romantic and sexual relationships and how they operate as a family. They keep their family closed and tight. From the outside, they aren’t unremarkable—they own a home and two cars, they live, and raise children together in their nuclear family. Even though

they aren't monogamous, they have built a quasi-traditional lifestyle using a mononormative model.

Several other polyamorists I interviewed adopted similar approaches, regardless of their legal entanglement with each other. Malcolm and Trinity are a couple who are significantly less legally intertwined than Brooke and Thalia, yet they still implement a deliberate hierarchy. Trinity is an East Asian, pansexual, woman in her early 20s and Malcolm is a white, queer, transgender man also in his early 20s. They live in an apartment together and have two cats. They aren't married and don't have children but have been dating for several years.

At the time of the initial interview, Malcolm had five partners of varying genders and Trinity had seven partners of varying genders. Unlike Brooke and Thalia, Malcolm and Trinity didn't use the term "primary partner." Instead, they preferred to consider each other nesting partners and called their relationship an "escalator relationship," which they acknowledged follows a traditional narrative. For Malcolm and Trinity, this means that they began by dating, then moved in together, will get married someday, and have children together. Escalator, in this context, refers to those linear stages. Although they didn't use the same hierarchical language as Thalia and Brooke, they stated that they didn't intend to have nesting relationships with anyone other than each other. Additionally, they stated that they intended to get married in the future and though they were not yet legally bound to each other, it was clear that while they both date many other people, their relationship is the priority. They planned to have children together and described their intentions to parent as a closed couple. These decisions to marry and have children with only each other will render a nuclear family structure.

When deciding how to organize their families, polyamorists who use a deliberate hierarchy are continually interacting with the legal system, the economy, and other systems of

power. Both of these couples enact a hierarchy in their relationships and resulting families. However, these hierarchies don't exist in isolation and can only be understood by considering the social context within which they exist. Furthermore, deliberate hierarchies are not the only hierarchical model that I observed.

### *Unintentional Hierarchies*

The most surprising form of hierarchies I found were those that are implemented unintentionally. Unintentional hierarchies don't look drastically different from deliberate hierarchies—polyamorists frequently share legal, economic, and social entanglement with only one primary partner. However, the main difference between deliberate and unintentional hierarchies is that polyamorists who implement an unintentional hierarchy aren't doing so with full intent. They commonly held negative opinions of polyamorists who use deliberate hierarchies and denied that their relationships were at all tiered. Nonetheless, when polyamorists in this group described their relationships and their families, it became clear that decisions were made that privileged one partner. Yet, instead of these decisions being made because of a strong intention toward hierarchy, they were made because social, legal, and economic forces had limited their options. Twelve of my initial participants engaged in an unintentional hierarchy. Among the polyamorists I interviewed initially, seven men, four women, and one non-binary individual were involved in an unintentional hierarchy at the time of the interview. Additionally, one man and one non-binary polyamorist described using unintentional hierarchies in past relationships, though their current relationships aren't unintentionally hierarchical.

Marvin and Angie are a married couple that live and own a home together about an hour outside Treeville. Angie also has a partner named Rodney that she calls her "life partner." Angie is a white, straight woman in her early 70s, Marvin is a white, straight man in his early 80s, and

Rodney is a white, bisexual man in his early 60s. Angie had been married to Marvin for over two decades and had been with Rodney for 15 years. Rodney was also married, and he considered himself to be in two triads—one with Angie and Marvin, and one with his wife and his wife’s other partner. I interviewed Angie, Rodney, and Marvin in Angie and Marvin’s home. Rodney stayed with them three nights a week and with his wife in the home that they own four nights a week. When Rodney stayed with Angie and Marvin, all three of them slept in the same bed together. However, Rodney had a sexual relationship with only Angie and described a brotherly bond with Marvin.

During the interview, Marvin, Rodney, and Angie explained their relationships and relationship structures to me in detail. They didn't deliberately implement a hierarchy. It was clear that Rodney didn't feel secondary to Marvin and that Marvin didn't see Rodney as below him in rank. However, even though there was no stated hierarchy, there was an unintentional hierarchy on paper. Rodney is married to a woman with whom he has children and owns a home. Angie and Marvin are married and own a home together. Neither Angie and Marvin, on the one hand, nor Rodney and his wife on the other, shared financial resources with each other.<sup>9</sup> Nor did Rodney and his wife share financial resources with his wife’s other partner. Marvin and Angie both have children from previous marriages, and they explained that Angie’s children would be inheriting their property when they die. Rodney and his wife’s children will inherit *their* assets when they die. Though they all agreed that they would be at the hospital if one of them was ill or injured, only Marvin and Angie can make medical decisions for each other. These arrangements and practices, when considered together as a whole, are a prime example of the types of situations in which polyamorists often find themselves. Marvin, Rodney, and Angie, like many

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<sup>9</sup> When Rodney stays with Marvin and Angie, he will often take them out to dinner at least once a week and will clean up the dishes after the meals that they share at home.



polyamorists, don't like the idea of tiered relationships, yet a challenge arises when they also *must* participate in legally recognized relationships such as marriage in order to reap the social, legal, and economic benefits like property rights, tax benefits, inheritance, and medical decision-making.

Similarly, Gary and Emery are hyper-aware of the hierarchy trap and struggle against it, yet they too end up with an unintentional hierarchy. Gary is a white, queer, man in his early 40s and Emery is a white, bisexual, woman in her early 30s. They have been seriously involved for eight years. At the time of their initial interview, Gary and Emery shared a room in a house with two other sets of polyamorists (with whom they were not romantically involved) and the child of one of those sets, whom they helped parent. They weren't married and didn't have children yet, but Gary was previously married. They shared resources, had a joint bank account, and intended to have children and buy a home together. If they follow through with these intentions, their family unit will appear heteronormative. Emery had two other partners and Gary had one other partner at the time of their initial interview. These kinds of commitments weren't shared amongst all their relationships at the time of this interview. They described how their relationship had evolved:

Gary: When we first lived together there was definitely a desire and conscious decision that everything else was secondary and this [our relationship] was a priority. Then we were like, 'This seems really unfair to other people.' We worked for months to really unpack those hierarchical kinds of things and maybe still are.

Emery: Definitely, yeah. Particularly when either of us is really low resource, it is really easy to revert back to that mindset that I'm losing out and not getting enough of what I need or wanting to pull rank.<sup>10</sup> I want to [pull rank] and make ridiculous demands. Sometimes I realize that myself or he will tell me.

In the beginning of their relationship, Emery and Gary engaged in a deliberate hierarchy. They eventually decided that a hierarchy "doesn't align with their principles," so they tried to

have more equality across their relationships. Both Gary and Emery had very demanding careers and at various points in their relationship they have felt that their careers made having multiple relationships challenging. Often, whoever is having a difficult time with constrained energy or time will remove themselves from their extra relationships and maintain a functionally monogamous relationship within the couple. However, at these points, the functionally monogamous aspect is one-sided, and the other person will still date others. Both expressed that it can be emotionally taxing to see the other person engaging in multiple relationships when they don't have the resources to do so at that time. In these circumstances, as Emery expressed, it can be easy to revert to a deliberate hierarchy mindset. This means that Emery and Gary's relationship often ebbs and flows somewhere between a deliberate hierarchy and an unintentional hierarchy when one partner is functionally monogamous at times while the other isn't.

Although Emery and Gary were involved in a relationship that distinguishes between partners based on obligations during their initial interview, they did express a strong desire to be inclusive in the future:

Emery: We both are interested in marriage.

Gary: After meeting you [Emery], it reignited my idea of something like a marriage partnership.

Emery: We are undecided on how legal we want to get with it. Whether we want to do a marriage license or really hash into the details of what gets encompassed within that and choose into the parts of it that we want and just make contracts around that and opt out of the parts that we don't. One of the big motivating factors about not doing a marriage license is that, as other people come into our lives or maybe for people currently in our lives, the legal contract will automatically take them out of the same legal structure and access that we would have. One, we don't want to take that away from them necessarily. Two, I think there's some fear or concern around other people who don't necessarily understand what is going on, treating them as if their relationship with us is somehow less significant than the one that we have because we're married or simply because we've been together longer.

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<sup>10</sup> The resources that Emery is referring to are time and energy.

Gary: We have talked about this since the beginning and came to the conclusion about living with and having children with and marrying others, the idea that we don't want to make any decisions now that will totally kick someone else out of the category later. Someone we don't even know. If it's not something we can share with someone else, we don't want to put that into our relationship because it automatically makes it unfair to others.

They were conscious of the social context within which their relationship exists and were wary of the consequences of implementing a hierarchy, yet they often still upheld a hierarchical structure. Emery and Gary expressed that they would like to have children with each other and that they weren't opposed to the idea of having children with multiple partners, although they weren't sure how that would work legally or financially. Much of their planning was speculative and would require legal resources, which would be inaccessible to polyamorists of a lower socioeconomic status. They are an excellent example of how challenging equality can be amongst the families of polyamorists. Even when trying to be inclusive, systems of power intrude. This is especially true for polyamorists that currently do or hope to someday have children. Although Gary and Emery are consistently struggling against mono-normative ideologies, many other polyamorists are less aware of how easy it can be to fall back on the hierarchical systems of organization introduced by mononormative social structures.

### *Marriage and Marriage-Like Contracts*

For the polyamorists I interviewed who implemented hierarchies, whether deliberately or unintentionally, the use of marriage and marriage-like contracts was an especially popular template for organizing a family. Several of these polyamorists took a measured and pragmatic approach when explaining their family and relationship-building decisions. In these cases, hierarchies resulted from a natural attempt to navigate a monogamous world—one in which many social, legal, and economic benefits are determined by legal recognition of the nuclear family unit. These polyamorists were aware of all the benefits that married couples gain and

worked strategically to acquire them using the resources they had available.<sup>11</sup> Ian and Valerie had been dating for nearly a decade and had been polyamorous for most of that time. They lived together but didn't have children. When asked if they would get married someday, Ian stated: “We may get married, but it wouldn't change anything in the way we'd look at it. For me, it would be for tax purposes, medical rights purposes, et cetera.” To which Valerie added: “We basically already consider ourselves kind of like, *de facto* married. We might actually qualify as a common-law marriage.”

Similarly, Gael and their long-term partner were very proactive and creative in the way that they utilized the legal system to their benefit. When discussing the birth of their child with their nesting partner, Jasmine, Gael described their interactions with legal actors. I asked Gael: “Since you're not married to the partner with whom you live and have a child, have there been any resulting legal complications?” Gael explained: “There have been no legal complications, but we have created legal entities. There are always lawyers around who are used to dealing with queer couples who couldn't get married. We have been dealing with one of those lawyers and she's been very good at setting things up. We have power of attorney and wills and trusts.”

Compared to the total sample of polyamorists that I interviewed, many of whom have relatively high levels of privilege, Gael and Jasmine have significant resources. Unlike some other polyamorists in my sample, they are in a financial position that allows them to employ lawyers in this manner. Gael and Jasmine also have the benefit of access to certain kinds of lawyers because of their location near a major city. Not all of the polyamorists I interviewed can afford to implement these kinds of legal work-arounds or do not live near enough to a major city to have these kinds of lawyers at their disposal. In those cases, couples often opt for marriage as an easier and less expensive alternative. For example, when asked if he would consider getting

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<sup>11</sup> See Metz (2010) and Polikoff (2008) for a deeper discussion of the legal benefits of marriage.

married to his current primary partner, Emilio stated: “We live fairly independent lives from each other. We don't live together but we are, at the same time, partners. I would probably do it right now for tax purposes if it made sense.” Emilio and his partner were not as educated and were closer to being lower-middle-class than many of my other participants. They also lived in Ag Valley, which conceivably offers far less access to sexual-minority-friendly lawyers than Techtown. Thus, many of the polyamorists in my sample who implemented a hierarchy did so by employing legal marriage or marriage-like contracts. However, the opportunity to utilize contracts instead of legal marriage seemed to depend largely upon geographic location and socioeconomic status.

### *Relationship “Rules”*

Another less formal pattern of contracting occurred when polyamorists implemented rules to help define and structure their romantic relationships and resulting families, which help set apart some relationships from others. Nearly every polyamorist I interviewed made some reference to rules—whether they currently utilized rules in their relationships, had used them previously, or had dated others who used them. The most common rules, not surprisingly, centered around safer sex practices and safety in general. Other common rules included those that foregrounded scheduling and communication practices as well as the implementation of “veto power.”

In addition to the legal and economic ties that Malcolm and Trinity planned to incorporate into their relationship in the future, during their initial interview, they also described rules that privilege their relationship over others:

Trinity: That's the other thing that drives me crazy is when people think polyamory means I get to do whatever I want. I don't get to do whatever I want.

Malcolm: It is definitely possible to cheat in a poly relationship. You can go against a lot of the rules and guidelines we have. Some are very specific. Our bed is our bed and unless the two of us are there we don't invite someone else there. That's a very specific rule.

Trinity: That is a very specific rule—we only share our bed with joint lovers.

Malcolm: And if we're not coming home it's something we talk about. Sleeping in bed together and ending the night together is really important.

Trinity: Fridays are *our* date nights. That's really important because otherwise you get overbooked. Every other night of the week I can be on my phone, I can be texting, I can be with other people, but Friday night is just for us.

These types of rules weren't uncommon and are a clear indication of the types of power and privilege that set some relationships apart from others.

Another family that is organized by hierarchy where we see the presence of rules is in the case of Brooke and Thalia. They are a legally married lesbian couple and refer to each other as “primary partners.” Brooke and Thalia have been romantically involved for well over a decade and spoke openly about the rules that they apply to their romantic relationships. In addition to rules for safety, such as informing your partner if your date with someone else moves to a new location, Thalia and Brooke described how they determine the pace at which new relationships can progress as it pertains to safer sex practices:

Brooke: In terms of like, sex practices, we're very adamant about safer sex. We also have a rule that we move at the pace of the most uncomfortable partner.

Thalia: Yes, we move at the pace of the most uncomfortable partner. Because you can't go any faster than what someone's uncomfortable with, right? So, there were some very specific things like, ‘Do we engage with anyone that has HSV-2? Genital warts or genital herpes?’ That is something that we've relaxed a little bit because we've found workarounds. And I think there has been some relaxing of being comfortable making individual decisions without consulting each other. I've noticed that over the years, that's gotten better. Whereas before, it was more of a group effort. ‘Well, am I going to date this person? Am I not?’ And now, it's more of a, ‘Well, what do you think? You know, what are you going to do? Tell me when you decide.’

Here, Thalia and Brooke are clearly describing a situation in which, at one point, they both had a very distinct say in the other's external sexual relationships. This was a rule that set each other apart from every other relationship they might have and is not directly related to an institutional force but is still a social force that reinforces their hierarchy.

Brooke and Thalia's rules were not at all uncommon. Aaron and Sydney, as well as many others, required paper proof of negative STD tests be presented before sexual contact with new partners and highlighted the importance of communication:

Sydney: No fluid exchange until STD tests have been presented.

Interviewer: Paper proof?

Aaron: Yeah, and also before any contact, we want to have some conversation so that there's some awareness about what's going on.

Sydney: We let each other know what's going on. With every step of escalation with the new person we check in with each other.

While these types of safety and communication rules are relatively innocuous on the surface, it is important to consider who is enacting them over whom, with whom, and under what conditions. For example, primary or nesting partners tended to hold the lion's share of the power when determining the conditions of unprotected sex with a secondary, tertiary, or non-nesting partner. Similarly, while there were certainly broad norms within nearly all of the polyamorous relationships and families that were described to me, rules around communication were most often emphasized by a primary or nesting partner.<sup>12</sup>

While safer sex, safety, and communication were common and widely accepted rules, veto power seemed to be polarizing for many of the polyamorists I interviewed. Some of them found a place for it in their relationships. For example, Blake is a 25-year-old, college-educated, white,

man who had identified as polyamorous for five years at the time of his interview. Many of Blake's stories involved his ex-partner from college, Bitsy. Bitsy was Blake's first polyamorous partner. When I asked Blake if he had any particular ways that he liked to conduct his romantic relationships, he said:

Blake: It varies from partner to partner. It's also varies over time within relationships. I've had partners who have wanted to be somewhat aware of what was going on with the other people I was seeing. Bitsy and I, early on, said that we would meet any potential partners before anything got serious. The first couple of dates are fine, but if things are starting to look like it's going to be a really high priority or high commitment relationship or things are going to become physical to the point of penetration, then it's something where the new partner should meet the first partner. The first partner didn't necessarily have to like the new partner, but they should be able to trust them. That was a rule that I introduced because I tend to be very overprotective. I didn't really want to find out after the fact that Bitsy had been dating someone that was a scumbag and would hurt her. Maybe I don't trust them as soon as I meet them because of how they act, and I need to be able to say something.

Interviewer: Is that like veto power?

Blake: Veto power for very specific reasons. The idea was that veto power couldn't be just because you had a personal beef with someone or didn't like them. But I could veto if it seemed like the person was a closet psychopath or something.

Similar to Blake and Bitsy, Ian and Valerie also utilize veto power in their relationship and discussed its purpose with anecdotes. According to Valerie, she has a tendency to date "the worst possible conflicts of interest," such as people who are monogamous, and Ian has had to utilize veto power in order to intervene on her behalf:

Valerie: We have to inform the other person about people we are dating. Inform each other and essentially we have veto power. Ian is the only one who has actually exercised the veto power because, before Billy [her secondary partner], I would usually always go after the worst possible...

Ian: ...Conflicts of interest, people that we *knew* were more monogamous than non-monogamous.

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<sup>12</sup> "Communication" was often used to mean openness and honesty about all aspects of the relationship. For example, the nesting or primary partner may request notification if their partner's other relationships were becoming more serious, advancing to sexual contact, etc.



Valerie: Yeah, single guys who are basically desperate virgins. Not like *virgin*-virgins but practically virgins. Like had sex three times in their lives. So, there was a whole fear that they would get too attached and then want more or want a monogamous commitment from me, so Ian vetoed them. I did actually violate our agreement a few times. I think it was a weird kind of rebellion-type thing, but Ian vetoed this one guy and it was after Ian vetoed him that I started dating him but behind Ian's back. That didn't last. The guy kept it to himself. He didn't kiss and tell or anything so that's commendable. But then I told Ian at some point and I was very ashamed because I had kept it a secret. I told him, 'I just wanted to let you know I've been seeing this guy behind your back and I'm not going to see him anymore.' You know, that sort of thing.

What is, perhaps, most interesting about both of these cases is that in both, the man in a heterosexual, primary relationship is described as using veto power to “help protect” the woman in her relationships with other men. This type of paternalistic explanation was not at all uncommon. Men frequently cited women’s poor choices in partners as a reason that they felt comfortable exerting power and control via veto power. Conversely, women were described as using veto power solely in situations where they were jealous or territorial. For example, when I asked Blake if Bitsy had ever used veto power, he said that she had wanted to but didn’t because “she was just feeling particularly territorial or jealous and was kind of wanting me to stop seeing them.” Blake said that he did not stop seeing the person Bitsy was jealous of because he “did not feel it was appropriate.” In these cases, jealousy was not considered a valid reason to utilize veto power and was often discussed as something women only exercised because they were overly emotional and irrational.

Men were not the only polyamorists that perpetuated this “women are jealous” discourse. Women, too, told stories that painted themselves or other women as jealous, territorial, and/or emotional in their use of veto power. It seems that polyamory, even with its ideological quest for equality and egalitarianism, is not immune to the pervasive influence of patriarchy. I asked Madison, who identifies as a woman, if she had encountered any problems in her polyamorous relationships. She said:

I've been really remarkably lucky. I've only been the recipient of one veto. He and I are still very, very dear friends. But his primary partner, and in that case it really was a *primary* relationship, grew very uncomfortable with the number of relationships that they each had, and it was kind of a 'last in, first out' scenario. But there were also some other things. I think there was discomfort on her part because theirs was a long-distance relationship. He and I are sexually compatible and emotionally compatible and were very good friends. I think there was a bit too much between he and I for her to handle. We're still very good friends. We refer to ourselves as functionally platonic and she's cool with that. We send each other pornographic texts and jokes. We freely acknowledge that we love each other, we just simply do not physically engage in any sort of intimacy anymore.

Though Madison doesn't explicitly state that the primary partner of her ex-boyfriend in this situation was jealous, she implies that the reason she was vetoed was because her connection with him was "too much" for his primary partner (who happens to be a woman) to handle.

While some polyamorists discussed the usefulness of veto power, others felt that veto power inappropriately reinforced hierarchical relationships. During Gavin's follow-up interview, I asked him what he thought about these findings and hierarchies in relationships more broadly. In the process of disclosing his feelings about hierarchies overall, he also touched upon how he felt about veto power and control in romantic relationships:

I struggle to see eye-to-eye with people who do hardcore hierarchical relationships. There is the issue of the third person coming in and being considered a secondary or tertiary relationship. I have problems with the language because it makes them sound less than. It makes it sound like at any moment they won't be a part of the polycule because one person who is higher up in the hierarchy could say, 'I don't like them anymore.' I've seen that happen and hurt a lot of people, so I don't believe that strict hierarchies really work in polyamory. There's also the 'one penis policy' or 'one vagina policy' that some people use. Control is what it comes down to. When you talk about control in a space, like polyamory, that is supposed to be understanding and encourage communication and respect, I see hierarchies as the antithesis to that. It promotes the idea that you're locking someone down and not letting them grow into who they are.

The "one penis" or "one vagina" policy that Gavin is referencing is common among a broad range of non-monogamous relationships. However, the "one penis policy" or OPP, is much more common than the "one vagina policy." Both of these rules usually exclude all partners of the same gender as the rule's enforcer. For example, a man in a relationship with a

bisexual woman who explicitly states that she is not allowed to date any other men but is allowed to date other women, is enforcing a OPP. Additionally, if he gets upset only when she finds a new man to date but is unfazed by her dating women, this is also indicative of a “one penis policy” (Sheff 2016). Those, like Gavin, who did not support the use of veto power also tended not to support rules in general because they felt like it emboldened some people to exert more power and/or control than their partners would like. As Rodney explained about his relationships: “There’s no, ‘You can’t do this, or you can’t do that.’ It’s really just, ‘Let’s talk about it and we’ll figure out a way forward.’”

One possible explanation for the presence of rules in polyamorous relationships is the pervasive influence of law, legal thinking, and legal language (Sarat 1990). The presence of rules, particularly veto power, suggests that polyamorists construct or frame their relationships at least somewhat in terms of the law. Veto power itself is based on a legal concept. The classic Weberian concept of power is most useful in this context: the ability to carry out one’s will, even against the will of others (Weber 1947). This definition of power is common in the study of families and romantic relationships (McDonald 1980) because it can easily be understood as decision-making power. Of course, the definition of veto power can be extracted from this: “the power to prevent one from carrying out his or her will” (Schwartz, Patterson, and Steen 2012:253). In the U.S. government, veto power is usually described as a “right” vested in one branch or one political actor to stop the enactment of a particular law. Similarly, polyamorists seem to be enacting the language of the law in a powerful way by conferring disparate decision-making powers to their multiple partners.

### **Non-Hierarchical Family Structures**

Despite the polyamorous ideologies of autonomy, democracy, and egalitarianism, only a small fraction of participants (five out of 30) did not implement any hierarchies in their family structures. In their interviews, these polyamorists emphasized the importance of autonomy and equality most and often identified as practicing “solo-polyamory” or “non-hierarchical polyamory.” This means that they didn’t have, and weren’t seeking, a primary or “nesting” partner. They didn’t apply hard and fast rules to their relationship structures and opposed the implementation of hierarchies of any kind. Among the polyamorists I interviewed initially, two men, two women and one non-binary individual practiced polyamory this way at the time of the interview.

One such polyamorist is Carly. I interviewed Carly, a white, woman in her early 40s, together with one of her two partners, Gavin. The interview took place in the home where Carly lived alone four to five days a week. Gavin is a white, bisexual man in his mid-40s and lived with his wife most days in a home that they own together. At the time of his initial interview, he stayed with Carly one or two days a week. In addition to Gavin, Carly was dating another man who spent the night once a week. Though she and Gavin held a commitment ceremony to express the intended permanence of their relationship, she didn’t consider Gavin her primary partner and she strongly opposed hierarchies. Carly said she practices solo-polyamory, considered herself her own primary, and greatly valued her autonomy. She had no interest in legal marriage, children, or cohabiting with someone else full-time:

I've never been interested in nesting or marriage. I generally like to date people who *do* have other partners because when I date people who are single they want to be more invasive, but I really need my ‘me time.’ This is my life. This is my home.

Interestingly, while Carly practiced solo-polyamory, Gavin implemented an unintentional hierarchy. He is married to his wife and owns a home with her. While Carly didn't utilize hierarchies in her own relationships, she is inherently a part of Gavin's hierarchical structure.

Neil, a white, asexual, man in his mid-20s, also practiced solo-polyamory at the time of his initial interview. Neil, a legal professional, considered socio-legal interference in relationships unethical. He lived alone and was not involved in any romantic relationships at the time of his initial interview, though he stated that he was seeking them. Like Carly, Neil valued his autonomy and resisted patriarchal social norms:

I look at marriage and it really does seem like it's a property transfer. My ideal relationships are independent and not attached at the hip. We occasionally see each other and so on but I don't like the relationships that transition from 'I' to 'we' and where you merge identities. I prefer relationships where everyone has their own life and is very autonomy-focused.

Many solo-polys make conscious ethical decisions around the way they practice their relationships and resultant families. In these cases, the family-building behaviors of solo-polys differ most from the traditional, monogamous, nuclear model. These polyamorists relied most heavily on a true chosen family model. Their relationships tended to be straightforward and well-defined. However, by purposefully disregarding hierarchies as a legitimate family structure, these participants were also unable to take advantage of the many social and economic benefits that come with being a part of a legal family.

### **Reactions to Initial Findings**

After an initial phase of interviews that took place in 2015 and 2016 and some time spent analyzing them, I returned to interview a portion of the same participants in order to have them reflect upon what I was observing. First, I wanted to ask for these polyamorists' help understanding these contradictions. As the best experts on their lifestyle and lived experiences, I

wanted and needed their input and interpretation of the hierarchies that I observed. Second, I wanted this analysis to be as deeply steeped in the polyamorous experiences of my participants as possible and, thus, I wanted their voices to foreground my analysis. Throughout the process of this dissertation, I have been careful not to tell polyamorists what they are experiencing or how they are experiencing it, and while the hierarchies I witnessed are a sociological puzzle, it was important to me that I understood them as a polyamorist would understand them.

#### *Deliberate or Unintentional Hierarchies vs. Prescriptive or Descriptive Hierarchies*

While discussing the hierarchies I observed, the most common theme that arose was a differentiation between “descriptive” and “prescriptive” hierarchies. These were two terms I had never heard before and that were not mentioned at all during my initial set of interviews. Adeline used them unprovoked during her interview and I asked her to explain the terms to me:

“Essentially, it’s whether you describe yourself as hierarchical and then follow that label’s actions [prescriptive], or if you happen to have some sort of hierarchy because of how your relationship or life is structured [descriptive], I think.”

Similarly, Edgar used both terms more than 10 times in his follow-up interview. He elaborated on Adeline’s definition:

A prescriptive label means that you say, ‘This person is primary, this person is secondary, and that means these things.’ Whereas a descriptive hierarchy means that, you know, in the last month I've spent 60% of my time with this person and the other 40% of my time has been unofficially split up between the rest of the people I'm dating. And maybe that indicates somehow that the first person is primary, and these people are secondary. So that's descriptive, I would say...It's also kind of a respect thing. Prescriptive means that there are these rules or these agreements that enforce this hierarchy. And now you're taking away someone’s autonomy. Whereas descriptive means that these people have been doing their own thing, doing what makes them feel good, and scheduling things how they want to and living their lives but when we look back at the month prior, it turns out that these two people liked spending a lot of time together and they just happened to spend less time with their other partners.

The polyamorists I interviewed are using different words to describe the same phenomenon that I uncovered: hierarchies appear to emerge even when they aren't explicitly chosen as a relationship model. When they emerge purposefully, polyamorists call this "prescriptive" whereas I have called them deliberate. When they emerge naturally as polyamorists go about living their lives, polyamorists call them "descriptive" whereas I have called them unintentional. Therefore, the polyamorists in my sample and I were in agreement that hierarchies are a prevalent relationship model and foundation for building families. But why were they so common if they seem to contradict several polyamorous ideologies?

Malcolm described his experience with this exact tension in his follow-up interview when I asked about the way he was using the term "primary partner" to describe Trinity:

Hierarchical language is something that I struggle with because I don't like the term 'primary partner' and yet I say it because I don't really know how else to convey what I mean. I feel like I either have to use 'primary partner' or I have to give the whole spiel. I think it is a shorthand I use to designate that Trinity has my heart. I don't know how else to describe it. I'm in love with her in a way that is fundamentally different from the way I am in love with anyone else right now. I don't think that she experiences things this same way. I think that I have discovered that when I have someone in my life that I have really big, long-term feelings for, that feels kind of separate and different and distinct from my other relationships that are also important to me but because of the distinctness, that relationship ends up being prioritized. I don't like the idea of secondary or feelings being secondary...I like the idea of it being descriptive. I would say our situation is much more descriptive. It is not rules then actions. It is that the actions have crafted the rules that we follow. We have noticed what is comfortable and what feels honest about our feelings and we've structured our relationship around that rather than setting out to have a primary relationship.

While Ritchie and Barker (2006) described the way that polyamorists created new language to describe their relationships and experiences, it seems that at least some polyamorists use existing language to describe their families and relationships, even if that language isn't a perfect fit, in order to be a part of a conversation that can be understood by monogamous society.

*Needs vs. Emotions*

The dominant way that polyamorists understood hierarchies was within a needs versus emotions framework. The polyamorists I interviewed frequently highlighted that their hierarchies were needs-based, not emotions-based. While they may have a deliberate hierarchy or unintentional hierarchy, it was not necessarily because they loved one person more than another. Often, these delineations were made because one partnership had different needs than another. For example, Madison discussed the way that one of her vee relationships operates. The other two parties in the vee are married, live together, and have children

At least with my semi-local vee it would look, from the outside, very much like a hierarchy because there is from a financial and housing perspective. There is sort of a hierarchy in that Elijah and Alexa are married and they share a bank account, they share space and they have a three-year-old that requires the time and attention that a three-year-old requires. So, from that standpoint, there are certainly things and needs that come first but I think we all have kind of the agreement that it's more needs-based and logistics-based than it is emotional or structure-bound. So, with my other polycule, even though it is long-distance, it is in many ways more equitable even though Morris and Madeline share space. They don't really put either of each other ahead of either me or Heidi [one of their other partners].

Jaimie is describing here that often hierarchies emerge because of responsibilities undertaken by two partners that may not be undertaken by others such as childrearing and cohabiting. The needs associated with making those responsibilities function smoothly on a daily basis can sometimes override the desire to maintain equality across all relationships.

Jaime discussed the way that egalitarianism, equality, and hierarchies interact in her follow-up interview when I presented her with my findings:

Hierarchy and egalitarianism are pretty much opposite. But I think there are a lot of folks who believe in the idea of being egalitarian, who want to believe they treat everyone equally and that everyone in their life has the same kind of value. But the reality of emotions is that we connect with some people more deeply than with others. There are some people you want to spend more time with than others. You get this sort of default hierarchy. But then you also have logistics and life circumstances and the fact that it's really hard to survive in this world as a single person trying to raise a family and keep a household alive. Financially it's impossible. Logistically it's impossible, or near impossible, to manage. So, people couple because that's what's accepted and because



we've all been raised to do that. You find someone to get married to and then have kids and now by default you have a hierarchy. If your life is tied into a mortgage and raising children, you can't invest all of that and then just say, 'Well today I'm feeling like doing this so never mind what you all need.' I mean you can, but it doesn't usually bode well for a marriage and children. It's a tough thing to balance. It takes a high degree of awareness and luck and life circumstances to be entwined in that way and to still truly navigate being egalitarian... I think as a solo poly person it's much easier to be egalitarian because I do what works for me. I negotiate for myself with each person individually. But obviously my kids still have to be my primary relationship. In that sense, everyone else around me kind of loses out to that. I guess if I had a partner who I was raising those children with, they would get lumped into that.

In these conversations, the polyamorists in my sample are attempting to navigate a world in which “needs” are dictated by financial and legal co-mingling and these needs don't align with how they want to live their lives ideologically. In the above excerpt, Jaime seems to be arguing that part of the problem comes from emotional limitations that polyamorists face. However, another large part of it pertains to the “impossibility” of maintaining a family and household without the help of at least one other person. This tension, according to Jaime, leads to what she terms “default hierarchies.” So, then, what are these family or household disruptions that polyamorists face?

### **Disruptions to Daily Functioning**

During family construction, polyamorists face multiple decisions concerning how to best interact with formal institutions, the law, and legal actors in order to carry out even some of the most basic tasks of daily functioning. Places where they experience disruptions to their daily functioning highlight tensions between the law and the family-building desires of polyamorists, which is important context for understanding the landscape of the families of polyamorists. Whether they are aware of it or not, these disruptions to daily functioning inevitably shaped their families.

Polyamorists must navigate laws about custody, marriage, healthcare, taxes, discrimination, and housing, among others. When these conversations arose, they were often characterized by expressions of fear, frustration, and distrust. The polyamorists in my sample feared that they would face discrimination and stigma across a variety of settings because polyamory is not part of a legally protected class, which would qualify polyamorists for special protection by law or policy. They were frustrated with existing policies that dictated and/or limited the legally-recognized family-building options that were available to them and expressed a lack of trust that the “the system” itself would not discriminate against them.

Perhaps one of the greatest and most frequently mentioned sources of fear for polyamorists was custody law. Several polyamorous women I interviewed described experiencing fear that their existing or future children could be taken away from them because family law judges often consider polyamory immoral, resulting in an unsafe environment for the child. Jaime will soon be forced to confront this fear head-on. She has two children who are fathered by her ex-husband and she feels she must keep her polyamorous lifestyle a secret from her ex-husband. When asked if she would tell her children about her polyamorous relationships, she stated:

I think so. My 10-year-old is getting to the age where he's going to start asking questions. He hasn't asked anything directly yet but he's getting more aware. It'll be interesting because I don't know how he'll react to that and I worry about him taking it back to his dad. I don't know how I'll ride that line of being honest with him and also protecting custody.

It seemed most people had heard a story about someone in the community losing their child(ren) in a custody battle because they are polyamorous. This was most often the case for polyamorists who entered prior marriages monogamously and then came to polyamory during or after those marriages dissolved.

Similarly, in Olivia's follow-up interview, she told me a story about a triad she knew who were experiencing issues with Child Protective Services (CPS). The triad raises their two children together as a closed group but are not open about their family structure. Olivia explained that the confusion at their children's school around determining who one of the children's mother was led to a call to CPS that they must now navigate.

On the other hand, for polyamorists who had yet to become parents, the fear of potential legal troubles factored into their decision about future parenthood. For example, Adeline described her thought process about whether or not she will adopt or conceive a child biologically:

Adeline: About kids, so with poly, I get concerned about the legal stuff, especially because of the Supreme Court changes and current politics, that if I adopted a kid...if I didn't want to have a kid of my own body and I adopted a kid...what if someone doesn't like that I'm in a polyamorous relationship? Will they take the kid away? Or will they not allow me to adopt to begin with? And if I had a kid of my own body, then I think there would probably be more protections for that biological child than there are for adopted children. Polyamory does feel like it would limit my options if I don't want to present as, like, normal, I guess.

Interviewer: Is that the main thing that you're concerned about? Having the child taken away, or are there other social or legal sanctions that you are concerned about too?

Adeline: The kid being taken away is my first thought. Like, my mom would probably want to be involved with the kid, even though I'm not really involved with her right now. And if she doesn't like the way I do my relationships, what if she wants to get authorities involved or something? I also don't know how it would work if fifteen or twenty years from now, I have a kid old enough to talk about their parents. I don't know how much the world's going to change in fifteen years when it comes to how people view alternative relationships. Would I have to hide my relationships from my kid? Would I have to lie to my kid? If not, how do I impress upon them that other people might not think that this is right, but that it's actually okay?

Interestingly, but not surprisingly, polyamorous women overwhelmingly bore the burden of these types of fears around parenthood and custody. The only time a non-woman brought up similar issues was in reference to trying to give up their legal custody rights in the event that they

chose to father a child with a partner (in the case of Gael) or wanting to enforce child support requirements (in the case of Malcolm).

Many times, disruptions to daily functioning that polyamorists experienced were not isolated to one realm or particular issue. Polyamorists frequently expressed frustration with the way that legal marriage is a prerequisite for shared tax or healthcare benefits and protection for children. Tyrone brought his current parent, Hannah, with him to his follow-up interview. Hannah is monogamous and neither she nor Tyrone are currently dating anyone else. Tyrone maintains his polyamorous identity even in his current monogamous relationship. Hannah agreed to be interviewed with Tyrone and together, they discussed some of the issues that polyamorists experience as well as those that they have encountered personally:

Tyrone: The biggest thing I hear, especially with people being opposed to rights for polyamorous families, is: 'What's to stop people just claiming they're a polyamorous family to get on each other's health insurance?' Well, if people actually had the option of getting health insurance easily, it wouldn't actually matter. If we didn't have employment-based health insurance, if we had a nationalized system, then it doesn't matter if you're married or not. Everyone's got health insurance.

Interviewer: So, it sounds like your ideal situation is one where we decouple the rights that go along with being part of a married-couple family and just make them individual rights?

Tyrone: Exactly. I don't see the difference between a tax break for being married and a tax break for cohabitation. We already decoupled the child tax break, right? Doesn't matter if you're married and have a child or are not married and have a child, if you have a child, you get a tax break because you need to take care of the child. What's the deal with marriage? If people are living together in a household, you need the support that household. Give them the tax break.

Hannah: As much as I believe in marriage, I don't think that it should be a requirement. You're with someone, you've committed your life to that person. You're running a household together. You're paying your part. You're doing everything that a married couple would do. I don't understand why you're still ineligible to share healthcare or for certain tax things or other things like that. I don't understand because I know a lot of people that don't want to get married, but they want to be with their partner the rest of their life. They have children. They have this life together and they can barely afford their home because they can't get a tax break.

Tyrone: Like for every reason to give a marriage benefit, there is a secular reason why it should apply to basically anybody, which just leaves just religious reasons. Unfortunately, we still have a lot of room. The whole thing about separation of church and state is not a real thing. It's something that they tell people to make them feel better because very much religion runs this country and how it views coupling and life and things like that. Even though our generation is changing in that aspect.

Other polyamorists expressed fear about losing their jobs or being otherwise discriminated against if they were open about their polyamory. Yazmin described her response to participating in a diversity and inclusion event at her company during which a high-ranking employee discussed being gay:

I thought, I think this is the time to bring up that not all sexual orientations or relationship models fall under that protection. I could conceivably be fired for being polyamorous. There's nothing protecting that from occurring. I think that the time is right to bring this up and what better place than a follow up to this discussion that multi-partner consensual non-monogamous relationships are noticeably absent from that.

For this reason, among others, many polyamorists that I interviewed prefer to remain closeted and appear monogamous at work. A similar situation in which polyamorists often prefer to appear monogamous for fear or facing discrimination without proper legal recourse is in housing matters. During her follow-up interview, Emery described that her housing situation had recently changed and that she was now living with Gary as well as his other partner, Korie. She explained that during their home search, they would often present only two as the parties as dating and the other as simply a roommate because they were afraid that a landlord would not rent to them knowing that they were polyamorous.

Many of my participants articulated some degree of fear, frustration, and/or distrust about openly building families within existing institutions while polyamorous. I suspect that the norms and laws that motivate these negative feelings contribute to the prevalence of hierarchies

amongst polyamorists despite their strong ideological position against them. Hierarchies may protect and buffer polyamorists from discrimination by allowing them to appear normative.

## **Discussion & Conclusion**

The polyamorists I interviewed negotiate a complex set of social and legal discourses in their quest to define and build their families. This family-building cannot be understood without considering the broader social structures and institutions within which they exist. To operate successfully within a monogamous society, polyamorists regularly must make decisions about their relationships and families within a framework that doesn't account for non-monogamy. In many ways, the legal system and resultant social practices directly contradict the core principles of polyamory, which results in many polyamorous family structures being much more traditional than one would expect—comparable to nuclear, monogamous families.

By interrogating the meaning and content of family among polyamorists, this chapter makes three crucial contributions. First, it confirms Sheff's (2011) findings, namely that polyamorists define family comparably to gays and lesbians by placing emphasis on the families they choose. Despite differences in social and legal protections, polyamorists don't differ from other sexual minorities in their definition of family.

Second, this chapter highlights the connection between families and wider social and political structures. While U.S. families are becoming increasingly heterogeneous, this research demonstrates that, at this moment, there are limits to this heterogeneity. The families of polyamorists are a perfect backdrop to examine how mono-normative ideologies persistent within the socio-legal structures in American society may interfere with the family-building behaviors of non-traditional or sexual minority groups. Polyamorists espouse ideologies of autonomy, egalitarianism, and democracy and yet, many struggle to uphold these ideologies in

practice. Thus, while the way we define family may continue to change, certain family relationships are limited by socio-legal structures.

Finally, and centrally, polyamory is not a monolithic arrangement or lived experience. This chapter demonstrated how polyamorists navigate their circumstances as well as the processes in which they engage to maintain their commitments. In doing so, I have identified three major approaches that polyamorists use to organize their families—the “deliberate hierarchy,” the “unintentional hierarchy,” and the non-hierarchical families of solo-polyamorists and relationship anarchists. With these first two strategies, polyamorists rely on a framework that can be understood by traditional, monogamous society, yet renders them the same safety and benefits as a family with two married, monogamous adults. However, polyamorists that use an unintentional hierarchy don’t acknowledge this contradiction and often believe that their relationships are all equal. Those who utilize a deliberate hierarchy are mindful of the decision they’re making, whereas those who utilize an unintentional hierarchy are not. Failing to acknowledge the use of a hierarchy is potentially problematic and may result in polyamorists inadvertently contributing to a system of oppression and constraint that they don’t stand for in principle.

## Chapter 3

### State Protection vs. State Interference

When you get married, you don't get married to just one person. It's a triad between you, that person, and the state... You're in a business contract with all three. It's a three-way contract.

-Gavin

The fact that polyamorists—both intentionally and unintentionally—engage in hierarchical family structuring, even when they are ideologically opposed to that practice, reflects that “the law is all over” (Sarat 1990:343). Though polyamory is often “demonized” by society (Barker 2005), the polyamorists in my sample still exist within the context of the U.S. legal system and are subject to the same formal laws and persistent forms of legal ideology as the rest of the country. These laws and regulations are enacted by the state with the assumption that they *will* affect decision-making and behaviors, and, for that reason, the law is very important (Baumle and Compton 2015). This fact is highlighted when comparing polyamorists who implemented hierarchies with those who did not.

A small number of the polyamorists in my sample were able to avoid hierarchies by opting out of legal marriage as the basis of family structure. Most of these polyamorists shared a similar opinion about marriage, which was summed up well by Neil. According to him, the institution of marriage is “tainted” and has a history akin to “property transfer,” which is enough to dissuade him from using marriage in his family formation efforts. For Neil, a white, man in his late-20s who practices “relationship anarchy,” and others like him, “marriage creates hierarchy” because of the way that it allocates rights among partners. However, for others, the legal



restrictions around family formation, especially marriage, play a more powerful role in their family-building beliefs and decisions.

For couples like Aaron and Sydney and Bryan and Valerie, “marriage is important for a lot of reasons, just for dealing with legal things.” Both of these couples described feeling mostly ambivalent about being married to one another except that they wanted the state protections that legal marriage would afford them. Interestingly, a majority of the polyamorists I interviewed felt that the state should not interfere in families except in cases of abuse or neglect and that the legal rights given to married-couple families were unnecessarily exclusionary of other family forms. Why, then, do some polyamorists rely on these preexisting legal structures more heavily than others? How do polyamorists understand and navigate their relationship with the state and how does that contribute to their use of hierarchies to structure their families?

I answer these questions in this chapter, first by providing broader context about how the dominant legal ideology in the U.S. conceptualizes and treats families as a backdrop against which non-normative families can be understood. Next, I explore how polyamorists experience and make sense of the tensions that they encounter between themselves, their relationships, their families, and the state. I argue that polyamorists who implement hierarchies tend to think about rights, protection, and interference as mutually exclusive functions of the state. They want the same rights that legally-recognized families are granted, on the one hand, and feel that the existing framework is broken, on the other. Furthermore, I describe the complex and, at times, contradictory use of rights discourse interwoven throughout polyamorists’ family-building beliefs and behaviors. My findings suggest that polyamorists grapple with their experiences of the state as both a source of protection and a source of control. I explain how the polyamorists in my sample often find themselves inviting the law into their family lives in order to receive

protection while simultaneously fearing what the law could do to control their families or tear them apart. I argue that these critical experiences and the narratives of the state created around them—the state as an agent of protection and the state as an agent of control—contribute to the prevalence of hierarchies within the families of polyamorists.

### **How and Why Does the State Regulate Families?**

Formal law and the state as its primary agent have the ability to affect the family-building beliefs and behaviors of both monogamous and non-monogamous people in that they have the power to define terms like family, marriage, and parenthood. Under current U.S. law, the state creates and controls these definitions and designs and dispenses benefits, protections, and rights according to them (Metz 2010). Though formal laws and informal legal ideologies regulate many familial interactions, most people are not fully aware of the role of law in their family lives and view the family as a “private” sphere that is sheltered from external legal control (Mather, McEwen, and Maiman 2001). However, similar to LGBT individuals (Baumle and Compton 2015), polyamorists are more likely to confront formal law more regularly in their family-building endeavors and are more likely to find that their desired outcome is not possible under existing law. Socio-legal scholars have described the ways that this kind of regulation is carried out.

Legal scholar Elizabeth Emens (2004) emphasizes how the laws of a given society maintain the dominant construction of relationships. Emens describes the way that non-monogamy could be perceived as a threat to monogamy and the systems of power that privilege it in the West. Polyamorous family-building is not recognized by federal, state, or local laws. Indeed, some jurisdictions enforce laws that make it nearly impossible, including state laws that enforce the two-person limit on marriage and partnership, zoning laws limiting the number of

unrelated persons who may reside together (Emens 2004), custody, adultery, and bigamy.<sup>13</sup>

These laws guarantee that polyamorists are not afforded the same legal rights and protections as monogamous relationships.

Kimberly Richman (2002) studied the roles that courts and judges play in defining what it means to be a “legitimate” parent when you are gay or lesbian by analyzing the language used in child custody cases over a 50-year time frame. She showed how, in determining custody cases, judges sculpt the notion of “parenthood,” both legally and socially (Richman 2002). These processes, “either explicitly or implicitly, shape and redefine the identities of gay and lesbian parents” and those seeking parenthood (Richman 2002:288). She also found that, oftentimes, it was judges who made the decisions about who are considered “legitimate legal actors and who are not” (Richman 2002:286). Because of these decisions, Richman argues, some people are defined as appropriate legal actors and some have their legal existence erased. In this way, Richman has highlighted the inadequacies of the U.S. legal system when it comes to dealing with families that don’t fit into the traditional, heterosexual definitions of family defined by the courts.

A similar issue arises when the meaning of “family” in the contemporary U.S. expands and is challenged. Currently, marital families are granted more rights and privileges than both heterosexual and homosexual family forms that are not based on marriage. Families that are omitted from marital families include: “unmarried couples of any sexual orientation, single-parent households, extended-family units, and any other constellation of individuals who form relationships of emotional and economic interdependence that do not conform to the one-size fits-all marriage model” (Polikoff 2009:2), including the families of polyamorists. Laws that distinguish between married and unmarried persons stem from patriarchal notions of family. In

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<sup>13</sup> Moore v. City of East Cleveland, 431 U.S. 494 (1977).

the U.S., marriage brings with it a host of rights and protections that legitimize it as the most important type of family. Marriage provides married-couple families with economic, medical, and social support (Polikoff 2008). The institutionalization of marriage and the way that monogamy has been normalized as a “natural component of human biology and evolution” are the most important factors that sustain marriage as a dominant ideology (Aguilar 2013:107). The state conflates these two factors by making monogamy an essential part of legal marriage (Duggan and Hunter 1995). This serves to reproduce marriage as a hegemonic discourse and practice, which Pieper and Bauer (2005) termed “mono-normativity.” Thus, the families of sexual minorities are defined and constrained by persistent conservative legal ideologies and formal laws.

But why is the law so integrated into family life? Two differing perspectives arise when socio-legal scholarship attempts to answer that question. Progressive legal scholars argue that family matters are only intensified by law’s involvement, while more conservative legal scholars maintain that law’s involvement in family matters is necessary to maintain order (Dewar 2000). For example, on the conservative side, Schneider (1992) is heralded as a “canon” of family law because of his argument for the distinctive role of law in governing families. Schneider argues that law is a necessary force in family life in order to “channel” people’s behaviors into those that build, shape, sustain, and promote “social institutions which are thought to serve desirable ends,” namely marriage and parenthood (Schneider 1992:498). The issue of promoting social institutions is an important one and many legal scholars agree that protection, arbitration, and facilitation of marriage and parenthood are central goals of contemporary family law (Schneider 1992; Carbone 2011). However, the question remains whether it is a *necessary* function of the law given today’s quickly changing family landscape in the U.S.

Feminist socio-legal scholar Martha Fineman (1995) makes a slightly more progressive argument about the role of the “sexualized family” in sustaining power and inequality within families. She examines the societal assumptions underlying the “natural” or traditional family and argues that the problem with the American definition of family is its focus on adults and the sexual aspect of their relationship. Instead, Fineman proposes an “intimacy scheme” within which intergenerational nurturing would be privileged and protected by the law and the mother-child dyad would be the focus of social policy (Fineman 1995:5). Fineman argues that the “sexualized family” is the property of men and that this relationship is reinforced by legal institutions and the state. “Sexualized families” receive legal protection and social and economic subsidies without being subject to scrutiny, whereas families that lack a male head of household are considered public and are subjected to a barrage of interventions and supervision (Fineman 1995).

### **Ditching the Script**

Incongruity between mono-normative scripts and polyamorous ideology is the foundation for polyamorists’ contentious relationship with the state. When describing their family forms and contents, the polyamorists I initially interviewed often felt the need to first acknowledge the mono-normative sociocultural scripts from which they felt their relationships and resultant families deviated. This recounting of traditional family scripts was an important first step that tended to lay the groundwork for later discussions of tensions between how they want to structure their families and how they can legally structure their families. For example, Emilio and Nathalie chronicled the ways they had been taught to think about family and relationships growing up with traditional, religious parents:

Emilio: I had been brought up with the idea that I should marry whoever my high school sweetheart was as soon as I turned 18 and have three children. That was pretty much the

program that was laid in front of me by my parents. I never agreed with that ideal at all, even from a pretty young age, but it was the only thing I really knew. As a teenager, I pictured my future relationship style being pretty monogamous, but I just didn't really want to get married or have kids until I was older.

Nathalie: Pretty similar situation for me as far as, 'This is the option that you're given. This is the model that is laid in front of you.' I *did* go that route. I got married at 19-years-old and we were together for a couple of years. Then I got pregnant and had a kid. But then, you know, dude split.

At different points in their lives, Emilio and Nathalie realized that these traditional family expectations did not sit well with them and they moved toward relationships and families that aligned more with their beliefs. It was not unusual for the polyamorists I interviewed to acknowledge that they were raised according to traditional norms and values before describing their current, less traditional relationships and families. As if describing an act of resistance, polyamorists would then tell me all of the ways that these norms became undone in their lives and were replaced with ideologies that fit better with their identities and lifestyles. This pattern of acknowledging traditional scripts and subsequent acts of resistance was an evolution that frequently appeared in the narratives.

Like Emilio and Nathalie, many other polyamorists I interviewed described an evolution over time that altered their understanding of society's expectation of monogamy in familial and intimate relationships. This was particularly true amongst those who were in their 30s or older at the time of their interview(s). When this was the case, it wasn't uncommon to hear a story, or sometimes multiple stories, describing their attempts to adhere to the monogamous expectations of their families for many years before recognizing and accepting that it wasn't working for them. Yazmin, now in her 40s, told me how in high school, she had a summer boyfriend and then met someone new at the start of the school year. One of her friends asked her who she was going to pick between the two boys. Yazmin remembers not understanding why it was necessary for

her to pick because both boys were so different from one another. And yet, because her friend had asked the question, she realized that she was expected to pick one. Yazmin described continuing to “just pick one” all the way through her college graduation, at which point: “I decided it was time to start the next thing. I was supposed to go and do the husband thing and raise babies and live in the suburbs. All those things you're *supposed* to do. I had my little list of things I needed to do. That was how I conducted my relationships up until fairly recently—until the last 5 years.”

The polyamorists in my sample wanted me to understand that they were aware of the norms, but mono-normative scripts had not historically worked well for them, so they started to resist them later in their lives. Yet, at the same time, the resistance did not come without apprehension. They were concerned about potential discrimination and legal trouble, often indicating that it was especially nerve-wracking because they are not a legally protected sexual minority group. In many ways, the polyamorists in my sample were keenly aware of mono-normativity's presence in official law and this shaped the way polyamorists interacted with the state in order to construct their families.

For example, Emery and Gary have been discussing the possibility of having a child together in the next several years of their relationship. Emery is a 33-year-old, college-educated, white, woman who works in healthcare. She identifies as mostly straight, is not religious, and has identified as polyamorous for eight years. Emery described for me all of the different angles they have been considering during these discussions, one of which was the possible legal repercussions they may face:

Another concern that I have is related to having children and being open[ly polyamorous]. If certain people find out, it could risk my family's protection because of ignorance and lack of understanding. To somehow say that I'm putting my child in danger because I have more than one romantic partner...that is a real thing people think.

Someone could get wind of that and it scares them so then they think I'm doing something wrong. As if somehow because I have an additional partner I'm now having sex in front of my kid or something. I wouldn't do that with one person, why would I do that with two people? They conflate it with immorality. They ask what kind of moral standards I'm teaching them. That's a definite concern for me as I move toward these other life goals.

In this quote, Emery is raising her concerns about the way that polyamory has been traditionally misunderstood by monogamous society. She describes fearing that people will mistake her non-monogamous relationships to mean sexual promiscuity, which could be used to bring a child endangerment case against her. Emery's apprehension is not unfounded. Klesse (2006:573) found that many polyamorists tend to draw the line between polyamory and promiscuity because promiscuity has a negative connotation. According to Klesse, the difference between someone who is polyamorous and someone who is promiscuous is that polyamorists "have fewer partners and an honest interest in building intimate long-term relationships" (Klesse 2006:574). Nonetheless, polyamory is still characterized by many as something in which only "promiscuous" or "slutty" people partake. These characterizations can be detrimental to polyamorists, especially women, because, in the U.S., custody decisions are formulated around the very vague "best interest of the child" standard (Norrington 2010:161). This standard has been shown to impose moral biases and to stereotype sexual minority groups (Stern, Oehme, and Stern 2016).

Other polyamorists I interviewed expressed similar concerns, such as losing custody of children, the fear of losing their jobs, or otherwise being penalized if they were ever exposed. Rodney is married to Dena and has had a long-term romantic partnership with Angie. When I asked Rodney if he would ever be interested in legally-recognizing his relationship with Angie, he responded: "I think if legal recognition didn't carry with it social approbation, yes, I would probably be interested in some official form of recognition. However, in the present environment



that's a) not possible and b) it's hazardous. Not as much for myself, although there is some risk there, because I'm still working and all, but Dena has a relatively high-profile job that could be damaged by revelations of polyamory and she's concerned about that.” According to Rodney, legal recognition often means social recognition but not necessarily social approval. While he would want legal recognition, he is afraid that with it would place a social spotlight on his private life, which could still lead to social discrimination and stigma. Rodney’s proclamation that legal recognition is “not possible” is a surrender to legal hegemony. Furthermore, his claim that “it’s hazardous” asserts that even with legal recognition, the legal consciousness of others potentially rests on violence, threat of economic harm, or social marginalization. He seems to have assessed the hegemonic conception of monogamy, which is enshrined in the law, and deemed it to allow others the potential to cause himself or his family social injuries.

On the one hand, polyamorists experience formal law as a force outside of themselves, which is administered by the state, and against which they have very little recourse. On the other hand, they also sense the oppressive and adversarial presence of the state in their lives. I argue that despite their strong ideological position against them, hierarchical configurations remain present, in part, precisely *because* of this kind of fear and the resultant concern about state interference in their lives. As I will discuss, polyamorists may believe that hierarchies, both intentionally and unintentionally, protect and buffer them against sanctions and discrimination. However, these hierarchies and the compliance they symbolize seem to be resistance strategies that allow polyamorists to remain comfortable yet defer changing (and perhaps reinforce) the very institutions that oppress them.

### **State Protection or State Interference**

Two orientations toward the state emerged from my research: the state as an entity that protects family life and the state as an entity that controls and interferes within family life. A majority of my sample expressed the view that the state should “protect” families at least once in their initial or follow-up interview(s). Interestingly, while polyamorists may believe that the state has a responsibility to protect the members of a family unit, they also believed that the state *should not* exclude families from that protection, though it does currently. Furthermore, many of the polyamorists I interviewed expressed the belief that the state should not interfere in families unless someone is objectively being hurt, such as in cases of abuse or neglect.

Emery lives in a major city with her partner, Gary, and one of his other partners, Korie. Gary introduced Emery to polyamory and their relationship has been polyamorous for its entirety. Though Emery and Gary don’t currently have children, as discussed previously, they have been planning to have a child together in the next several years of their relationship. At the time of her follow-up interview, Emery and Gary were trying to figure out a way to have a child together and co-parent with Korie in a way that would give all three of them equal access and rights associated with the child. While she doesn’t believe that the state should have a role in determining family structure, she does think the state plays an important role in protecting family members:

I think that [the government] definitely has too big of a role. I don't think that they should have a say in family structure. I certainly think they have a say in maintaining safety for a child or a spouse in a potentially abusive situation. I think we need them to have a say in that. I think that when it comes to children, better definitions around what abuse is... emotional, social, physical, sexual [is important]. I mean, my personal view is if the child is seeing and being modeled healthy happy relationships, it doesn't matter what they look like. You know, even the parents being in monogamous relationships doesn't guarantee that the children are being modeled healthy, happy relationships.

Emery recognizes that the state can enforce rules around safety for family members. She even goes so far as to acknowledge the role of the state in defining the conditions that may be

considered unsafe and or “abusive.” Emery is experiencing both orientations toward the state simultaneously—the state as a source of protection and the state as a site of intervention. She believes the state is responsible for defining “abuse” and for protecting families under that definition. Yet, she also believes that the state should not have a role in determining what family forms are acceptable.

Emery’s contradictory orientations toward the law are best understood using the critical lens found in feminist legal scholarship, which highlights how the state has attempted to paint itself as the protector of women and children. Feminist legal scholarship argues that “...the state is male in the feminist sense. The law sees and treats women the way men see and treat women” (MacKinnon 1983:644). Thus, while it would not be prudent to say that all American women have the same experience of law because of their gender, it is fair to say that the state views women from a patriarchal perspective. Furthermore, the state often mandates the “terrorization of the female body” through the process of inadequately protecting them against physical abuse (Frug 1992). Essentially, through the law, the discourse that women are “weak” is naturalized (Frug 1992). This “weakness discourse” colors women’s experiences of law, the degree to which depends on other factors (Hollander 2001). Emery repeated to me the message that the state plays a role in protecting “weaker” family members, most often thought to be women and children (Frug 1992) and this cultural message contributes to the way she experiences her relationship with the state in spite of her relationship status.

Malcolm’s view on the role of the state in family life is similar to Emery’s. Malcolm is a 25-year-old, college-educated, white, transgender man who works in the legal field. He identifies as pansexual, is spiritual but not religious, and has identified as polyamorous for six years. He is

opposed to the role of the state in determining family structure, but he is in favor of the state's ability to protect as an objective enforcer of "fairness" and "equality":

In my ideal world, the government isn't going to tell you how to structure your family. You could decide to make a committed married relationship with as many people as you want. That sort of arrangement should be fine. But I do like the idea of being able to make a civil contract that you have the government enforcing. That's a nice thing sometimes, to be able to enforce a contract you make [laughs]. Even if you fundamentally disagree about how to raise a child to the point where you get a divorce, if you have a contract from the start then you have to pay for some of the childcare costs. I like the idea that the government can step in and make sure things are equal and fair. I think personal issues are volatile and people get married for all sorts of reasons so having someone that's an outside authority to enforce things is good. I want them to enforce obligations but not tell you what obligations you need to make.

Though polyamorists and their families are frequently excluded from the legal system in many ways, they are not shielded from the pervasive power and influence of the state to carry out the law. They too are transmitted the cultural messages that portray laws and rights as the vehicle for equality. Like Emery, Malcolm is not in favor of legal interference into family content and structure. However, he does believe the law *should* play a role in promoting fairness and equality as well as with enforcing commitments and obligations between family members.

At the time of his follow-up interview, Malcolm was preparing to move across the country to attend an Ivy League law school. Malcolm is one of three polyamorists I interviewed with a daily proximity to the law as a result of his profession. Legal consciousness research has analyzed the relationship between lawyers and legality and found that divorce lawyers tend to emphasize the "limited efficacy of rules" (Sarat and Felstiner 2006:1675), which delegitimizes the legal system in the eyes of many of their clients. This "law talk," which divorce lawyers speak to their clients, is echoed in the conversations that they have with each other (Sarat and Felstiner 2006). The lawyers in my study are in an interesting intermediary position and have an orientation which was strongly opposed to the law. Similar findings have been reported in the

case of criminal proceedings as well (Blumberg 1967). Thus, Malcolm sits at a noteworthy intersection as a result of his personal and professional identities. Malcolm's professional proximity to the law likely colors his perception of both what the law can do as well as its limitations. As seen in the excerpt from his interview, he has confidence in the state to enforce legal contracts between people and administer fair and equal decisions, but his confidence does not extend to the point of permitting the state to define appropriate familial configurations or relationships. In his view, the legal system is predictable and unwavering (Ewick and Silbey 1999).

In the years between the initial interviews and follow-up interviews, Malcolm and his nesting partner, Trinity, experienced a fire in their home that destroyed most of their possessions. I asked Malcolm if any legal actors or third-party intervenors were involved in the aftermath of the fire:

Malcolm: Very luckily, no. Nothing has come up, which I'm grateful for because I know the ramifications of that. I try to stay away from it.

Interviewer: What do you mean?

Malcolm: I think that any time police or a legal process is involved that it's something I want to avoid. That goes on the permanent record. There are people investigating my stuff. I just don't want people doing that.

Interviewer: Which is really interesting because you want to *be* a legal actor.

Malcolm: Yeah!

Interviewer: Is that related?

Malcolm: Definitely. A lot of what I want to do in law is to help and enable people to live their lives as free from legal intervention as possible. I know that you need a good lawyer when you want to get out of the legal system. I want to be that lawyer for people. There are a lot of different ways that I can help people and I don't want a lot of supervision into my life. Luckily, there was way more involved in my name change than anything else I'll ever have to do.

Here, Malcolm is expressing an “against the law” orientation that he hopes to carry out from “with(in) the law.” Malcolm’s proximity to the law as a future legal actor, as well as his past experiences with the law through the process of transitioning and changing his name shape his understanding of the role of the state in his life. He is weary of state intervention and supervision, likely resulting from his marginalized and stigmatized gender identity as well as his status as a sexual minority, but he expresses confidence in his power to subvert the law as a legal actor with legal knowledge. He, interestingly, points out the distinct irony of “needing a good lawyer when you want to get out of the legal system.”

Gael, on the other hand, has a very strong orientation toward the state as a source of control and intervention, a fact which displeases them greatly. Gael is a 43-year-old, white, genderqueer individual who works in computer programming. They hold a master’s degree and identify as heteroflexible. Gael currently has one child, is an atheist, and has identified as polyamorous for 15 years. Gael owns a house in a major city and lives there with their child and the mother of their child, Jasmine, who is also polyamorous. I asked Gael if they could explain their view about the law’s role in regulating families:

It's terrible. It needs to stop. If you talk to me and other poly activists, some of them are in favor of poly marriage but most of them hate the government. There's this way, if you go back to the middle ages, it was god. The king was answering only to god. The king and the priests were only answering to god. The dukes were only answerable to kings and the people running the fiefdoms were only answerable to dukes, and in the fiefdoms, there were families and each family was only answerable to the people above them. I feel like marriage is still about men controlling women and children and part of this hierarchical system. I think it hasn't gone away, we just institutionalized it. So much of how we get healthcare for our families is through corporations, which is ridiculous. In the face of change there has been such a strong effort to institutionalize families, which shows up as the state interfering in relationships. There are tax breaks for married people. I want to say that I also appreciate when the state protects people, but there's a way in which all that structure is built around who you're having sex with and men controlling women and kids. The state fails to protect people in that way, or it protects in the wrong way, or the mechanisms of protection are used for abuse because everything is predicated on this one model and if it isn't that one model then you're screwed. I would like the

current system to stop regulating relationships and just be in the business of supporting people in their relationships. I think childcare is a good example of that. Children are going to have caretakers. Those caretakers don't have to be their biological parents. They don't have to be their adopted parents. There needs to be some way in which we can identify caretakers and family for kids and then have the government respect those. If a grandmother watches a kid for 20 years, but the government gives the grandmother no rights and doesn't protect that relationship, then it doesn't support that relationship. The grandmother cannot claim the kid as a dependent or give the kid their health insurance. In this moment, I'm having very negative experiences.

Gael has been seeking to father a child with one of their partners, Joy, through the use of In Vitro Fertilization (IVF) technology but has come up against several stumbling blocks. Gael and Joy do not intend for Gael to have all of the rights and responsibilities normally afforded to the biological father of a child, so they utilized a sperm donor approach in which Gael was, on paper, an anonymous sperm donor instead of a “known donor”/romantic partner. Gael described his frustration at not having many other options that allowed him to forego his parental rights, thus, they are attempting to subvert the intention of the law as a subtle act of resistance. Engaging in resistance in this way is a “powerful shaper of the law in action” and has the potential to expose points of weakness in legal power structures and may even work to modify legality and alter what we understand to be the law (Baumle and Compton 2015:6). Gael’s case demonstrates the role that past experiences with the law or legal ideology may play in understanding how polyamorists experience and navigate their relationship with the state (Kulk and de Hart 2013).

Gael has become very frustrated with the legal system throughout their personal experiences trying to navigate forming families in a way that works for them and their partners. Like the others, they inhabit several positions of disadvantage. Gael’s past negative experiences with state intervention has oriented them away from the state. And yet, like Emery and Malcolm, Gael also believes that the state should be able to protect individuals and families.

How then are we to understand these seemingly contradictory views of the state? It would seem that polyamorists are not entirely conscious of the fact that state protection does not come without state interference. The key to understanding the way polyamorists experience this inconsistency lies in legal consciousness. Ewick and Silbey (1999:1036) contend that situations where the law has “multiple and contradictory meanings” are not uncommon. Furthermore, the ability of the law to have multiple meanings is part of what creates and sustains the law’s hegemonic power (Ewick and Silbey 1999).

### **Rights Discourse and New Legal Configurations**

Both initial and follow-up interviews revealed that, while polyamorists express various and often contradictory relationships with the state, there was one major overarching theme: a desire for the state to provide new frameworks for envisioning rights, discussing rights, and rights claims. Both orientations toward the state—as a source of protection or as a source of control—were frequently accompanied by a belief that, though the system did *not* currently support them or their families, this could be changed through the proper channels so that eventually they could have rights and protection under the law. Additionally, many of the sentiments expressed by the polyamorists I interviewed were primed by the knowledge that any of the benefits of state supervision or interference into their lives, namely protection, are predicated on fitting into the marriage model, which is not achievable by polyamorists unless they engage in a hierarchy and choose to marry one of their partners. I argue that this rights discourse and polyamorists’ belief in rights as a vehicle for equality largely fall at the intersection of both orientations toward the state. The polyamorists I interviewed highlighted the need for imagining new institutional paths for rights and protections, namely a rethinking of the family law framework to include new and non-traditional family forms.



In the United States, marriage does not simply create a contract. Metz (2010) describes the complex network of rights, obligations, and duties marriage creates and the way it defines relations between people. In *Meyer v. Nebraska* (1923), the Supreme Court declared that the Fourteenth Amendment, “without a doubt,” protects “the right of the individual to contract...to marry, establish a home and bring up children,...and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.” Thus, marriage is a fundamental human right and the state protects it (Metz 2010).

This characterization of marriage as a man’s right is important because it explains why the state is so concerned with the marriage label and its contents. Liberal political theory could not imagine a more fundamental task than protecting rights (Metz 2010). However, unlike other rights, the state does not just defend the right to marry in cases of interference. Instead, marriage *requires* the state take a proactive role in order for marriage to be exercised (Metz 2010). Marriage cannot be carried out between two individuals alone—the state is a necessary third party. As Gavin described, “When you get married, you don't get married to just one person. It's a triad between you, that person, and the state... You're in a business contract with all three. It's a three-way contract.” Essentially, the state’s logic is that *it* must provide a legal framework for marriage to be both definable and protectable (Metz 2010).

Metz (2010) also examined the way the California Supreme Court made their role more explicit while still maintaining the language of rights, declaring: “The right to marry represents the right of an individual to establish a legally recognized family with the person of one’s choice...and, as such, is of fundamental significance both to society and to the individual” (*In re Marriage Cases*, 43 Cal. 4<sup>th</sup> 757, 183 P.3D 384, 76 Cal. RPTR. 3D 683:814-815). Furthermore, “the right to marry does obligate the state to take affirmative action to grant

official, public recognition to the couple's relationship as a family" (*In re Marriage Cases*:819-820). The state must recognize and protect the "the family unit" (*In re Marriage Cases*:814-815). The court argues that it has a duty to create and control the institution of marriage in order to protect it.

The polyamorists I interviewed were keenly aware of the rights and recognition that marriage provides and the power that it holds in western culture. Those who chose not to institutionalize their relationships, whether through marriage or other types of legal entanglement, unsurprisingly, characterized their relationship with law as mostly nonexistent. Because these participants did not engage in any formal relationship structure like marriage, they did not invoke legal symbols in their romantic relationships as frequently (though invoking *some* legal symbols seemed to be difficult at best and unavoidable at worst). They often expressed feeling that the law didn't care what they were doing because it, for the most part, did not consider their relationships to be familial.

For example, Neil is a 29-year-old, white, man who, like Malcolm, works in the legal profession. He identifies as both bisexual and pansexual (for other people's benefit because he hates labels), is not religious, and has identified as polyamorous for twelve years. Neil says that he practices "relationship anarchy." He lives in the city alone and has three steady partners who are women. Adeline lives with roommates and stays with Neil a few nights a week. Kya was living with her primary partner before he moved out of the area and now lives alone in a house she owns. She and Neil see each other about once a week. Sage lives a bit further away from Neil and thus, usually stays with him on the weekends when she is in town visiting. All of these women know about and have met each other. Neil does not intend to make any of these women his primary or nesting partner. During our interview, he explained that he is not interested in

having children of his own. Adeline has expressed the desire to have children, but Neil explained that he would not be the father if she decided to go through with that. I asked Neil how he would describe his relationship with the law. He said:

[It's] somewhere between indifferent and hostile, depending on your idea of a relationship. To *me* it's indifferent. The law is mostly indifferent to what I'm doing. It doesn't care if I'm just dating a bunch of people. But if I was having kids with one or more partners and we were buying property together, the law would be more hostile because it wouldn't let me have multiple legally recognized romantic relationships. I'd have to get creative.

As a legal professional, Neil feels relatively comfortable navigating legal institutions but feels that the law is not particularly interested in his relationships because he isn't seeking to institutionalize any of them at any point in the near future, whether through marriage or fatherhood. Neil was on the more extreme end with his views of legal involvement in his relationships. He prefers that the law, and therefore the state, have no involvement in his relationships at all. Where others were open to the possibility of achieving rights and protection through marriage if necessary, Neil stated: "If Adeline were to lose her job and need health insurance or something, that would be a reason that I'd potentially consider doing something but I would almost rather just pay money than actually bother getting married. I'd almost rather just give someone a check and let them figure it out rather than get married."

On the other hand, Olivia is already a mother—a role that is heavily policed by the law and society alike. While she now practices solo-polyamory, she explained to me that she felt her role as a parent implied a hierarchy where her children are her primary relationship:

Olivia: I think as a solo poly person it's much easier to be egalitarian because I do what works for me. I negotiate for myself with each person individually. But obviously my kids still have to be my primary relationship. In that sense, everyone else around me kind of loses out to that. I guess if I had a partner who I was raising those children with, they would get included in that.

Interviewer: Are children and marriage the two things you see as primarily enforcing or causing hierarchies?

Olivia: I think so. I think the biggest contributing factor at least, especially kids. That's the biggest. I think the less legally and financially entangled you are, the easier it is to be egalitarian. I do think there are people who don't have children who choose to be hierarchical because that's what they want for security. But for those of us who really want to be egalitarian, once you have kids in the mix it gets really, really hard.

In this case, the state has already defined Olivia's role as a parent. She describes that though her kids are her first priority, any partner that was helping her raise them (though at the time of the interview she was a single mother and split custody of her children with her ex-husband) would also be considered a primary relationship because of their proximity to and relationship with her children. Thus, though not through marriage, Olivia implicitly sees her relationship with a co-parent as a priority over other romantic relationships.

Those polyamorists I interviewed who were either already legally married to one partner or were open to marriage, often expressed the view that rights could be used as a vehicle for equality. They evoked the legal symbols of marriage and family in order to capitalize on the pervasive presence of rights discourse in American legal culture in order to mobilize the law in their favor. These polyamorists expressed seeing the law as a powerful tool for social progress and acceptance. For example, Gary stated:

If a government stands up and says, 'This is just not okay and you'll be socially shamed, imprisoned, or fined if you do these things,' it suddenly makes it not safe for someone to discriminate in public. That is why we can't just wait for people to get used to an idea. That's why social issues need government to push them. Making something like gay marriage legal means that you're not allowed to discriminate and it's a very powerful message. People can't just say a gay slur like they used to be able to 20 or 30 years ago. Legal support helps the process of change a lot.

Gary is acknowledging both the literal and symbolic power of rights by stating that it's a "powerful message" to have legally protected rights for relationships like same-sex marriage.

Gary and others like him were comfortable using marriage rights and marriage-like relationships

with their partners to secure the rights they felt they deserved. However, such as is the case with Gary, the polyamorists in my sample seemed to uniformly subscribe to the “myth of rights” (Scheingold 2004).

In his 2004 book, *The Politics of Rights*, Scheingold analyzes the usefulness of judicial decisions as a tool for achieving social change. The “myth of rights” is a phrase applied to the unrealistic assumption that “litigation can evoke a declaration of rights from courts; that it can, further, be used to assure the realization of these rights; and finally, that realization is tantamount to meaningful change” (Scheingold 2004:5). He argues that this expectation is a flawed technique for producing change because it is costly, slow, and often counterproductive. Furthermore, Scheingold (2004) reasons that the legal recognition of rights alone is not enough to overcome inequalities because access to courts is stratified by social class and many American judges validate narrower constructions of rights than would be necessary to produce significant social change.<sup>14</sup> Because most laws are not self-enforcing, these inequalities mean that rights can often only be enforced in favor of those with enough knowledge, time, and money to seek enforcement through the court system, which further limits law’s effectiveness (Albiston and Leachman 2015). However, Scheingold points out that although rights are a myth, rights ideologies leave a significant footprint on U.S. political thought. Thus, using this framework, polyamorists are relying too heavily on the notion of rights to secure their protection. This reliance on rights and rights discourse is very likely sustaining the hegemonic power of a legal system that seeks to consistently exclude them and their families.

### **Is Plural Marriage the Answer?**

Plural marriage is “marriage among three or more individuals” (Den Otter 2015:1). Similar to Aviram’s (2008) findings, the polyamorists I interviewed were mostly opposed to the

institutionalization of plural marriage. Only a few thought that plural marriage would be a suitable alternative for polyamorists. One such person is Tyrone. He is a 36-year-old, college-educated, white man who is currently receiving disability benefits. He identifies as straight, is not religious, and has identified as polyamorous for five years. When I asked him what legal protections or recognition he would want if they were available, he said: “Even before I was poly I thought that plural marriage should be legal. I don't really see a reason why it shouldn't. I don't think that ‘legal complication’ is a good enough reason to disallow it. I think official marriage status and all the benefits that come with that are an important thing I would seek. Like health insurance, in financial situations, et cetera.” For Tyrone, it is unacceptable that the state would disallow something like plural marriage just because it would cause more paperwork or bureaucratic challenges.

Similarly, Sydney, is a 27-year-old, white woman who works in library science. She holds a master's degree in the same field. She identifies as bisexual and has identified as polyamorous for much of her adult life. Regarding plural marriage, she expressed: “Plural marriage should be legal. Either that or there shouldn't be marriage at all. I have half-formed but rebellious thoughts about marriage and legality.” For Sydney, and others like her, supporting plural marriage was less about supporting only plural marriage or two-partner marriage, but instead was about providing more options for everyone. They often expressed that they felt plural marriage should be legal but that it shouldn't be the only option. Because marriage already exists as a construct for administering rights, it is not difficult to imagine extending that framework in the easiest way to include polyamorists instead of going completely against the existing framework to demand something new.

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<sup>14</sup> See also Galanter (1974).

On the other hand, many polyamorists I interviewed were not supportive of plural marriage. Instead of seeing the state as providing rights and protection via marriage, they felt that the state was holding these rights hostage by requiring marriage in order to receive them. Madison was skeptical about the usefulness of marriage at all. She is a 48-year-old, white woman who works as a veterinarian. She identifies as both bisexual and pansexual, has three children, is not religious, and has identified as polyamorous for four-and-a-half years. She lives in the suburbs with her children, who were fathered by her ex-husband, with whom she had a monogamous relationship. She started practicing polyamory after their marriage ended. When I asked Madison if she would support the legalization of plural marriage, she responded:

That's a complicated question, isn't it? Because there's the question of the legal aspect of it as a civil union. There's the question of it as a social contract. There's the question from a religious standpoint. I don't entirely know. I believe it is something that should be open to *everyone or no one*. I really believe that there shouldn't be restrictions on consenting adult parties. Now, how one defines consenting adult parties gets a little tricky. I'm not entirely certain. I think it may be an institution that has outlived its usefulness in a lot of ways.

Most importantly, these polyamorists were not supportive of plural marriage but were also not supportive of two-partner marriages. They felt that rights and protection should not be restricted to marriage-like relationships. Many folks like Madison conceived of marriage rights as all or nothing—either everyone should be able to opt-in to marriage regardless of their relationship structure and content or no one should have the rights and protections associated with marriage. Instead, they imagined an entirely new way of defining families and dispersing protections and benefits.

The polyamorists I interviewed had a variety of opinions about what their options should be if they wanted to form legally recognized families without marriage. All of my participants expressed some form of dissatisfaction with way rights and protections are currently determined

for families in the U.S., as well as a desire for new options. For example, Malcolm discussed his ideal family law arrangement:

I say that marriage is important but there should be *other* legal options. It makes no sense that there aren't a wide variety of different legal paths. Defining something legally gives people rights. It protects it once you carve out a space and have a legally defined relationship. There should be options for legally defined partners who can visit each other in the emergency room and file their taxes together, even if they aren't married. Or like, for people who would like to adopt a child together or put their names on loans together but don't want to get married. I would definitely want an adoptive relationship where I am legally the child's parent even if I'm not married to my partner. I'm never going to biologically father a child, that's not going to happen, so I want a situation in which I have the same rights as a biological parent, or however close we can get to that as possible.

Similarly, Gary described for me how he has seen the definition of family change culturally, even for those who aren't polyamorous, which he uses to support his position that families should have alternatives to being defined solely by marriage:

I think there's a lot of different communities out there within which the idea of a chosen family is becoming so normal, especially for younger people. I don't think that's abnormal at all, even for people I know who aren't poly. My opinions flow through that. I think everyone, even those people, should have ways to have a family without the bondage of marriage. I know people who have lived together for many years who aren't sexual partners, but they are life partners and they do function as a family even as they date other people outside of that partnership. It's sad that those relationships aren't recognized, and they aren't afforded protections. These situations are not new. They've been around forever. It's becoming more visible with situations like spinsters or confirmed bachelors living together. They form families and it would be nice to have *any* form a family takes be recognized and protected.

Woven into Gary's thoughts about family rights here is a broader definition of family, echoing what I found and discussed in Chapter 2—that nearly all of the polyamorists I interviewed utilized broader definitions of family, including “families of choice” (Weston 1991). Much of the time, these relationships are not protected nor are they afforded any legal rights.



Emilio, like Gary, felt that the current system needed to offer more options, not only for polyamorist's sake, but for everyone. He offered suggestions for how families might be arranged if not by marriage:

I essentially feel that 'marriage' should be a contract like any other and rather than having big, messy divorces we should just do prenups for everybody. Maybe even instead of marriage altogether. If it got to the point where we wanted to add someone to our family, I would like it if we could all sign a contract saying we're pulling our bank accounts or we're not and how it's all going to work. We want to be recognized as a family unit that is working together even if we aren't married. And I think that should extend as far as hospital visitation and things like that that are really crucial. Those would be the types of right we would be most interested in. I understand if they did that, things like tax benefits might need to change and there might be less benefits because of how many people could take advantage of it but that's not so much of a concern for me. Just being recognized as family for any purpose or being able to sign contracts together and things like that.

The polyamorists I interviewed very clearly expressed a desire for new paths that would allow them to acquire the rights afforded to married couples without being required to choose one partner to marry while simultaneously denying all of their other partners the same protections and rights. My participants very keenly utilized rights discourse and the language of rights when explaining their ideological issues with marriage as a construct for obtaining rights. Understanding the power of this rights discourse is useful insight for understanding the way polyamorists understand and navigate their contentions relationship with the state. While they aren't particularly interested in having marriage rights extended to include them, they are interested in family rights and protections being rethought and reconstituted to include a broad range of diverse family forms.

## **Discussion & Conclusion**

Formal laws are enacted by the state with the assumption that they matter—that they *can* and *will* affect our decisions and behaviors. One of the central ways that formal law has affected the families of polyamorists is through its ability to encourage hierarchical family structures. In

Chapter 2, I described the way that some polyamorists were able to avoid hierarchies by opting out of legal protections for their families. Yet, a majority of the polyamorists in my sample did not take this route. Thus, in this chapter, I have sought to explain how polyamorists understand and navigate their relationship with the state. Throughout, I have made three crucial arguments.

First, I explained how polyamorists discussed mono-normative scripts and how these narratives are what laid the groundwork for the different ways that they understand their relationship with the state. During these early conversations were the points at which polyamorists first discussed the differences between what was expected of them and their families, what their ideal family arrangements were, and what they could legally do within their families. I argued that this tension that polyamorists experience between their ideologies and monogamous scripts is what underpins their complicated relationship with the state.

Second, I outlined two orientations toward the state described by polyamorists. On the one hand, they experience the state as a *potential* source of protection for their family lives. On the other, they currently experience the state as a source of interference and control within their family lives. Though, from the outside, these orientations toward the state seem to be interconnected, polyamorists understand them as mutually exclusive. They do not express an awareness of state protection coming at the cost of state interference. I argue that these “multiple and contradictory meanings” (Ewick and Silbey 1999:1036) of the law are best understood using the legal consciousness framework.

Lastly, I discuss the way that polyamorists rely on the notion of rights and right discourse to advocate for new legal configurations. I argue that polyamorists overwhelmingly described a desire for the state to provide new frameworks for envisioning rights, discussing rights, and rights claims. In particular, polyamorists expressed the desire for the state to provide new

alternatives to marriage that protected all forms of families. Polyamorists believed that the state did not currently protect or support them or their families but thought that rights claims could be used as a vehicle for equality in the future. I argued that this “myth of rights” (Scheingold 2004:5) is problematic because it sustains the hegemonic power of a legal system that seeks to exclude polyamorists.

Overall, these complicated relationships between polyamorists and the state appear to play a pivotal role in explaining both the deliberate and unintentional hierarchies that I described in Chapter 2. Polyamorists seem to believe that hierarchies, both intentionally and unintentionally, protect and buffer them against sanctions and discrimination. Because they do not fully comprehend that state protection does not come without state control, they frequently invite the state into their family lives, which often leads to an implementation of a hierarchical family model. However, these hierarchies and the compliance they symbolize seem to be resistance strategies that allow polyamorists to remain comfortable yet defer changing (and perhaps reinforce) the very institutions that oppress them.

## Chapter 4

### Legal Consciousness and the Families of Polyamorists

There's a way in which a lot of strife comes from the fact that we are one of the most modern industrial nations in the world. There is a way in which, for example, polyamory started in the U.S. *because* it was one of the most sexually repressive industrialized nations. There's a way in which flowers bloom in darkness. A lot of repression creates a lot of resistance and that resistance can make things happen. But I'd rather just not have the repression in the first place.

-Gael

In Chapter 2, I described the ways that the polyamorists in my sample either deliberately (40%) or unintentionally (43%) enacted hierarchies within their relationships during the course of family construction. This presents a set of contradictions. There is an active conflict between polyamorous ideologies on the one hand, and the ideologies that are present within the U.S. legal system and existing family law, on the other. I also discussed how polyamorists interact with a variety of legal actors and face multiple decisions concerning how to best construct their families. They must navigate laws about marriage, custody, healthcare, taxes, discrimination, and housing, among others. How do they navigate making decisions in these areas of their lives when their personal ideologies conflict with prevailing legal ideologies? Furthermore, how do polyamorists understand the role of law in their family lives?

In this chapter, I analyze the answers to these questions. Drawing on the dominant legal consciousness framework, developed by Ewick and Silbey (1998), I foreground the work that law accomplishes in the family lives of sexual minorities, especially those who embody more than one marginalized identity. I explore the presence of law in the everyday lives of polyamorists in order to better understand the ways in which they perceive and interpret the

effect of law on their family lives. Examining the work law accomplishes within the family lives of polyamorists yields three important findings.

First, examining the ubiquity of law is an essential part of critical socio-legal studies. Investigating the place of law in the families of polyamorists, a group with an ideological justification to oppose the rule of law and fairly high socioeconomic privilege compared to the general population (Sheff and Hammers 2011) to be able to do so, the outer bounds of legal pervasiveness may potentially come into view or be extended further than scholars previously thought. Second, in this chapter, rather than examining the content of law, I underscore the importance of polyamorists' unique experiences of the law. In particular, I describe how the intersectional identities of the polyamorists in my sample inform their understanding of the law, which in turn contributes to the ways that they engage, avoid, or resist the law in their family lives. Lastly, I complicate the dominant legal consciousness framework by analyzing the ways that the intersecting and variously privileged or disadvantaged identities of the polyamorists I interviewed influence their experiences of law. I argue that the existing legal consciousness framework is an important starting point for understanding the role of law in polyamorists' family lives but should turn its critical lens more toward elucidating the links between social location and legal consciousness in order to adequately capture their daily experiences of law.

### **Law vs. Legality**

An exploration of law in the lives of polyamorists would not be complete without first clarifying what is meant by “the law.” The law is a complicated concept and many theories of law exist in legal scholarship. In the early 20th century, Roscoe Pound (1908) identified a “gap” between “law in books,” which consists of laws as they are written, and “law in action,” which is how laws are enforced in the social world. In the 1920s and 1930s, legal realists began the work

of exploring this gap, which was later taken up by the law and society movement several decades later (Silbey 2002).<sup>15</sup> Legal consciousness studies are an offshoot of the law and society movement.<sup>16</sup>

However, legal consciousness studies have evolved over the last half century and recent projects vary in their relationship to “gap” studies (Harding 2010). For example, some of the early legal consciousness projects in the 1970s concerned themselves with levels of awareness, understandings, and opinions about law (Sarat 1977). Using survey data to compare understandings of the law with the substance of laws and regulations, these studies examined the causal relationship between law and society (Harding 2010). Hertogh (2004:461) describes these studies as “knowledge and opinion about law” research. These early perspectives of legal consciousness were largely concerned with the way that the law can be used as a tool for changing or upholding aspects of the social world, which is measured by its “objective” effectiveness (Harding 2010). This perspective sees the law as distinct from society itself and, thus, argues that it is possible to measure the effect of law acting *on* society (Sarat and Kearns 1993).

More recent studies of legal consciousness have taken a different approach to sociolegal studies. These studies see the law as an integral part of society known as “everyday life,” which is constantly evolving and infiltrates most aspects of our lives (Baumle and Compton 2015). This perspective contends that the relationship between law and society is cyclical and maintains that society has as much of an impact on law as law does on society, rendering individuals “active participants in its interpretation and construction” (Baumle and Compton 2015:61). Official laws can only continue to be upheld if individuals accept and act upon them. If official laws aren’t

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<sup>15</sup> Legal realism is a theoretical approach to jurisprudence that argues studies of the law should emulate the methods of natural science, with an emphasis on empirical evidence.

accepted and implemented into everyday life, then new legal meaning can be created through the process of resistance or outright rejection (Baumle and Compton 2015). This perspective takes culture into account and focuses on the broad impacts of law while working to better understand the effects that everyday individual approaches, uses, and thinking about the law may have on law and legality (Ewick and Silbey 1998).

This more recent turn toward cultural approaches to the study of law underpins the theory of law that is most useful for this research. Cultural approaches to law bring to light two very important concepts: law and legality. I use these two concepts to situate my investigation within “the law” and to explore the relationship between culture and law in the family lives of polyamorists. Ewick and Silbey (1998) produced one of the leading frameworks for applying legal consciousness in social scientific research. In their book, *The Common Place of Law*, they differentiate between the concepts of “the law” and “legality.” They argue that “legal institutions do not...have a monopoly over the cluster of concepts and procedures that we might recognize as legal” (Ewick and Silbey 1998:22). Thus, they sought to innovate a term that would allow an examination of law apart from legal institutions. They define “legality” as “the meanings, sources of authority, and cultural practices that are commonly recognized as legal, regardless of who employs them or for what ends” (Ewick and Silbey 1998:22) and use the word “law” to mean “aspects of legality as it is employed by or attributed to formal institutions and their actors” (Ewick and Silbey 1998:22-23). Ewick and Silbey use this definition of legality to expand the original theory of legal consciousness and, thus, invite researchers to investigate the impact of law more broadly (Hull 2006).

One important part of this definition of the law is the idea that humans “do” law. Law is not an invisible force that exists only outside of individuals and is imposed upon them. It is

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<sup>16</sup> See Friedman (1986) for a description of the law and society movement.

situated both internally and externally to all individuals in a society, and thus, the law is everywhere and is transmitted via everyday interactions with both legal and extra-legal actors and sources (Baumle and Compton 2015). In this chapter, I will adhere to this linguistic differentiation suggested by Ewick and Silbey. When I refer to “the law” I am referring to official legal institutions and actors. When I refer to “legality,” I am using Ewick and Silbey’s definition of the term, which captures “law in everyday life.”

### **Legal Consciousness and Intersectionality**

In the last two decades, we have undergone major shifts in the legal landscape pertaining to families. Reforms and modifications relating to same-sex marriage add another complex layer to our understanding of the ways that sexual minorities experience the law in their everyday lives.<sup>17</sup> This is an especially salient point because these great strides forward—such as same-sex marriage becoming legal in all U.S. states in 2015—were followed by an era of uncertainty after the abrupt ideological shift rightward in the U.S. Supreme Court in 2018. Harding (2010) engages legal consciousness to explore the impact that earlier regulatory shifts had for lesbians and gay men. In their book, like Hirsch (1993), Harding critiques most mainstream approaches to legal consciousness—consciousness as attitude (Merry 1990), consciousness as ideology (Bumiller 1988; Sarat 1990), and consciousness as a producer of legality (Ewick and Silbey 1998)—and argues for further intersectional development of legal consciousness in order to fully account for the diverse experiences of gays and lesbians. In this chapter, I elaborate on this point made by Harding and others (Engel and Munger 2003; Ewick and Silbey 1998; Hull 2003; Marshall and Barclay 2003; Nielsen 2000). I use the case of polyamory to argue for a clearer and intentional intersectional approach to legal consciousness studies.

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<sup>17</sup> Sexual minorities are groups whose sexual identity, sexual orientation, or sexual practices differ from mainstream society.



In their work, Ewick and Silbey (1998) seem to assume that there is a link between a marginalized social identity and the incidence of an “against the law” orientation, but they do not go into depth elaborating the nature of this link. Furthermore, sexual minorities are not included in their discussion of marginality. Instead, they place emphasis on “the poor and working class, the racially and ethnically stigmatized, physically and mentally disabled persons, women, children, and the elderly” (Ewick and Silbey 1998:234-235). Until recently, much of the legal consciousness research has not engaged with the effects that race, class, gender, or education may have on individual legal consciousness (Hirsch 1993; Harding 2006). Some legal consciousness scholars have brought attention to the fact that this link needs some flushing out in order to accurately capture people’s experiences of law (Hull 2003, 2006; Hunter 2013; Kulk and de Hart 2013; Lepinard 2010; Morrill, Tyson, Edelman, and Arum 2010). For example, Nielsen’s (2000, 2004) research provides evidence that helps establish the importance of being sensitive to the structural and social factors impacting people’s legal consciousness. Nielsen closely engages with intersectionality in their use of legal consciousness to analyze the problems associated with offensive public speech. They found that people’s attitudes toward its regulation varied according to their race, class, and gender. Though most of Nielsen’s (2010) participants were against the legal regulation of offensive public speech, their reasonings were not the same across the board.

Additionally, Hull (2003:655) questioned if “the concept of resistant legal consciousness [should] be refined to allow for the fact that actors may be ‘against the law’ in important ways but at the same time embrace rather than reject legality as part of their resistance.” Further, Hull (2003, 2006) and Harding (2010) argue that Ewick and Silbey’s three schemas are not a perfect fit for understanding the place of law in lesbian and gay lives. They do, however, maintain that

legal consciousness studies are useful in these cases, allowing a focus on “a nuanced exploration of how law is experienced by lesbians and gay men” (Harding 2010:24).

In this chapter, I test the fit of the legal consciousness schemas developed by Ewick and Silbey while taking into account the unique ways that polyamorists can access privilege on the one hand (as a result of their relatively high levels of socioeconomic privilege compared to other sexual minorities), and still face marginalization on the other. Using my interviews with polyamorists, my data will show that the “before,” “with,” and “against” the law typology proposed by Ewick and Silbey is insufficient for understanding the role of law in the everyday family lives of polyamorists without intentionally addressing the role of intersectionality in this complex social process. While this framework is an excellent starting place, because it has been developed over time by other scholars, these schemas need further flushing out in order to adequately capture how polyamorists experience the law.

This literature on gay and lesbian legal consciousness is the closest comparative framework for developing a theory of polyamorous legal consciousness. However, in this chapter I will further develop the concept of legal consciousness, which will advance our understanding of “many differently marginalized groups” (Hull 2016:563). Polyamorists offer a unique and interesting case study because of their social location as a group that experiences “ongoing deficits in formal legal equality,” which is “accompanied by various forms of social privilege” based on high socioeconomic status and race/ethnicity (Hull 2016:563).

Throughout this chapter, as I examine the way polyamorists experience the law in their family lives, I have woven a discussion of intersectionality by highlighting, when appropriate, the importance of their intersecting and various social identities. Intersectionality is the “mutually constitutive relations among social identities such as gender and social class, which

may reinforce and naturalise one another” (Kulk and de Hart 2013:1066). Attention to intersectionality highlights how social positions are connected to both power and inequality (Crenshaw 1991). One social position may privilege a person, while another may disadvantage them (Crenshaw 1990). I argue that polyamorists’ experiences of law cannot be singularly attributed to the fact that they are sexual minorities. An intersectional approach is vital in order to adequately capture the link between their marginalization as a result of one or more of their identities and their simultaneous position(s) of privilege.

### **Legal Consciousness & Polyamory**

I began follow-up interviews with a linear understanding of the relationship between legal consciousness and polyamorous identity. Namely, I expected that, as a sexual minority group facing stigmatization and marginalization, polyamorists would express manifestations of legal consciousness similar to gays and lesbians. Based on prior research on the legal consciousness of marginalized populations (Baumle and Compton 2015; Connolly 2002; Frankoff 2010; Hull 2003, 2006; Nielsen 2000, 2004) and armed with Ewick and Silbey’s (1998) framework, I hypothesized that polyamorists would most likely express a “with the law” or “against the law” orientation. What I found is a much more complex relationship between identity, intersectionality, and legality. It seems that not only do polyamorists manifest legal consciousness along multiple axes according to their various social positions and levels of privilege and/or disadvantage, but these varied social positions result in multiple and often contradictory expressions of legal consciousness pertaining to their family-building beliefs and behaviors.

As discussed in Chapter 2, much of the polyamory literature compares the case of polyamory to that of lesbians and gay men. Currently, there is very little published research that

examines the legal consciousness of polyamorists. Despite the increasing use of legal consciousness approaches for understanding gay and lesbian experiences of law (Baumle and Compton 2015; Connolly 2002; Harding 2010; Hull 2003, 2006; Nicol and Smith 2008), as of yet, only one study has engaged the legal consciousness literature in the same way for polyamorists. Aviram (2008) interviewed 35 polyamorous community activists in the Bay Area of California and analyzed the issues that make polyamorists resistant to political mobilization toward plural marriage rights. Rather than situating polyamorists within Ewick and Silbey's (1998) "before," "with," or "against" the law schemas, Aviram (2008:263) found that polyamorists' "alternatives to material marriage rights, their concerns regarding political alliances and strategies, and their mistrust of law as a tool for shaping identities and designing interpersonal relationships" are what made them reluctant to mobilize in favor of plural marriage rights.

While Aviram's work is an important first step toward examining the legal consciousness of polyamorists, it suffers from a few fatal flaws that restrict its ability to speak to polyamorous family-building experiences more broadly. First, their interview sample is limited to activists in one location in California. This is problematic for two reasons. First, it is likely (and in my experience true) that the activists Aviram interviewed hold much more extreme views than the general population of polyamorists due to the nature of activism. Second, the Bay Area has a much higher concentration of wealth than most other parts of the state (U.S. Census Bureau 2010) and polyamorists there likely have much easier access to legal resources that make their aversion to legal marriage more sustainable. Furthermore, Aviram only analyzes polyamorists' aversion to mobilizing for plural marriage rights. While my own findings support many of

Aviram's in that regard, Aviram does not analyze the role of legal consciousness in other aspects of polyamorists' family-building beliefs and decisions.

### *Before the Law*

I was initially surprised at how often polyamorists expressed a “before the law” orientation. Stories that were “with the law” or “up against the law” stood out very clearly but expressions of being “before the law” tended to be much more subtle. Not only did they appear when polyamorists described a belief in and desire for state protection, but also during discussions about marriage. Approximately 48% (or 15 of the 31 participants) of the polyamorists I interviewed described experiences of law in their everyday lives that align with the “before the law” schema. Furthermore, 62% of the polyamorists I interviewed who implemented a deliberate hierarchy expressed feeling that the law was an immutable force outside of themselves (Ewick and Silbey 1998). Thus, at times these polyamorists participated in a performance of legality that ultimately reinforced the status quo and contributed to their continued exclusion under the law.

We know that in the U.S., civil unions and commitment ceremonies are not valued as highly as marriage (Badgett 2010; Hull 2003). The marital family is privileged in the U.S. and it's the primary way the state designs and disperses legal benefits, protection, and recognition (Metz 2010) and it creates social benefits, including a feeling of legitimacy (Badgett 2010; Baumle and Compton 2015; Hull 2003). The state maintains complete control over the contents of the marriage label (Metz 2010) and despite the decreasing marriage rate in the United States, marriage is often held above all other family forms as being the best and most legitimate family unit (Coontz 1992; Powell, Bolzendahl, Geis, and Steelman 2010).

The polyamorists in my sample often cited marriage as conferring legitimacy on relationships and family. These polyamorists were concerned about being considered legitimate under official law in order to reap the benefits afforded to married couples (Polikoff 2008, 2009), yet they were also keenly aware of the cultural messages that are transmitted through a legal marriage, which could legitimate one relationship in the eyes of their friends and family. Furthermore, some polyamorists expressed that marriage could reinforce commitment to partners by defining familial relationships, rights, and responsibilities. This view of marriage suggests an orientation that views the law as “originating from a legitimate authority, with the ability to transform individuals and families in addition to just conferring rights” (Baumle and Compton 2015:108). This message about law as the authority capable of defining legitimate families is powerful and is often the basis of many debates about marriage rights in the U.S.

As described in Chapter 2, Trinity and Malcolm are nesting partners from Treeville who employ a deliberate hierarchy. They aren't married and don't have children but have been together for six years and have been polyamorous the entire time. Though Malcolm and Trinity both date many other people, their relationship is clearly the priority. They plan to have children together and intend to parent as a closed couple. If they follow through with these decisions to marry and have children with only each other, it will render a nuclear family structure that is easily recognizable by the broader society and which can navigate formal legal systems more smoothly. Malcolm and Trinity described their desire to marry each other as deriving from their perception of marriage as a being a binding contract, which could communicate to their community the level of commitment within their relationship:

Malcolm: It's [marriage] very important to me. Marriage as a concept is very important to me. It's different. Marriage to me means that you've *chosen*. It doesn't have to be a one-on-one thing. I could imagine a marriage with five people working out. But the word 'marriage' to me means this is a commitment. This is going to last. It's a contract and I

take that really seriously. It means that when things get hard you don't leave; you work it out. It means that you have chosen to wed your life to someone in sickness and health. I really believe in that. It's just different in the level of seriousness and the level of believing that everyone will stay and make it work.

Trinity: I think that's the other part of me wanting to have an actual wedding rather than eloping even though weddings are exhausting. The idea I like about it is the standing up in front of everyone and having a community witness of that contract. That's intriguing to me. I would be as committed to Malcolm either way, but it doesn't matter because it's important to you [Malcolm] so it's important to me.

Malcolm: That word is important to me and it's not important that it be between a man and a woman. But for me and my life, I want to be married to Trinity and what it means is that we are putting our lives on the same track.

Trinity: Therefore, because of that definition, I can't imagine being married to anyone else because I just don't care that much about marriage. And Malcolm just wants to be married to me so I don't think either of us will be married again.

Furthermore, as discussed in Chapter 3, Malcolm's proximity to the law helps us understand his expectations of the law's power and limitations. Where he previously stated that he didn't believe in state interference pertaining to family structure, in this instance he is relying on marriage to convey a cultural message about the significance of his relationship with Trinity. He isn't concerned with the requirements or contents of the marriage label but intends to use the power of legality to set this relationship apart from others.

Trinity is an East Asian, pansexual, cisgender female in her early 20s. Unlike many of the other polyamorists I interviewed, Trinity does not have a college degree and does not hold regular employment. Thus, she has less class privilege than most of my other participants. Additionally, Trinity is also likely stigmatized and marginalized as a queer woman of color. Interestingly, Trinity claims that she doesn't "care that much about marriage" but acknowledges the cultural power that it holds as well.

Trinity's somewhat flippant remarks about marriage reflect her social positions. In fact, throughout much of Trinity's interview she relied heavily on the cultural significance of law and

its ability to legitimate relationships but also maintained a heavily “against the law” orientation toward legality in general. Trinity described coming “up against the law” in many other areas of her life, including when she was struggling with her mental health and when she participates in protests or activism. These prior experiences with the law in such a volatile environment certainly have the ability to transform Trinity’s experiences of the law.<sup>18</sup>

Gary and Emery are partners who live together. Like Malcolm and Trinity, they discussed the ability of law to legitimate their relationships. I asked them to describe their relationships to me and any plans that they might have for opting in or out of formal structures within those relationships. In terms of opting into an official marriage, Gary said: “I want my relationships to have the potential to be as legitimate and legal and protected as we both feel they could be.” Emery chimed in: “I wish a marriage contract had extra lines for people to sign on to in any form. Whether that’s signing into the marriage between the two of us or signing into marriage with one of us. That would be great for the sentiment and also for the social recognition and legal protection.”

Emery wishes that the “social recognition” and “sentiment” that marriage offers could be extended to more than one of her partners and Gary specifically reports that marriage is important because of its ability to make a partnership “legitimate,” “protected,” and “legal.” For Gary and Emery, marriage is important because of its ability to validate a relationship within the eyes of the law and their community. Gary specifically conceives of the law as being able to construct his relationship as something that is “legal” only if he decides to opt into marriage. Emery and Gary’s relationship most closely resembles an unintentional hierarchy. That is, while they don’t intentionally delineate the degree of commitment between each of their partners, they have unintentionally created a hierarchy. Decisions like marriage are a part of that unintentional

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<sup>18</sup> See Fritsvold 2009.



hierarchy and because they place importance on the cultural and legal significance of marriage, hierarchies necessarily emerge.

Olivia is in a different position than either Gary and Emery or Malcolm and Trinity. She is a 41-year-old, college-educated, white, female who works in office administration. She identifies as bisexual and has identified as polyamorous for eight years. She lives in the city with her two children, who are fathered by her ex-husband, in a house that she owns. At the time of the interview, Olivia considered herself “solo-poly” and did not currently employ any type of hierarchy. However, she did tell me how her polyamorous relationships have evolved over time, which highlighted the role of marriage in establishing legitimacy in the same way.

When Olivia first started practicing polyamory she was looking for a primary or nesting partner—someone that she could marry. When she found a polyamorous man to date who was also looking for a primary partner, they started dating. She said: “That was important to me. I knew I wanted to be married again and have a stable family structure. The fact that it was something he was so open to and that’s where we were headed helped a lot.” Eventually they got married and Olivia explained that in their relationships “there was that sort of primary-ness in the sense that marriage comes first,” even though they were polyamorous. Though she is now estranged from her husband, they have not officially filed for divorce. What stands out in her case is that, though Olivia is no longer with this initial polyamorous partner and now considers herself solo-poly, even in her recounting of her decision to marry her husband she describes a married couple household to be the only “stable family structure.” Unsurprisingly, this sentiment is often mirrored in existing U.S. family law.

*With the Law*

While expressions of the “before the law” schema appeared least frequently in my data, “with the law” orientations appeared more frequently but still less frequently than “against the law” orientations. Similarly, the ways that polyamorists described being “with the law” were also much clearer and more direct than their experiences being “before the law.” Approximately 68% (or 21 of 31 participants) of the polyamorists I interviewed described family-building beliefs and/or experiences that aligned with a “with the law” orientation. Furthermore, 76% of the polyamorists I interviewed who implemented either a deliberate or unintentional hierarchy expressed feeling that they could work within the law to achieve legal outcomes that were favorable to them (Ewick and Silbey 1998). These polyamorists were often aware that they would not be favored in many legal situations and felt justified to strategically shape the law in their favor when they could.

Yazmin expressed feeling very comfortable navigating legal situations by engaging with legal actors to confront issues head-on. She is a 47-year-old, college-educated, white female who works in systems administration. She identifies as mostly straight, has three children, is not religious, and has identified as polyamorous for eight years. She lives in the suburbs in a house with her children. One of her partners and his children currently live with them as well. Her children are fathered by her ex-husband. While she was still married to her ex-husband, they explored having an open relationship. She started practicing polyamory after their marriage ended.

She and her ex-husband share custody of their children and at the dissolution of their marriage, they created an agreement stating, “that the other person is not allowed to interfere in either one of our abilities to have adult relationships as we see fit.” Yazmin called it the “stay out of my business clause,” which meant that she isn’t allowed to question who her ex-husband is

dating and he isn't allowed to question who she is dating or how many people she is dating because "it's irrelevant to our ability to parent our children." She discussed some of the legal issues she has come up against as she attempts to parent her children as a polyamorous woman with a monogamous ex-husband and the way she navigates that:

I have a family attorney on retainer just in case, really. I have had to consider a couple of times that I may need to take some action against my ex-husband because we had a difference of agreement about how to handle something. And I consulted counsel in order to understand... We share joint custody. Since we have joint custody, what am I legally able to do independently of him? What do I have to get a consensus on, or what do we have to decide together? You know, based on what's written into the agreement and the current state of family law. I absolutely seek counsel.

Yazmin felt very confident that her experiences of the law were not what everyone could expect to experience. She has significant economic privilege compared to many of the polyamorists I interviewed. It is likely that her socioeconomic status, education, and racial-ethnic background heavily contribute to her orientation toward the law on many issues. She identifies as heterosexual and likely experiences marginalization along fewer axes than others I interviewed as a result of her gender and status as a sexual minority.

Like many of the polyamorists I interviewed, Yazmin was very aware of her privilege and did not shy away from it. She seemed keenly aware that legal institutions are more accessible to people with the right kind of privilege. During her follow-up interview she explained that her son had gotten himself into some legal trouble that resulted in several court appearances. However, Yazmin did not express fear or concern for the outcome of her son's legal entanglement. Instead, she explained that the situation had turned out about as good as it could have in their favor. While describing her interactions in the courtroom, she seems to express the belief that her financial and educational privilege is what mattered the most:

Certainly, I possess a lot of privilege, and that carries me in a lot of interactions that I have with institutions. So, the ability to be articulate and to sit in the room with the

juvenile probation officer and explain, 'This is what's going on,' and to be listened to...I am fortunate that I have that, and so my experiences have been very much, you know, I haven't been marginalized as a result. I'm able to bring my experiences and not have them discounted, discredited, or anything else.

Marvin is in a similar position to Yazmin, possessing relatively high levels of social capital. He is an 83-year-old, white, man who holds a PhD and is a retired faculty member from a private university. He identifies as straight, has three adult children, and has identified as polyamorous for 35 years. I asked Marvin to tell me any stories he might have about interactions that he had with the law throughout his life. Interestingly, Marvin, like several others of my interviewees, immediately associated "the law" with the police. This mirrors Ewick and Silbey's (1998) linguistic interpretation of the difference between "the law" and "legality," with the police being an official legal actor in their definition. Marvin began by explaining that he hadn't been in a car accident or received any traffic tickets in many years. Then he transitioned to a discussion of his interactions with law enforcement more specifically. He described growing up with an uncle who was "highly connected in the police" in the city where he lived at the time. He explained that his uncle was the "Chief Deputy Sheriff" of the county. He attributed this connection to mean that he learned how to "do" politics at a young age: "We had connections. Family connections. The fire department would come around because my dad's business had fire hazards. My uncle just took care of it. I knew how to do politics as a kid but that was never an issue for us." For Marvin, he sees his privilege as being rooted in family connections to the source of law. In a way, he is attributing his present-day legal acumen to his childhood experiences "with the law."

For a majority of the polyamorists I interviewed that expressed a "with the law orientation," the law was simply a means to an end to achieve the family structure that they wanted, the quickest and easiest way possible. They described wanting to be able to use the

existing legal frameworks to achieve their familial goals, even if it didn't align with their relationship principals. For example, Melina is a 30-year-old, mixed race woman and veterinarian. She has identified as polyamorous for six years and has been dating her nesting partner, Edgar, for the entire time. They were engaged at the time of Melina's follow-up interview and had purchased a home together where they both lived. At the time of her initial interview, Melina was living with her nesting partner, but they were not engaged. Melina and Edgar were interviewed separately, and Edgar expressed that they were not interested in marriage. Thus, I asked Melina about their decision to become engaged during her follow-up interview:

Melina: I really hate signing forms and being engaged is the easiest way to get power of attorney and medical visitation rights and all of that.

Interviewer: You can't get those without being legally married?

Melina: You can. It's just...difficult.

I went on to ask Melina more about this decision to become engaged and if she felt that there were any social or relational costs associated with marrying Edgar:

Melina: Oh yeah, totally.

Interviewer: What are those for you?

Melina: Nominally, I can't do that with any of my other partners. Eventually I will have to give in and get a lawyer and sign a bunch of forms. Because, ideally, if I do have more than one long-term relationship, I would like that person to have medical visitation rights and things like that and I would like them to be notified when things happen to me, and so on.

Melina finds herself amidst the same contradiction as many other polyamorists in my sample. On the one hand, she has oriented herself "with the law" by seeking to take advantage of her and Edgar's appearance as a monogamous couple in order to achieve the rights they desire using the most straightforward, traditional path. On the other hand, she is resentful that she will

have to eventually “give in” and engage with the law to an even greater extent in order to extend those rights to any future partners. She seems to be suggesting that engagement with the law, even a little bit, invites more and more interactions “with the law.”

### *Against the Law*

As previously noted, expressions of being “against the law” appeared the most frequently in my data. Approximately 68% (or 21 of 31 participants) of the polyamorists I interviewed described situations they experienced that align with an “against the law” orientation. Furthermore, across both rounds of interviews, I coded 106 instances in which polyamorists were “against the law,” compared to 68 instances of being “with the law,” and 37 instances of being “before the law.” Interestingly, there was no clear pattern of being “against the law” between those polyamorists who implemented a hierarchy and those who did not. All of the polyamorists in my sample were equally likely to express the belief that the law is an oppressive power to be resisted, reject its legitimacy, and view the legal system as an adversary (Ewick and Silbey 1998). This schema seemed to appear most frequently alongside the expression of fear, anxiety, or distrust of the law and discussions around how much or how little they wanted the legal system to be involved in their lives.

This calculation of how little or much to involve the legal system in their lives was seriously considered by the majority of my sample in some form. Polyamory is not considered a sexual orientation by many (including some polyamorists themselves). This consideration is important because sexual orientation is a protected class in 21 U.S. states, and it offers certain legal protections and rights against discrimination on the basis of sexual orientation. If polyamory were to be considered a sexual orientation, it would extend legal status and protection to polyamorists. At present, many aspects of polyamory are punishable under various federal,

state, and local laws. Nearly all of the polyamorists I interviewed made some mention of the precarious legal situation in which they were situated as a result of their polyamorous identity. Throughout their interviews, it was clear that many of the polyamorists in my sample felt that they were not on secure legal footing and needed to employ various methods to buffer themselves against the legal uncertainty that they faced. To an extent, this uncertainty and precarity laid the groundwork for many of the family-building decisions that polyamorists made. Polyamorous relationships are fragile, and polyamorists make the decisions they feel will best preserve their delicate family arrangements.

For example, during her follow-up interview, Emery expressed apprehension about the legal protections that she described wanting earlier in her interview. I asked her what kind of protections related to her family and polyamorous life she would want or would adopt if they were available to her. She explained:

If there are protections available, I would be very interested in exploring them and figuring out which ones make sense to opt into but I'm not currently knowledgeable on what those are. That's definitely work that I need to do and also be able to find a way to stay abreast of the changes as they're happening. *However, just because something gets passed into law that doesn't mean it's accessible yet and it doesn't mean that it will stay in law* [my emphasis]. I am definitely concerned about getting some kind of legal protections and then relying on those and choosing to be more open about our life and then having those legal protections taken away. Then the government still has the knowledge that you're polyamorous and you're no longer protected.

In particular, Emery's concern that a protection may be passed into law but a) may not be immediately accessible and b) may not "stay in law" is likely heavily influenced by California's extended legal battle over Proposition 8. Same-sex marriage became legal in California in June 2008, at which point the state started issuing marriage licenses to same-sex couples. However, the issuance of those licenses was halted in November of that same year after the passage of Proposition 8, which banned same-sex marriages.

In Emery's case, this apprehension about the legitimacy and staying power of the law meant that she may not choose to opt into formal legal structures that offer protection solely on the basis of her status as a member of a protected sexual minority group. In this excerpt, Emery is simultaneously "with" and "against" the law. As a self-identified white, cis-gendered female with a relatively high socioeconomic status, Emery has options available to her that allow her to think about which legal protections "make sense to opt into." She has the knowledge and privilege to be able to look at her options in this way and to discern how much of being "with the law" would be beneficial for her. However, she is also a sexual minority with a distinct sense that the law is not always legitimate or fair. In this excerpt, the latter sense of distrust in the law mediates the initial effect of being "with the law."

Like Emery, Gavin is very skeptical about the outcome of any legal intrusion into his life because of his polyamorous identity. I asked him to describe any interactions with the law that he had through his life. Gavin's response was a slightly subtler expression of being "against the law:"

Gavin: Honestly, I'm very above board. Not a lot of illegal activities going on. I even had a medical marijuana card to make sure I was following all the laws instead of just buying weed illegally. I've kind of walked the straight line. I don't want the hassle.

Interviewer: What do you see as the potential problem?

Gavin: I've seen the way it has derailed other people's lives. I'm fringe enough that I don't think I want to have any legal issues thrown in there as well.

Interviewer: Do you mean the police? The courts?

Gavin: Both. I just try to stay away from it. I do my thing and try to make the world a better place because I can see when people involve the law it often turns bad. I don't want any legal issues.

Gavin has expressed being "against the law" several times in this excerpt. He wants to avoid legal entanglement at all costs. And yet, Gavin is married and owns a house with his wife, and



they engage in an unintentional hierarchy. He has invited “legal issues” into his family life through his participation in a marriage contract. Gavin even acknowledged the ways that marriage invites law into families:

I don't have a good view on most marriage processes either. When you get married you don't get married to just one person. It's a triad between you, that person, and the state. People don't like to think about it that way. You're in a business contract with all three. It's a three-way contract. You just wrote a contract to the state of California that says you two are going to be together. If you break up, the state has a say in that. They even get money from you breaking up. It's an industrial system. It was probably meant to protect people at one point, but now looking back, it seems like a money-making industry.

Gavin is “against the law” in a lot of ways, and yet has engaged in a legal marriage, likely in order to stay “above board.” By Gavin's account, this “against the law” orientation is largely a result of his multiple “fringe” identities. Gavin is a bisexual man and engages in polyamory, both sexual minority categories. Yet, he likely experiences privilege as a white, cisgender man with relatively high social and socioeconomic capital. In this case, the subtext of Gavin's interview seemed to imply that he didn't want to compromise the privilege afforded to him as a result of these second set of identities and that is what informs his decision to engage in an unintentional hierarchy.

Perhaps one of the clearest articulations of being “against the law” came from Neil in his follow-up interview. Neil is a white, straight, cisgender male in his late-20s who lives and works in Freetown as a legal professional. Additionally, Neil's relationships are strictly non-hierarchical. I asked him to describe what he likes and dislikes about the law and what role he sees it playing in his life. He said:

I mean, the criminal justice system is too hard and retributive and not rehabilitative enough. The police use force too often. The elections don't seem to respect ‘one person, one vote’ as much as I would like with gerrymandering and the electoral college and all of that. Immigration...we should be trying to welcome people, not make America white again. That's the new immigration plan, I think. I also think the government is involved in our lives in the wrong ways. Again, police and law enforcement. This is more generally

about the U.S. and not me personally because, obviously, I'm a white guy so I don't have too much trouble with police. And a [legal professional] no less who dresses nicely and all the bullshit there. Generally, for example...the system is about retribution and not preventing things before they happen or helping people resolve things peacefully. I'm very much in favor of more welfare and benefits like healthcare, education, and even housing if it were doable. That shouldn't be controversial. It should be doable. I do think there should be, in a way, more government as a backstop to help people and less government as an ominous force threatening to make people disappear. Whether it be through police violence or deportation or whatnot.

Here, Neil is very much “against the law” in the way that he sees it being discriminatory against non-white men and as an “ominous force threatening to make people disappear.” Though it is not directly related to his family-building beliefs or behaviors, it almost certainly informs the way he decides to move throughout the legal landscape. Neil possesses a lot of privilege and proximity to the law, but he also experiences disadvantage as along another axis that few of the polyamorists in my sample did; Neil has a disability that significantly impacts his quality of life and lifespan. In portions of his interview, Neil expressed that he feels comfortable having such radical view on politics and relationships because of his privilege but also because he knows that if he faces any major legal repercussions, they won't last long.

Polyamorists are tasked with navigating their precarious legal footing as a sexual minority without legal protections. They experience uncertainty in relationship to institutions and often feel threatened by the same institution that is tasked with protecting them. Because of this precarity, the polyamorists in my sample frequently expressed being “against the law” and feeling as though the law is not fair or legitimate. It is likely that, in order to navigate this, they intentionally and unintentionally evoke symbols from these legal institutions, like marriage, to buffer themselves from this potential threat.

### **Hybrid Consciousness**

The polyamorists in my study frequently occupied multiple positions of disadvantage. Forty-percent of my sample identified as women and an additional 16.7% identified as transgender, genderqueer, or gender non-binary. Thus, nearly 57% of my participants not only occupy a gender position for which they likely experience disadvantage but are also potentially marginalized for their status as a sexual minority. Furthermore, only 26.7% of the polyamorists I interviewed identify as straight. That means that over 73% of my sample face marginalization and stigmatization as a result of their sexual orientation in addition to their sexual minority status resulting from polyamorous identification. At the same time, over 83% of the polyamorists I interviewed identify as white and just over 78% of them earned a bachelor's degree or higher, which is associated with a relatively high socioeconomic status as a group overall. Therefore, while navigating the social world, polyamorists are tasked with weighing the pros and cons of tapping into certain types of privilege while simultaneously maneuvering through treacherous legal territory within which they face "ongoing deficits in formal legal equality" (Hull 2016:563). Using this framework as a lens for analyzing the legal consciousness of polyamorists can help us advance our understanding of "differently situated marginalized groups" (Hull 2016:563).

The way that they described their experiences of law emphasized the tensions between their marginalized and privileged social identities. As demonstrated in the previous three sections, nearly all of the polyamorists in my sample expressed two or more legal consciousness schemas when discussing the role of law in their family lives. It was rarely the case that their experiences of the law fell strictly either "before the law," "against the law," or "with the law." Instead, the polyamorists I interviewed tended to express experiences of law that aligned with at least two of these schemas, even when discussing a single issue. Some of the ways they

described their experiences tended to agree more with one schema, while others seemed to express contradictory experiences of law on the same issue. How can this be explained by the legal consciousness framework?

Ewick and Silbey (1998:226) justify this apparent “mystery,” arguing that “meaning and sense making are dynamic, internal contradictions, oppositions, and gaps are not weaknesses or tears in the ideological cloth...an ideology is sustainable only through such internal contradictions.” According to their research, each of the three legal consciousness schemas proposed represents different aspects of legality as hegemonic. For example, “together, ’before’ and ’with’ constitute legality as both ideal and practice” (Ewick and Silbey 1998:230). They argue that, specifically, “before” and “with” the law need each other and are not inseparable (Ewick and Silbey 1998:231). Furthermore, they argue that these same contradictions that make legality hegemonic are also what make resistance possible. Though, they don’t explicitly demonstrate how “against the law” exists alongside “before” or “with” schemas the way they do for the two latter, they do argue that “resistance recognizes that legality’s power rests on its ability to be played like a game, to draw from and contribute to everyday life, and yet exist as a realm removed and distant from the commonplace affairs of particular lives” (Ewick and Silbey 1998:234). In essence, resistance would not be possible without an understanding of how legality operates as an ideal and a practice.

The primary purpose of this chapter is not to critique the legal consciousness framework developed by Ewick and Silbey; quite the opposite. My data confirms the existence of Ewick and Silbey’s three schemas as the dominant way that polyamorists understand and experience the law in their family lives. Furthermore, it confirms Ewick and Silbey’s assertions that each of these schemas work together to solidify the hegemony of law. However, one of the issues I have with

their analysis and resultant theory is that their discussion of intersectionality and marginality constitutes only a sparse few pages in the conclusion. It is understandable that for their purposes of broad theory-building, it was not described in much detail. Nevertheless, it appears like an afterthought. But in order to understand how legal consciousness operates across time and within various social groups, I argue that we need to understand how the law maintains its hegemonic power across and within different social landscapes by exploring the multiple axes of power that operate in people's lives.

Moreover, I disagree with later writings produced by Susan Silbey arguing against these kinds of micro-level analyses. In "After Legal Consciousness," Silbey (2005) critiques the evolution of legal consciousness research, asserting that it has lost its critical focus and questions the current value of the very concept she helped popularize. I argue that we need a better understanding of how legal consciousness works along different axes of institutional power. Exploring the connections between the way that legal consciousness is expressed amongst differing marginalized social locations is necessary in order to achieve a greater depth and breadth of understanding of how legal consciousness is produced and sustained through social processes.

Polyamorists are an excellent example of how much nuance is lost by maintaining a purely macro-sociological perspective. In order to best understand the way that law operates in people's lives, we need both perspectives. An intersectional approach to legal consciousness allows us to continue observing law's power but also recognizes the multiple ways that other systems of power intersect and coalesce to construct a nearly impenetrable force in people's lives.

## **Discussion & Conclusion**

Applying the dominant legal consciousness framework produced by Ewick and Silbey (1998), we would expect polyamorists to most frequently express being “up against the law” or “with the law” in their family-building beliefs and practices. However, while many of my findings reinforce the typology created by Ewick and Silbey—affirming the strength of their theory—they also highlight the need to delve deeper into the underlying role that social location plays in the development and expression of legal consciousness.

The contradictions that I described in Chapter 2 are mirrored in the way that polyamorists describe their experiences of law in everyday life, the analysis of which adds another complex layer to legal consciousness studies and can help us better understand its underlying processes. If polyamorists reject or challenge legal authority by resisting or avoiding the law, they are fundamentally excluded from creating families in a way that is socially recognized or meaningful to mainstream society. If they choose to engage with legal authority and attempt to mobilize it in their favor, the law can be used as a strategy to advance their rights and interests.

And yet, on the one hand, while they may achieve short-term gains and social recognition, on the other hand, by engaging with a system that finds their behavior deviant, they risk sustaining, reproducing, and contributing to the institutionalization of the hegemonic legal structures that restrict their ability to construct families in a way that aligns with their ideologies. For instance, polyamorists may choose to utilize the family structure provided by legal marriage, which affords them both the legal and social rights and responsibilities to maintain that structure. Nevertheless, by doing so, they are sustaining the hierarchical, mono-normative model with which they ideologically disagree. Furthermore, these legal ideas and rules can become sedimented into their everyday lives and consciousnesses, such that the ideologies of polyamory

(autonomy, egalitarianism, and democracy) seem to have become secondary to the hegemonic legal discourse.

With this in mind, this chapter makes three important contributions to the legal consciousness literature. First, by examining the extent to which polyamorists, who ideologically value equality, utilize and are constrained by the law when constructing their families, the pervasive nature of the law becomes readily apparent. Polyamorists possess race and class privilege, which means the law is most likely to work in their favor (Galanter 1974). As far as sexual minorities are concerned, it is possible that they have the best chance of resisting the law without facing significant legal repercussions. And yet, acts of outright resistance were described relatively infrequently and typically only appeared in the narratives of those who engaged in solo-polyamory or relationship anarchy. This only accounted for 17% of my sample. Consequently, despite their privilege, the law maintains its hegemonic power and influence in their lives.

Second, this chapter has highlighted the role that law and legality play in the everyday lives of polyamorists, especially as it relates to their family-building beliefs and behaviors. It demonstrates how mono-normative legal discourse and official law can affect the ways that marginalized social actors understand and interpret their “legitimate” family-building options and how that ultimately determines how their families are structured. Thus, the same way that polyamorists ideologically favor equality but struggle to implement it into their family-building efforts, they are also ideologically “against the law” in many ways while struggling to illustrate that through their decision-making.

Lastly, this chapter argues that studies of legal consciousness are incomplete without turning their attention toward the social location of marginalized groups. Nielsen (2000:1087)

argues that the way people understand the law is shaped by “good or bad connections” to their past experiences, many of which arise from the social positions they occupy. Polyamorists provide a unique case because of their position as both a sexual minority and as a population with considerable privilege stemming from their race and class statuses. The influence of personal factors highlighted in this chapter are consistent with other studies of legal consciousness (Engel and Munger 2003; Ewick and Silbey 1998; Kulk and de Hart 2013; Marshall and Barclay 2003; Nielsen 2000). Engel and Munger (2003) argue that personal factors are resources that influence how people see and understand their relationship with the law and, thus, how people decide to navigate the legal field.

Thus, while inhabiting a marginalized social location may lead to an “against the law” (Ewick and Silbey 1998) expression of legal consciousness, incorporating an intersectional approach demonstrates that the relationship between social location, power, and inequality is very intricate. Polyamorists often encounter marginalization as sexual minorities, yet they experience privilege as a predominantly white and educated group. This highlights the dynamic aspects of legal consciousness. It helps us understand the contradictions found between polyamorous ideology and family-building practices, because polyamorists are often up against conflicting and paradoxical messages before, with, or against the law.



## Chapter 5

### Conclusion

Honestly, I think a lot of legal repercussions are informed by an ambient morality of people. I feel like our world is becoming more sexually accepting—accepting of different sexualities. I think we're taking a step in the right direction. However, until polyamory is an accepted thing in people's minds, I don't think it's super safe to be completely out.

-Valerie

This dissertation has analyzed how the families of polyamorists are formed and how they operate despite the treacherous and hostile legal context within which they exist. One unusual dynamic that I observed was that the polyamorists in my sample were extremely articulate, likely as a result of their class privilege. During interviews, participants made insights into and analysis of their situation that was far beyond what I was expecting, which produced abnormally analytical interviews. And yet, despite this articulateness, keen analytical ability, and the polyamorous ideologies that would seem to disfavor hierarchies, the polyamorists in my sample lacked self-reflexivity about their participation in hierarchies. During follow-up interviews, when presented with my preliminary findings, polyamorists were able to see and locate hierarchies in the relationships of others, but not in their own lives. However, this dissertation *does not* argue that polyamorists are suffering from a kind of “false consciousness” where they cannot see their own hypocrisy. Instead, I argue, the existence of this contradiction highlights the inextricable link between notions of family and legal concepts. It is a testament to how deeply engrained the cultural ideas of what families *should* be are. I have shown that when seeking to build families, polyamorists must navigate a complex legal discourse that does not make room for non-monogamy or the families that result from those arrangements. Thus, the law has both intended

and unintended consequences for these families. Nonetheless, these families also have intended and unintended effects on the law.

### **Family Lives and Family Structure**

Before being able to ascertain how the families of polyamorists are created and shaped, it was necessary to first examine what constitutes the “families of polyamorists.” Polyamorists are a sexual minority group aspiring to uphold their ideologies within their family lives against a backdrop that does not support them and actively discourages them from forming legally-recognized families. In Chapter 2, I described the varying degrees to which polyamorists were able to achieve the goal of building families while upholding their ideology of egalitarianism. I described how polyamorists are often faced with the decision of *either* upholding their relationship values while being excluded from forming legally-recognizable and protectable families, on the one hand, *or* utilizing existing family structures to gain protection and recognition while being unfaithful to their ideologies, on the other.

The polyamorists in my sample relied on one of three different strategies to structure their relationships and resulting families. Those who utilized “deliberate hierarchies” implemented hierarchical configurations purposefully and strategically, using existing legal pathways and structures to build families that were universally meaningful and received the same rights and protections as monogamous, nuclear families. Polyamorists who operated within an “unintentional hierarchy” implemented hierarchies much in the same way, but they were not aware or did not acknowledge these configurations. They alleged that their relationships were all equal, regardless of legal responsibilities that are impossible to share with more than one partner, such as marriage. A small segment of my sample managed to forego hierarchies entirely, as in the cases of solo-polyamorists and polyamorists that practice relationship anarchy. However,

these polyamorists were also unable to utilize legal structures to protect and legitimize their families and tended to navigate their daily lives, more or less, as single people.

The data reveals that hierarchies are almost an inevitability if polyamorists want any kind of protection or rights for their families, or at least parts of their family. The case of polyamory highlights the extent to which mono-normative and traditional ideologies impact alternative families in the U.S. While they may desire to create and maintain families that align with their ideals, they are legally constricted from doing so. Instead, they are forced to exist inside preset family patterns that in turn degrade their ability to function as families in the ways that *they* see fit. Polyamorists come up against legal hurdles relating to custody, marriage, healthcare, taxes, discrimination, and housing, among others. And yet, they are one of the more privileged sexual minority groups in the U.S. They possess significant race and class privilege compared to other sexual minorities. In a way, this would seem to make them more likely to have the resources and ability to resist governmental interference into their lives. At the same time, from their perspective, they also have more to lose should their resistance be met with legal consequences.

I have shown that, for non-traditional families and the families of sexual minorities, there are limits to the increasing heterogeneity of family forms described by feminist scholars. These limits can be explained by investigating the connection between families and wider social and political structures. In particular, traditional ideologies persist within the U.S. legal system and these ideologies limit the choices for non-traditional families, both culturally and legally. Thus, while the way we define family continues to evolve, the state refuses to define it in a manner that would include polyamorists and others who fall outside of the traditional, monogamous, heterosexual dyad.

### **Polyamory and the Law**

This dissertation is first and foremost a story of conflict—between ideology and practice, between law and ideology, and between public and private spheres. The narrative is set against the backdrop of the everyday family lives of polyamorists. I have shown the intricacies of their daily lives, how they navigate and negotiate their families under the law and described the processes of meaning-making that they undertake via the law. In Chapters 3 and 4, I apply a legal consciousness framework to argue that polyamorists experience conflict in two crucial ways, which contributes to the prevalence of hierarchies in their families.

In Chapter 3, I described the first conflict that polyamorists experience as they attempt to navigate the legal world. In some ways, the polyamorists in my sample saw the state as a source of protection for families. They utilized the language of rights to describe all of the ways that forming legally-recognized could advance their interests and protect their families. However, they also experienced the state as a source of control and interference in their lives. They were weary of involving the state too much in their private, family affairs for fear of retribution for their “deviant” relationships. Because polyamorists do not see these two functions of the state as mutually exclusive, they freely utilized rights discourse to describe their ideal relationship with it. They desire new legal configurations that grant all family forms the same rights and protections. In this way, polyamorists engage in a complicated dance along a fine line between too much control and not enough protection for their families. Because of this, polyamorists often end up inviting the state into their lives more than they intend. At that point, the families of polyamorists become an apparatus of the state, within which the state can impose its own ideologies. My data have shown that this nearly inevitably leads to hierarchical family forms.

In Chapter 4, I explain the second conflict that polyamorists encounter as they navigate the legal world. I explained how, using a legal consciousness framework, we would expect them

to mobilize the law in one or several ways: engagement, avoidance, or resistance, including a combination of these three possibilities (Ewick and Silbey 1998). However, my data suggests that despite polyamorists' relatively high level of race and class privilege, the law maintains its hegemonic power and influence in their everyday lives. This is seen in the, at times, contradictory ways that legal consciousness arises in the discussions polyamorists have about their family-building beliefs and behaviors. Much in the same way that they see the state as both a source of control and protection, multiple expressions of legal consciousness can be observed simultaneously. This is likely the result of polyamorists attempting to negotiate the conflict between their own ideologies and persistent, traditional legal ideologies.

Furthermore, I argued that by incorporating an intersectional approach to understanding legal consciousness, we are better equipped to analyze the role of law in the everyday lives of sexual minorities. I showed that, in the case of polyamorists, social position is connected to power in very complex ways because they often experience privilege and disadvantage at the same time. These complexities are what help us understand how polyamorous ideologies can be overshadowed by messages before, with, or against the law.

### **The Challenges of Studying Polyamory**

Reflecting back on the research process, I have recognized a few very clear hurdles that I had to overcome. This research has been challenging, in part, because of the way that it requires an intense comfort with flexibility, something that does not come particularly naturally to me. As described in Chapter 1, polyamory is an iterative process for polyamorists, who define and refine what polyamory means to them. Yet, that also means that those of us who research polyamory and polyamorists must remain flexible in our understanding of these social relationships in order

to accurately capture changes in the academic, political, and real-life landscapes that, together, create a broad understanding of what polyamory even *is*.

For example, there is an ongoing debate in both the scholarly literature and the polyamory community itself about whether or not polyamory is a relationship practice (Lano and Parry 1995), relationship orientation (Anapol 2010), philosophy (Klesse 2007), theory (Emens 2004), identity (Barker 2005), or something else entirely. Among these is the debate about whether or not polyamory is a sexual orientation that should be included under the LGBT+ umbrella. Presently, researchers and members of the LGBT+ community alike argue that polyamorists are in a grey area (Carey 2013). Furthermore, Klesse (2014a) is unsure if inclusion in this community would have the best outcomes for polyamorists. Sexual orientation is a protected class in many states and extends several legal protections and rights to people within that class. Thus, if polyamory were to be categorized as a sexual orientation, polyamorists would be granted this legal status and receive some protections. While there are many valid arguments on both sides, the debate carries on.

Similarly, a particularly salient challenge of this research was understanding polyamory according to the polyamorists themselves. At the beginning of every interview during both waves, I provided my participants with the definition of polyamory developed by Sheff (2014a) and asked them if they agreed with the definition or if they would define polyamory in a distinctly different way. While all of my participants agreed with the definition generally, several wanted to highlight particular aspects of Sheff's definition that they felt were especially important or add on to the definition to make it align with their polyamory as closely as possible. One of the most common ways that they sought to make the definition their own was by problematizing certain words in Sheff's definition. In these cases, they often confronted

normative understandings of words like “relationship” or “love.” For example, during my interview with Adeline she stressed the importance of allowing flexibility when defining the boundaries of relationship: “I would emphasize that a ‘relationship’ or ‘partnership’ is defined by the people within it. It shouldn’t be some external definition of what those things mean. I place emphasis on what people in a relationship define as the relationship instead of what people outside of that relationship would call it.” When I asked her to explain further she said: “Some people are like, ‘Oh, well, if you’re having sex you’re in a relationship,’ right? But, in poly, that’s not necessarily true. There’s more room for friends-with-benefits-types of relationships. There are people who just meet up and have a physical connection at parties and things like that. Some people on the outside looking in might try to define that as a relationship but if the people in it don’t, then it isn’t.” Similar to what Adeline is describing here, many outside influences may color a person’s understanding of different relational terms, some of which polyamorists have repurposed or extended to meet their own needs.

I witnessed the iterative process that takes place around terminology firsthand. In the initial round of interviews, there was a sharp learning curve as I tried to integrate the way polyamorists understand, define, and use relationship terms. During Edgar’s initial interview, for example, he would often reference all of the dates that he had been on during the previous week. I assumed that he meant romantic dates with one of his many partners. What I learned about three-fourths of the way through the interview was that Edgar defined “date” as any social activity with a person that may *someday* lead to a romantic or sexual relationship, even if the relationship with that person was not at that level yet or may never reach that level. He saw all of his social engagements as rapport-building and social capital within his network, which he may someday be able to turn into romantic or sexual capital. This notion of “dating” is not entirely

unknown to the monogamous world, but it is one that largely disappears once someone enters into a monogamous romantic relationship. With polyamory, that isn't the case. This complex use of normative language in non-normative ways made interviewing polyamorists feel a bit like walking through trenches laden with landmines. I needed to constantly interrogate my assumptions about the meanings of words during both my interviews themselves and during data analysis.

What we know for certain is that polyamorists face significant discrimination and stigma when navigating the social world (Sheff 2014a). It felt extremely important that as a researcher, I was able to understand and communicate my understanding of these nuances to the polyamorists that I interviewed. I did not want to assume how my interviewees felt about polyamory being a part of their identity, nor did I want to assume how they felt about the political aspects of being included under the LGBT+ umbrella. Any of these assumptions risked both offending my interviewees and limiting the validity of my findings.

### **Broader Implications**

This dissertation demonstrates the ways that notions of family are almost inextricably linked with legal concepts. It is evidence of how deeply entrenched the cultural ideas of what family *should* be are. In Western society today, the family is imagined as a relatively private institution. Its successes and failures are believed to be largely dependent upon individual triumphs over personal concerns rather than the result of macro-level social forces, which have the power to determine family realities. This research proves how false that assumption is. It proves that families are made and shaped as direct responses to the law, legal ideology, and what Ewick and Silbey (1998) call “legality.” Family-building options are directly influenced by



cultural notions of the law and the way that the law and legality are deployed in our daily interactions with the social world.

The use of hierarchies within family structuring is at odds with the polyamorous ideology of egalitarianism. As I have shown, these divergences are not due simply to differing levels of commitment to polyamorous ideologies or arrangements. Instead, variations in family structure reflect differences in how polyamorists relate to the law and legality. Those I interviewed had interactions with the state as a source of control and/or as a source of protection as well as diverse, and often conflicting, experiences of the law in everyday life. This contributes to a greater sense of the pervasiveness of the law and legality. Thus, my findings have implications for the ways in which policy-makers understand the role of law in family life, as well as its ability to restrict, alter, or influence people and their daily family decision-making—particularly among the families of sexual minorities and other marginalized populations.

Furthermore, scholars highlight the inadequacies of the U.S. legal system when it comes to dealing with families that don't fit into the traditional model of family defined by the courts. This research emphasizes the ways that the law contributes to inequality within the family, especially for groups who receive little institutional support, like sexual minorities. It interrogates the centrality of marriage as a legal construct for access to rights and highlights the need for innovative, alternative institutional paths and policies. Lastly, it shines a light on the unintended consequences of law, which are often overlooked by policy-makers, and aids sociologists and policy-makers alike in better understanding the ways that people respond when they hold two conflicting sets of ideologies.

## **Contributions**

This research makes three main theoretical contributions. First, it complicates the feminist theoretical perspective concerning the increasing heterogeneity of U.S. families by demonstrating the limits of this heterogeneity. Although research on non-traditional families and the increasing diversity within families in the United States has grown in the last several decades, even the majority of feminist scholarship has done so within a monogamous framework. Moreover, though feminist legal scholarship has examined the relationship between families and the law (Fineman 1992, 1995, 2004; Fineman and Doherty 2005; Tong 1984), it has largely ignored the role of legal consciousness in framing cultural understandings of families.

Likewise, some socio-legal scholarship has given consideration to the intersections of non-traditional families with legal forces. For example, literature has focused on explaining how legal and cultural forces shape understandings of what “family” means (Hull 2003, 2006; Richman 2013). Other scholars have assessed if and how legal definitions of family constrain non-traditional families (Polikoff 2008; Richman 2008) and reasons why polyamorists may not be in favor of mobilizing for plural marriage rights (Aviram 2008). Yet, existing research has not paid enough attention to the manner in which legality is understood, utilized, or challenged as polyamorists build families. Thus, this dissertation makes its second theoretical contribution by building upon and extending prior work on both the families of polyamorists and legal consciousness. I have focused on a broader analysis of polyamorists’ interactions with the law than what has been analyzed as of yet. Instead of concentrating specifically on why polyamorists do not favor plural marriage rights (Aviram 2008), I examined both direct interactions with formal law and less direct, everyday interactions with laws, rules, policies, and legal ideology. In doing so, I sought to attain a complete picture of the way that polyamorists’ understandings of and interactions with the law shape their family-building choices.

Lastly, this dissertation makes its third theoretical contribution by bringing these two literatures together in order to paint a more complete picture of the connection between non-traditional families and wider social and legal structures. I argue that the legal consciousness literature has not paid enough attention to the intersectionality issues that have emerged more generally in feminist social science. Furthermore, in Chapter 4 I stressed the importance of analyzing variations in legal consciousness that occur within groups using an intersectional lens. Thus, this dissertation has expanded upon prior legal consciousness research that examines how disadvantaged groups understand and/or use the law (Connolly 2002; Hull 2003, 2006; Nielsen 2000; Sarat 1990) by uniting these two complimentary theoretical frameworks. The case of polyamorists highlights the heterogeneity in legal consciousness that is possible within one group. Few groups possess as much race and class privilege while simultaneously experiencing disadvantage because of their gender identities, sexual orientations, and lifestyle choices. This variation within the families of polyamorists provides a rare opportunity to examine the ways in which intersectional identities impact the way sexual minorities understand and interact with the law and legality during family-building. Scholars have analyzed how legal consciousness interacts with class status (Merry 1990), welfare status (Sarat 1990), race and gender (Nielsen 2000), or geographic location (Baumle and Compton 2015). However, this research examines how intersecting identities that provide *both* privilege and disadvantage affect interactions with the law. My findings illustrate that the families of polyamorists both reflect and create legality. Whether they accept, modify, or challenge the law is dependent upon their intersectional identities, how or when those identities are activated as polyamorists experience legal conflict in their everyday lives, and the relationship between those identities and systems of power.

### **Next Steps**

### *Future Research*

The current research has provided some answers but has also uncovered additional questions. I began interviewing polyamorists shortly after same-sex marriage was legalized in the United States in 2015. It was a time when the expansion of marriage rights was on the mind of many sexual minority groups and it is likely that the emphasis placed on marriage rights by my participants is due to this landmark Supreme Court decision. Additionally, my sample is limited to polyamorists in California and the racial and socioeconomic statuses of my participants vary minimally. Though it is difficult to access polyamorists from disadvantaged backgrounds due to a host of economic and social restrictions that they may face, future research should attempt to examine regional variation amongst polyamorists and their families. It should seek to uncover how legal consciousness looks for polyamorists in different parts of the United States and globally. Do polyamorists in other parts of the globe mobilize concepts and symbols the same ways that polyamorists in California do? Did the polyamorists in my sample mobilize the specific concepts and symbols that they did because they are more readily available in California, which is a more progressive state?

For example, while Sheff and colleagues (Sheff 2005; Sheff and Hammers 2011) indicated that polyamorists tend to have similar demographics with regards to race and education, a recent national study comparing polyamorous individuals with individuals in monogamous relationships found that polyamorists were less likely to report having a bachelor's degree or higher than people in monogamous relationships (Balzarini, Dharma, Kohut, Holmes, Campbell, Lehmilller and Harman 2019). Additionally, Balzarini et al. (2019) reported that people in monogamous relationships were more likely to report having a higher income than polyamorists. However, most of the participants in their sample were white, regardless of

participation in monogamous or polyamorous relationships, though polyamorists were more likely to report being multiethnic (Balzarini et al. 2019). Thus, it is possible that Sheff's and others' findings, mine included, based on research that took place predominantly in California and which indicates polyamorists are primarily middle-class, educated, and white may not be generalizable outside of that geographic context.

Furthermore, future research should assess what the data would look like if other forms of non-monogamy were included. Do these groups produce similar family structures to the polyamorists in my sample? Are my findings a result of the non-monogamous nature of polyamorous relationships more broadly, or a result of the ideologies of this specific group? Research should address the ways that polyamorous relationships and their resulting families take shape in different contexts.

### *Policy Alternatives*

These findings are important beyond polyamory because, in the U.S., more people are identifying as sexual minorities than at any other point in history. Yet, in October 2018, Brett Kavanaugh became a Supreme Court Justice, furthering far-right interests in upholding conservative family values and presenting non-traditional families with new legal challenges. This rightward shift of the federal court system increases the likelihood for re-litigation of 2015's marriage rights expansion and familial recognition for sexual minorities. These developments stress the need for re-evaluation of marriage as a framework for understanding families in the U.S., marriage as a legal construct for access to rights, and for innovation of new institutional paths to these rights.

The opportunity to examine the processes inside the families of sexual minorities is one we cannot forego. Furthermore, in a time when the legal system is both treacherous for and

hostile toward sexual minorities, understanding the ways that these groups interact with, utilize, and are constrained by the law can shed necessary light on the consequences of restrictive family laws based on monogamous, heterosexual dyads. To overcome the paradox presented by the polyamorists in my sample entirely would not only mean overcoming heteronormative and mono-normative family laws and policies, but the persistence of traditional gender and family ideologies that underlie them.

Policymakers should begin to seriously consider new institutional paths to rights and protections for families other than marriage. They should look to guidance from legal experts, several of whom argue that the groundwork for these pathways have already been laid (Den Otter 2015; Metz 2010; Polikoff 2009). For example, according to Polikoff (2009:102), “in every area of law that matters to same-sex couples, such as healthcare decision making, government and employee benefits, and the right to raise children, laws already exist in some places that could form the basis for just family policies for those who can’t marry or enter civil unions or register their domestic partnerships, as well as for those who don’t want to or who simply don’t...” Thus, it would not be difficult for lawmakers to take these existing routes and extend their scope.

I agree with my participants that protections and rights should not be based on the content or structure of marriage. I don’t believe plural marriage rights are the answer. Instead, policymakers should seek legal reform that values all families under the law, which may not look like family law at all. It may look like reformed patients’ rights or expanded government and employee benefits policies. In fact, it is possible that these types of modifications will be more well-received in the current political climate if they are not packaged as family law or marriage

law reform. The goal overall should be to make marriage matter less. This will have positive outcomes and better meet the needs of diverse family relationships.

## Appendix A: Participants

Below is a descriptive listing of the polyamorous study participants. All names are pseudonyms, and some other identifying information such as occupation has been slightly altered for some individuals in order to protect their confidentiality. Demographic information reflects the information given at the time of the most recent interview. For those who were only interviewed once, the data comes from 2015 or 2016. For those who participated in a follow-up interview, the data comes from 2018 or 2019.

*Aaron* is a 32-year-old, white, man who works in the legal profession. He holds an advanced degree. Aaron identifies as bisexual, has no children, and has been with his partner, Sydney, for several years. They are currently dating long-distance and Aaron lives alone in a one-bedroom apartment in the suburbs. Aaron was introduced to polyamory by Sydney and the majority of their relationship has been non-monogamous. Aaron and Sydney were interviewed together in the initial round of interviews. Aaron did not participate in a follow-up interview.

*Adeline* is a 25-year-old, college-educated, white woman who works in information technology. She identifies as queer, has no children, is atheist, and has identified as polyamorous for four years. She lives in a city with roommates who are also polyamorous. She has two long-term polyamorous partners and several more casual relationships. Adeline participated in the second round of interviews only.

*Angie* is a 72-year-old, white, woman who works in the mental health field. She holds an advanced degree, identifies as straight, has four adult children, and has identified as polyamorous for 25 years. She lives in the suburbs with her husband, Marvin, in a home that they own together. One of her partners, Rodney, stays with them several nights a week. Marvin and Angie have been polyamorous for the entirety of their marriage. Angie's initial interview was conducted in the home she owns with Marvin and included Marvin, Angie, and Rodney. Angie did not participate in a follow-up interview.

*Aspen* is a 52-year-old, Native American, non-binary individual who works in the veterinary profession. They hold an advanced degree. They identify as bisexual, have three children, are pagan and Buddhist, and have identified as polyamorous for four years. They live in the suburbs. Aspen did not participate in a follow-up interview.

*Blake* is a 25-year-old, college-educated, white, man who is currently pursuing a graduate degree. He identifies as straight, has no children, and has identified as polyamorous for five years. He lives in the suburbs in an apartment with non-romantic roommates. Blake did not participate in a follow-up interview.



*Brooke* is a 46-year-old, white, woman who works in information technology. She has completed some college. Brooke identifies as pansexual, has five children, is pagan, and has identified as polyamorous for 13 years. She lives in the suburbs with two of her children and her wife, Thalia, in a house that they own together. Brooke and Thalia have been polyamorous for the entirety of their relationship. Brooke and Thalia were interviewed together for both their initial and follow-up interviews.

*Carly* is a 42-year-old, college-educated, white, woman who works in childcare. She identifies as straight, has no children, and has identified as polyamorous for three years. She lives in a city in a house, which is her primary residence but where both of her partners stay several nights a week. One of Carly's partners is Gavin. Gavin and Carly had a commitment ceremony and consider each other committed partners. Carly and Gavin completed their initial interviews together but between the initial and follow-up interview they ended their relationship. Carly did not participate in a follow-up interview.

*Edgar* is a 30-year-old, college-educated, white, man who works in the technology industry. He identifies as pansexual, has no children, and has identified as polyamorous for six years. He lives in the suburbs in a house that he co-owns with one of his partners, Melina, whom he introduced to polyamory when they first started dating four years ago. Edgar participated in both an initial and follow-up interview.

*Emery* is a 33-year-old, college-educated, white, woman who works in healthcare. She identifies as mostly straight, has no children, is not religious, and has identified as polyamorous for eight years. She lives in a city with her partner, Gary, and one of his other partners. Gary introduced Emery to polyamory and their relationship has been polyamorous for its entirety. Emery's initial interview was completed together with Gary. She completed her follow-up interview alone.

*Emilio* is a 37-year-old, white, man who holds down several part-time jobs. He has completed some college. Emilio identifies as heteroflexible and has no children. He has been with his partner, Nathalie, for six years and they maintain a BDSM dynamic as well as practicing polyamory. He lives in a house in the suburbs with non-romantic roommates. Emilio and Nathalie were interviewed together in the initial round of interviews. Emilio did not participate in a follow-up interview.

*Frankie* is a 48-year-old, college-educated, Black, man. He identifies as straight, has no children, is a Baptist Christian, and has identified as polyamorous for four years. He lives alone in a city and his relationships maintain a BDSM dynamic in addition to being polyamorous. Frankie did not participate in a follow-up interview.

*Gael* is a 43-year-old, white, genderqueer individual who works in the technology industry. They hold a master's degree. They identify as heteroflexible, have one child, are an atheist, and

have identified as polyamorous for 15 years. Gael owns a house in a city and lives there with their child and the mother of their child, Jasmine, who is also polyamorous. Gael participated in both an initial and follow-up interview.

*Gary* is a 42-year-old, college-educated, white, man who works in project management. He identifies as queer, has no children, and has identified as polyamorous for eight years. He lives in a city with his partner, Emery, and one other of his partners. Gary introduced Emery to polyamory and their relationship has been polyamorous for its entirety. During their initial interviews, Gary and Emery were interviewed together. Gary did not participate in a follow-up interview.

*Gavin* is a 47-year-old, white, man who works in the technology industry. He holds an associate degree. Gavin identifies as bisexual, has no children, is an atheist, and has identified as polyamorous for ten years. He lives in the suburbs in a house that he owns with his wife. They opened up their marriage after several years and now both identify as polyamorous. Gavin completed his initial interview with one of his partners at the time, Carly. In the time between the initial and follow-up interview, Gavin and Carly ended their relationship. Gavin completed his follow-up interview alone.

*Ian* is a 30-year-old, college-educated, white, man who works in the engineering field. He identifies as straight, has no children, and has identified as polyamorous for nine years. He lives with one of his partners, Valerie. They have been non-monogamous for nearly all of their relationship and also participate in swinging. Ian and Valerie completed their initial interviews together. Neither of them participated in a follow-up interview.

*Janiya* is a 26-year-old, college-educated, white, non-binary individual who works in the service industry. They identify as queer, have no children, and have identified as polyamorous for three years. They live alone in a studio apartment in a city. Janiya did not participate in a follow-up interview.

*Lee* is a 29-year-old, college-educated, white man who works in the service industry. He identifies as straight, has no children, and has identified as polyamorous for three years. Lee is married and he and his wife decided to open up their relationship to satisfy her sexual desires. They live together in an apartment in the suburbs. Lee did not participate in a follow-up interview. When I contacted him for a follow-up interview, he stated that he no longer identifies as polyamorous, has divorced his wife, and is currently in a monogamous relationship.

*Madison* is a 48-year-old, white, woman. She works in the veterinary profession. She holds an advanced degree. She identifies as both bisexual and pansexual, has three children, is not religious, and has identified as polyamorous for four-and-a-half years. She lives in the suburbs with her children. Her children are fathered by her ex-husband, with whom she had a

monogamous relationship. She started practicing polyamory after their marriage ended. Madison participated in both an initial and follow-up interview.

*Malcolm* is a 25-year-old, college-educated, white, transgender man who works in the legal field. He identifies as pansexual, has no children, is spiritual but not religious, and has identified as polyamorous for six years. He lives in the city with one of his partners, Trinity. They have been polyamorous for the entirety of their relationship. During their initial interviews, Malcolm and Trinity were interviewed together. Malcolm completed his follow-up interview alone.

*Marvin* is an 83-year-old, white, man who works in higher education. He holds an advanced degree. He identifies as straight, has three adult children, is a member of the Unitarian Universalist church, and has identified as polyamorous for 35 years. He lives in the suburbs with his wife, Angie, in a home that they own together. One of Angie's partners, Rodney, stays with them several nights a week. Marvin and Angie have been polyamorous for the entirety of their marriage. Marvin's initial interview was conducted in Marvin and Angie's home with Marvin, Angie, and Rodney. Marvin completed his follow-up interview alone.

*Melina* is a 30-year-old, mixed race, woman. She works in the veterinary profession. She holds an advanced degree. She identifies as both pansexual and demi-sexual, has no children, is not religious, and has identified as polyamorous for six years. She lives in the suburbs in a house that she co-owns with one of her partners, Edgar, who is also polyamorous. They have been together for six years. Melina participated in both an initial and follow-up interview.

*Nathalie* is a 31-year-old, white, gender fluid individual who works as a caregiver. They identify as pansexual, have earned an associate degree, and have one child. They have been with their partner, Emilio, for six years and they maintain a BDSM dynamic in addition to practicing polyamory. Nathalie and their child live in a house with Emilio's brother, who has autism, as his caregiver. Nathalie's child is fathered by their ex-husband and their relationship was monogamous. Nathalie and Emilio completed their initial interviews together. Neither of them participated in a follow-up interview.

*Neil* is a 29-year-old, white, man who works in the legal profession. He holds an advanced degree. Neil identifies as both bisexual and pansexual (for other people's benefit because he hates labels), has no children, is not religious, and has identified as polyamorous for twelve years. He lives in a one-bedroom apartment in the city. Neil participated in both an initial and follow-up interview.

*Olivia* is a 41-year-old, college-educated, white, woman who works in office administration. She identifies as bisexual, has two children, and has identified as polyamorous for eight years. She lives in the city with her two children in a house that she owns. Though she is estranged from her husband, they have not officially filed for divorce. They were both polyamorous for the entirety of their marriage. Olivia participated in both an initial and follow-up interview.

*Rodney* is a 60-year-old, white, man who works in higher education. He holds an advanced degree. Rodney identifies as bisexual, has two adult children, and has identified as polyamorous for 15 years. He lives in the suburbs with his wife four nights a week and stays with his partner, Angie, and her husband, Marvin 3 nights a week. Rodney and Angie have been together for 15 years and their relationship has been polyamorous for that entire time. Rodney's initial interview was completed together with Marvin and Angie in their home. Rodney did not participate in a follow-up interview.

*Sydney* is a 27-year-old, white, woman who works in library science. She holds an advanced degree. She identifies as bisexual, has no children, and has identified as polyamorous for much of her adult life. She lives in the city with non-romantic roommates and is engaged in a long-distance relationship with Aaron. They have been dating for several years. She introduced Aaron to polyamory and the majority of their relationship has been non-monogamous. Sydney and Aaron completed their initial interview together. Neither of them participated in a follow-up interview.

*Thalia* is a 51-year-old, white, woman who works in business administration. She has completed some college. She identifies as bisexual, has five children, is spiritual, and has identified as polyamorous for 19 years. She lives in the suburbs with two of her children and her wife, Brooke, in a house that they own together. Thalia and Brooke have been polyamorous for the entirety of their relationship. Thalia and Brooke completed their initial and follow-up interviews together.

*Trinity* is a 25-year-old, Indian, woman who holds down several jobs. She has completed some college. Trinity identifies as pansexual, has no children, is spiritual but not religious, and has identified as polyamorous for six years. She lives in the city with one of her partners, Malcolm. They have been polyamorous for the entirety of their relationship. Trinity and Malcolm completed their initial interviews together. Trinity participated in her follow-up interview alone.

*Tyrone* is a 36-year-old, college-educated, white, man who is currently receiving disability benefits. He identifies as straight, has no children, is not religious, and has identified as polyamorous for five years. Though he still maintains his polyamorous identity, he is currently in a monogamous relationship with his girlfriend, Hilda. Tyrone and Hilda live together in the city. Tyrone was interviewed alone for the initial interview but brought Hilda with him to the follow-up interview. Tyrone participated in both an initial and follow-up interview.

*Valerie* is a 29-year-old, college-educated, mixed race, woman who is unemployed. She identifies as bisexual, has no children, and has identified as polyamorous for nine years. She lives in the suburbs with one of her partners, Ian. They have been non-monogamous for nearly

all of their relationship and also participate in swinging. Valerie and Ian completed their initial interview together. Neither of them participated in a follow-up interview.

*Yazmin* is a 47-year-old, college-educated, white, woman who works in systems administration. She identifies as mostly straight, has three children, is not religious, and has identified as polyamorous for eight years. She lives the suburbs in a house that she owns with her children. One of her partners and his children currently live with them. Her children are fathered by her ex-husband. While they were still married, they explored having an open relationship. She started practicing polyamory after their marriage ended. Yazmin participated in both an initial and follow-up interview.

## Appendix B: Glossary of Terms

*Escalator relationship*: a relationship that follows a traditional relationship narrative, meaning it progresses forward incrementally (e.g. going from dating, to living together, to getting married, then having children, etc.).

*Fluid-bonded*: relationships that have negotiated the exchange of bodily fluids during sexual encounters.

*Functionally Monogamous*: two people in a couple that identifies as polyamorous but are currently only romantically involved with each other.

*Infidelity*: the action or state of being unfaithful to a monogamous spouse or sexual partner.

*Metamour*: your “partner’s partner,” or two people who are dating the same person but not each other.

*Mono-poly*: someone who is dating a polyamorous person but is monogamous and only dating that polyamorous person.

*Moresome/Tribe*: a group of five or more romantically-involved adults.

*Open Relationship/Marriage*: a marriage or relationship in which both partners agree that each may have sexual relations with people outside of the marriage.

*Polyamory*: “consensual, openly conducted multi-partner relationships in which both men and women [all genders] have negotiated access to additional partners outside of the traditional two-partner couple.” (Sheff 2014a)

*Polyandry*: one woman has multiple husbands and the men do not have access to multiple partners and are not allowed to have sexual relationships with each other.

*Polycule*: a close network of polyamorous friends and relationships.

*Polygamy*: being married to more than one man or woman at a time.

*Polygyny*: one man is married to multiple women and the women do not have access to multiple partners and are not allowed to have sexual relationships with each other.

*Poly-single*: a person who identifies as polyamorous but is currently single and seeking polyamorous relationships

*Quad*: a group of four adults who are all romantically involved with each other.

*Solo-poly*: polyamorists that don't follow any formal relationship structure or timeline and tend to reject relationship escalators.

*Swinging*: a behavior in which both singles and people in committed relationships engage in sexual activities with others as a recreational or social activity.

*Triad*: three adults in a relationship who are all romantically involved with each other.

*Vee*: a relationship consisting of three people in which one person has intimate relationships with the other two

### **Appendix C: Sample Characteristics**

Whites are disproportionately represented among polyamory practitioners (Clark 2012; Klesse 2014b; Sheff and Hammers 2011), and white sexual minorities are more likely to have a higher socioeconomic status than those who are Black and Latino (Averett 2016). My initial sample affirms this tendency, as it consists mainly of white, middle-class polyamorists. Although I sampled in four cities that were geographically diverse, a clear majority (23 out of 31 polyamorists) came from the greater Treeville area. Excluding Marvin and Angie who were much older than the rest of my participants, the average age of interviewees was 37 years old. The median age of respondents, including Marvin and Angie, was 39.4 years old. They are a highly educated group, which is typical of polyamorists in the U.S. At the time of their most recent interviews, 10 had attained a graduate degree, 15 had attained a bachelor's degree, two had attained an Associate degree, and four had some college education but didn't complete their degree. Thus, nearly one-third had graduate degrees and none of my participants received below a high school degree.

All the polyamorists I interviewed were either employed or students. They worked in a range of occupations including veterinary medicine, law, technology, and academia. Reflecting broader trends of polyamorous demographics in the U.S., 26 of the polyamorists in my sample identified as white. Only two of the polyamorists in my sample identified as mixed race, one identified as black, one identified as Native American, and one identified as South Asian. The gender composition of my sample was more complex. In response to the question, "How would you describe your gender identity?" polyamorists used a variety of inconsistent terms. The majority responded as either man/male (42%) or woman/female (42%). However, two identified



specifically as cis women,<sup>19</sup> three identified specifically as cis men,<sup>20</sup> two identified as non-binary, one identified as genderfluid, one identified as “mostly male,” and one identified as specifically a trans man. Allowing participants to declare their own gender identity is an important way to avoid forcing them into categories that do not accurately describe them. For example, Malcolm said that he would always identify as a “trans man” because “man” doesn't accurately describe his experience transitioning and being socialized for most of his life as a woman. In the final analysis, I place all nonbinary genders<sup>21</sup> into one category (genderqueer) and all cis genders<sup>22</sup> into two categories (man or woman) due to several categories being introduced, which described small numbers of participants. However, I aspire to be transparent about the nuances of these categories, and to describe participants in their own words when possible.

The follow-up interviews include a sub-sample of my initial participants; thus, much the sample description is the same. However, though I originally sampled from four cities, all of the polyamorists who participated in follow-up interviews were from two of the four original cities: Treeville and Techtown. This was not a purposeful decision on my part, but rather it reflects the residencies of the polyamorists who responded to my requests for follow-up interviews. See below:

<b>Race/Ethnicity</b>			<b>Gender</b>		
White	83.9%	26	Woman	42%	13
Black	3.2%	1	Man	42%	13
Mixed Race	6.5%	2	Genderqueer	16%	5
Native American	3.2%	1			
South Asian	3.2%	1			

<sup>19</sup> Including one who identified as a cis woman and one as a cis female.

<sup>20</sup> Including two who identified as cis males and one who identified as a cis man.

<sup>21</sup> Including trans man, non-binary, genderfluid, and “mostly male” identifications.

<sup>22</sup> Including male/cis man/cis male and female/cis female/cis woman.

<b>Education</b>		
Some College	12.9%	4
AA	6.5%	2
BA	48.4%	15
Graduate Degree	32.2%	10

<b>Age</b>	
Mean	39.4 years
Median	36 years
Mode	25 years
Range	58 years

<b>Sexual Orientation</b>		
Straight	25.8%	8
Bisexual	25.8%	8
Pansexual	16%	5
Heteroflexible	6.5%	2
Mostly straight	6.5%	2
Queer	9.7%	3
Bisexual/Pansexual	6.5%	2
Bisexual/Demisexual	3.2%	1

<b>Number of Children</b>		
0 Children	64.5%	20
1 Child	6.5%	2
2 Children	6.5%	2
3 Children	12.8%	4
4 Children	3.2%	1
5 Children	6.5%	2

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