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ALWAYS A MINOR, NEVER A WIFE: THE FEMALE ADOLESCENT EXPERIENCE IN POLYGAMOUS COMMUNITIES

INTRODUCTION

The United States Supreme Court held in *Prince v. Massachusetts* that, “[P]arents may be free to become martyrs themselves. But it does not follow they are free, in identical circumstances, to make martyrs of their children before they have reached the age of full and legal discretion when they can make that choice for themselves.”¹ This quote has particular significance in polygamous communities. Parents may choose to disregard polygamy laws, and to follow the polygamous practices of their choosing, but they should not be allowed to subject their minor children to these illegal practices. In the context of polygamous communities, the above quote can be interpreted to apply to female adolescents who are forced to live in polygamous communities. Often, such female adolescents are subjected to arranged marriages because of the strong parental control over their lives. The quote also suggests that while parents in polygamous communities may choose to be sacrificial victims, they are not free to subject their female children to the same harms or decisions.

Female adolescents in polygamous communities must be provided adequate schooling, resources, and information to decide for themselves whether they would like to perpetuate the polygamous traditions of their communities. More importantly, upon reaching the age of majority, they should be able to decide for themselves if they would like to consent to a polygamous marriage. For legal purposes, the age of majority is defined as “the age at which [a] person is considered an adult,” which is typi-

¹ *Prince v. Massachusetts*, 321 U.S. 158, 170 (1944).

cally eighteen in the United States.² Until female adolescents in polygamous communities are afforded adequate education, resources, and their own decision-making power, adaptations must be made to our current legal framework to protect them from abuse and indoctrination. Such adaptations include stricter enforcement of our current laws, heightened investigations and government interventions, modified laws to address the unique concerns raised by polygamous communities, and emphasis on female adolescent education and empowerment.

This article provides a close examination of how the current legal framework affects issues arising from polygamy. More specifically, this article discusses how the laws can be changed or enforced to reduce indoctrination and abuse of female adolescents in polygamous communities. The scope of this article is limited to female adolescents raised in polygamous communities in the United States.³ Part II examines the background of polygamy in the United States with a closer examination of the sexual victimization, inequalities, force, indoctrination, and physical abuse that female adolescents in polygamous communities experience. Part III of this article explores the current legal status of polygamy in the United States. Finally, Part IV focuses on ways to address the unique issues raised by polygamous communities.

² RICHARD A. LEITER, *Legal Ages, 50 STATE STATUTORY SURVEYS: CIVIL LAWS: CIVIL PROCEDURE* (2007), available at Westlaw 0020 SURVEYS 9.

³ There may be many other instances of polygamous families living outside of traditional polygamous communities that involve the mistreatment of female adolescents. However, these cases are much more difficult to prove since these families are scattered across the United States and elsewhere. Since these families are harder to pinpoint, they are beyond the scope of this article. Nevertheless, many of the issues and legal courses of action discussed in this article are universal to polygamous marriages, and thus, any proposed remedies for polygamous communities may be applicable in the context of isolated cases of polygamy as well.

II. POLYGAMOUS COMMUNITIES IN THE UNITED STATES

Polygamous⁴ communities have existed in the United States since the early 1830s.⁵ Traditionally, these communities were thought to be associated with the religious practices of Mormon Fundamentalists.⁶ However, this religious group moved away from polygamy after the United States Supreme Court upheld a statute that outlawed polygamy in *Reynolds v. United States*.⁷ The polygamous movement was later resurrected in the middle of the twentieth century as an essential religious practice of spin-offs from the Fundamentalist Church of the Jesus Christ Latter Day Saints.⁸

Marriage in the United States is traditionally viewed as “[t]he legal union of a couple as spouses.”⁹ Polygamy differs from traditional marriage in that it is “[t]he state or practice of having more than one spouse simultaneously.”¹⁰ Polygamy denotes the presence of more than one spouse at one time, whereas the union of a marriage is only one couple, or two spouses. In the United States marriages are typically of a non-polygamous nature.¹¹

Today, polygamous communities continue to exist in scattered pockets throughout the United States, but are predominantly located in the small rural areas of Utah, Arizona, Montana, and

⁴ Although this article speaks generally of communities commonly described as “polygamous,” which typically means a person with more than one spouse at the same time, research supports that these communities are in fact predominately “polygynous” in nature, meaning males who marry plural wives. For further discussion see IRWIN ALTMAN & JOSEPH GINAT, POLYGAMOUS FAMILIES IN CONTEMPORARY SOCIETY 2-4 (1996).

⁵ Cathleen Kaveny, *Remember the Mormons: Thinking About the Nature of Marriage*, COMMONWEAL, Jan. 2005, at 7.

⁶ RICHARD S. VAN WAGONER, MORMON POLYGAMY: A HISTORY 6, 210 (2d ed. 1989).

⁷ *Reynolds v. United States*, 98 U.S. 145, 166-167 (1878); Maura Strassberg, *Lawyering for the Mentally Ill: The Crime of Polygamy*, 12 TEMP. POL. & CIV. RTS. L. REV. 353, 354 (2003).

⁸ Strassberg, *supra* note 7, at 354.

⁹ BLACK'S LAW DICTIONARY 13c (9th ed. 2009).

¹⁰ *Id.* at 16c.

¹¹ Strassberg, *supra* note 7, at 354.

Idaho.¹² In 2004, an estimated 50,000 polygamist individuals lived in the United States.¹³ In some polygamist communities, such as Colorado City, Arizona, and Hildale, Utah, it is estimated that it would be common to find homes in the community with more than ten wives and over thirty children.¹⁴

A. *Unique Characteristics of Polygamous Communities*

There are various issues raised in the context of polygamous communities that make the experiences of the communities unique as compared with the experiences of mainstream society. For this reason, it is important that issues created by polygamous communities be considered in light of the community's uniqueness. Furthermore, specific and narrowly tailored strategies must be explored in order to address these issues.

Polygamous communities are unique because of practices associated with plural marriages. In general, plural marriages have some defining characteristics. One such characteristic is that typically only the first marriage includes procedures that are associated with an official, legally sanctioned marriage.¹⁵ Participants in subsequent, or "spiritual," marriage ceremonies do not seek a marriage license or official recognition for these marriages since polygamy is illegal.¹⁶ The individuals entering into these marriages, or those overseeing the marriage ceremonies, naturally wish to avoid exposing themselves to criminal penalties and do not seek obtaining a marriage license.¹⁷

Parents in polygamous communities commonly decide that their female adolescent daughters should acquiesce to arranged

¹² *Id.*

¹³ Jonathan Turley, *Polygamy Laws Expose our Own Hypocrisy*, USA TODAY, Oct. 3, 2004, available at http://www.usatoday.com/news/opinion/columnist/2004-10-03-turley_x.htm.

¹⁴ *Polygamy in the United States* (CNN int'l broadcast May 16, 2006), available at <http://transcripts.cnn.com/TRANSCRIPTS/060516/i-ins.01.html>.

¹⁵ Alyssa Rower, *The Legality of Polygamy: Using the Due Process Clause of the Fourteenth Amendment*, 38 FAM. L.Q. 711, 717 (2004).

¹⁶ *Id.*

¹⁷ *E.g.*, UTAH CONST. art. III (1953).

polygamous marriages with significantly older men.¹⁸ This practice of significantly older men entering into marriages with female adolescents, not of legally consenting age, is a highly controversial aspect of plural marriages in polygamous communities and has roots in the early traditions of polygamy.¹⁹ During the mid-nineteenth century, polygamous society was fairly lenient towards men who selected numerous, and oftentimes teenage, wives.²⁰ For example, at that time, only a Brother from the Priesthood needed to approve these age-varied marriages.²¹ Although this standard has changed, the approval needed for a polygamous marriage is still not a stringent standard.²²

In addition to the distinct marriage practices, polygamous communities are unique because they are relatively self-sustaining in nature.²³ Assets in these communities are often pooled, creating one large asset pool rather than allowing for the accumulation of independent wealth.²⁴ This creates a sense of reliance and interdependence in the community that potentially makes it impossible for community members to develop any individual savings.²⁵ Arguably, the forced financial dependence on the community also makes it difficult for any individual members to escape the community confines if they decide that they would like to leave.

Financial dependence in polygamous communities may also be coupled with emotional dependence on the resources the community provides. For example, it may be extremely difficult

¹⁸ *Affidavit: Polygamist Ranch Rife with Sexual Abuse* (NPR radio broadcast Apr. 8, 2008), available at <http://www.npr.org/templates/story/story.php?storyId=89476130>.

¹⁹ Stephen A. Kent, *A Matter of Principle: Fundamentalist Mormon Polygamy, Children, and Human Rights Debates*, 7 *NOVA RELIGION* 7, 10 (2006).

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 13.

²³ Jennifer Dobner, *Judge Rejects Plan to Return Land to Polygamous Church Followers of Warren Jeffs*, *USA TODAY*, July 26, 2009, http://www.usatoday.com/news/religion/2009-07-26-polygamoustrust_N.htm.

²⁴ *Id.*

²⁵ See generally *id.* (discussing common financial procedures in Mormon polygamous communities).

for female adolescents to leave polygamous communities if their whole family and entire support system is within the community.²⁶ Female adolescents may lack other life skills such as work experience, or even experience applying for jobs, which may deter them from trying to venture out on their own.²⁷ These community pressures may influence the ability of female adolescents to leave the community, even when they feel they are being mistreated.

As a further inhibitor to leaving, individuals raised in these communities are typically either not schooled or are schooled only with other children in the community.²⁸ This raises questions about the curriculum that children living in polygamous communities are learning, and whether they are being educated about life beyond the scope of their polygamous compound.²⁹ Colorado City, Arizona and Hildale, Utah are examples of cities in which children living in a polygamous community are schooled outside of the mainstream school system.³⁰ In 2000, school enrollment at Phelps Elementary School in the city of Hildale decreased from 230 to 96 students.³¹ The children were removed from the school based on the public school's choice not to offer teachings on the cultural heritage of polygamous com-

²⁶ See Kent, *supra* note 19 (describing the interdependence and close relationships of members of polygamous communities).

²⁷ Scott Anderson, *Polygamy in America: One Man, Five Wives, 46 Children*, NAT'L GEOGRAPHIC, Feb. 2010, at 45, 57.

²⁸ An example of a school in a polygamous community is the Colorado Unified School District. This school services the areas of Colorado City, Arizona and Hildale, Utah—two heavily populated polygamist communities. This school district was only recently returned to local control after a period of state intervention due to financial insolvency. Prior to the intervention, and with the return to local control, community officials manage not only financial matters within the school, but also personnel, curriculum, and disciplinary decisions. Paul Davenport, *School District in FLDS Area Set to Emerge from Arizona Takeover*, SALT LAKE TRIB., Oct. 26, 2009, http://www.sltrib.com/polygamy/ci_13639678.

²⁹ *Senator: Polygamous Sects are 'Form of Organized Crime,'* (CNN, July 24, 2008), available at <http://www.cnn.com/2008/CRIME/07/24/polygamy.hearing/index.html>.

³⁰ Andrew Murr, *Strange Days in Utah*, NEWSWEEK, Nov. 13, 2000, www.newsweek.com/2000/11/13/strange-days-in-utah.html.

³¹ *Id.*

munities.³² Others speculate that polygamist community members have also chosen to remove their children from the public school system because historically, including the children resulted in questions from the surrounding communities.³³ It appears that polygamous community members determined that it was more important that their children learn about polygamous traditions than learn the other public school curriculum, and therefore chose to remove their children from the mainstream school system altogether.

Additionally, female adolescents have been removed from schools due to marriage.³⁴ Some argue that when female adolescents have been placed in arranged marriages, their purpose becomes providing for their husband in domestic ways, such as maintaining the household and raising children.³⁵ Married female adolescents may be allowed to remain in schools until their children are born, at which time they are removed from school so that they can care for the children.³⁶ Therefore, not only are parents making decisions about whether their children should be exposed to the school system, but other demands are being placed on females in the private sphere that affect their ability to pursue an education.

B. Sexual Victimization of Female Adolescents

Even more troubling than the illegal marriages that female adolescents are forced into is the sexual victimization that results. This sexual abuse has caught the attention of many scholars who suggest there are serious human rights concerns

³² *Id.*

³³ *Id.*

³⁴ *E.g.*, Susan Greene, *Polygamy Prevails in Remote Arizona Town*, DENVER POST, Mar. 4, 2001, <http://www.rickross.com/reference/polygamy/polygamy54.html> (describing stories told by former members of polygamous communities who now speak out against the treatment of women in the communities).

³⁵ *Id.*

³⁶ Murr, *supra* note 30.

implicated in polygamous communities.³⁷ In April 2008 the media highlighted a case that involved the sexual victimization of female adolescents living in the polygamous community of the Yearning for Zion Ranch located in Eldorado, Texas.³⁸ A raid of the ranch revealed the high prevalence of sexual abuse being perpetrated against adolescent girls living on the ranch.³⁹ The girls were reported to have been involved in spiritual marriages with older men in the community.⁴⁰ Of these girls, aged twelve to fifteen years old, seven of them had already given birth to at least one child at the time of the raid.⁴¹ This was true despite the fact that under Texas law it was, and still is, impermissible for anyone under the age of seventeen to consent to sex with an adult.⁴² Given that the girls were not able to consent to sexual conduct with an adult, and that the marriages they engaged in could not be found valid, the sexual relations that took place in these marriages constituted statutory rape.⁴³

The statutory rape resulting from these illegal marriages, as well as other crimes in the polygamous community, led to the arrest of twelve community members who were charged with various crimes, including bigamy, sexual assault, and the failure to report child abuse.⁴⁴ Despite the situations involved in this raid, or other past raids, in which females appeared to be “consenting” to these marriages, it should not be overlooked that these females were raised in very closed and sheltered environments in which their status compared to the males and elders

³⁷ See, e.g., Kent, *supra* note 19 (discussing different viewpoints of human rights violations associated with polygamous communities).

³⁸ Dan Frosch, *Texas Report Says 12 Girls at Sect Ranch Were Married*, N.Y. TIMES, Dec. 23, 2008, http://www.nytimes.com/2008/12/24/us/24abuse.html?_r=1.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² TEX. PENAL CODE ANN. § 21.11 (West 2009) (Texas statute criminalizing indecency with a child).

⁴³ See discussion *infra* Part III.B.

⁴⁴ Frosch, *supra* note 38

was significantly unequal.⁴⁵ For example, in polygamous societies, female adolescents are typically under the control and supervision of their parents.⁴⁶ Thus, if parents choose for their adolescents to participate in arranged marriages, it may appear that the adolescents have consented, when in fact, the adolescents are complacent because they feel they have no individual choice in the matter.⁴⁷ This leads to questions of whether meaningful consent could ever be given in these cases when female adolescents experience unequal social conditions because of their gender or other societal status.⁴⁸

In addition, as previously discussed, it is common in polygamous communities for older males to pursue marriages with younger females.⁴⁹ This age disparity further contributes to unequal status for female adolescents, and is further supported by the typically inferior status that minor individuals are afforded in the United States, as they are restricted by numerous laws and do not receive the same rights as their elders.⁵⁰ Examples of laws that prohibit certain behaviors of minors include laws with a minimum age for drinking, driving, and smoking.⁵¹

⁴⁵ See Altman, *supra* note 4, at 2-3 (for a discussion of the deep-rooted beliefs of male superiority found in Mormon polygamist families); Greene, *supra* note 34 (describing instances of violence and abuse young women and girls suffer at the hands of males in polygamous families as well as active beliefs of male superiority).

⁴⁶ Hilary Hylton, *The Future of Polygamist Kids*, TIME, Apr. 15, 2008, available at <http://www.time.com/time/nation/article/0,8599,1730471,00.html>.

⁴⁷ See Greene, *supra* note 34 (escaped member of a polygamous community reflects upon her former life with disbelief at how little she understood about the mistreatment she suffered while living in the community until experiencing life outside of it).

⁴⁸ CATHARINE MACKINNON, WOMEN'S LIVES, MEN'S LAWS 96 (2005).

⁴⁹ Catherine Blake, *The Sexual Victimization of Teenage Girls in Utah: Polygamous Marriages Versus Internet Sex Predators*, 7 J.L. & FAM. STUD. 289, 292-93 (2005).

⁵⁰ See LEITER, *supra* note 2 (providing a comprehensive state-by-state analysis of the age at which minors receive a range of rights as adults).

⁵¹ See *id.*

C. *Inequalities Faced by Female Adolescents*

Another major issue in polygamous communities is gender inequality. One example of a gender inequality is that of polygyny, the practice of polygamous males who choose to take plural wives.⁵² This happens far more frequently than when females in polygamous communities choose to take multiple husbands.⁵³ In polygyny, a woman is often responsible for caring for her children the majority of the time, since the husband is typically split between different wives, homes, and children.⁵⁴ Therefore, adolescent females have an unequal role and status in polygamous communities compared to older males. This inequality complicates and negatively affects the consent process adolescent females experience when they make decisions regarding polygamous practices.⁵⁵

It is difficult to reconcile the lack of exposure female adolescents have to mainstream society, as well as their potential lack of schooling, with any possibility that these adolescents may make an informed decision about an age-varied relationship. Female adolescents in polygamous communities may neither have knowledge of their individual rights nor knowledge of the well-established societal norms to critically examine any situations of indoctrination and arranged polygamous marriages. Furthermore, female adolescents in polygamous communities are typically not exposed to a great deal of diversity or mainstream influences.⁵⁶

In addition, polygamous communities have been noted as having a uniform, albeit unofficial, dress code for women.⁵⁷ The wives in polygamous marriages usually have their hair fastened in a bun, wear long plain dresses, and have been described as having a "very old-fashioned style."⁵⁸ Although the way in

⁵² See Altman, *supra* note 4.

⁵³ Altman, *supra* note 4, at 2-4.

⁵⁴ Anderson, *supra* note 27, at 50.

⁵⁵ Greene, *supra* note 34.

⁵⁶ Hylton, *supra* note 46.

⁵⁷ *Polygamy in the United States*, *supra* note 14.

⁵⁸ *Id.*

which females in polygamous communities dress may seem irrelevant, it serves as an additional example of a way in which female adolescents are forced to conform to the community standards. Similarly, it is a way in which female adolescents must suppress their individual desires for self-expression through the lack of choice in their clothing.

Even in those cases in which females in polygamous communities know of mainstream beliefs regarding polygamous practices, these adolescent females may not have the means or resources to escape from polygamous communities. Even more disturbing, such adolescent females may have experienced threats for contemplating leaving as well as physical abuse for attempting to leave.⁵⁹ Females raised in sheltered polygamous communities are indoctrinated by not having the adequate knowledge, rights, and opportunities to be able to make informed choices that are in their best interests.⁶⁰

D. Force and Indoctrination of Female Adolescents

To further complicate the mistreatment of female adolescents, arranged marriages may take place in the context of an extended family unit.⁶¹ For example, concerns of incest were raised in the case of Tom Green⁶² who married three sets of sis-

⁵⁹ Richard A. Vazquez, *The Practice of Polygamy: Legitimate Free Exercise of Religion or Legitimate Public Menace? Revisiting Reynolds in Light of Modern Constitutional Jurisprudence*, 5 N.Y.U. J. LEGIS. & PUB. POL'Y 225, 240-43 (2001) (providing a detailed example of physical and sexual abuse against a teenage woman who tried to escape her polygamous marriage).

⁶⁰ *Id.* at 243-44.

⁶¹ Ray Rivera, *16-Year-Old Girl Testifies of Beating*, SALT LAKE TRIB., July 23, 1998, available at <http://www.rickross.com/reference/polygamy/polygamy2.html> (discussing the case of a father that arranged for his sixteen-year-old daughter to be married to her uncle, then beat her when she tried to run away).

⁶² Tom Green was a Mormon living in Utah in the 1980's who openly discussed his polygamist lifestyle on several television shows, including NBC's Dateline, ABC's 20/20, and The Sally Jesse Raphael Show. As a result of his public statements, the state initiated the first prosecution for polygamy in Utah in fifty years. Blake, *supra* note 49, at 406.

ters and three of his stepdaughters.⁶³ Incest is not only another way in which a value found in polygamous marriages does not align with mainstream society's beliefs, but it is also an illegal practice.⁶⁴ However, individuals living in polygamous communities and practicing plural marriages based on their religious beliefs believe that their bloodline is directly linked to Jesus Christ.⁶⁵ They intermarry in an effort to keep their bloodline pure.⁶⁶ This religious belief disregards the mainstream stigma and research that incest is harmful to children. Oftentimes, this can lead to children in the community not understanding that these incestuous practices are outside the societal norm and can have very damaging and lasting effects.⁶⁷

Even more disturbing than these incestuous practices is the fact that parents arrange their daughters' participation in the incestuous, illegal marriages.⁶⁸ In some states, parental consent is sufficient for minors to be able to enter into marital relationships.⁶⁹ Parents in polygamous communities typically face little, if any, difficulties having their young daughters continue the same way of life.⁷⁰ This parental consent not only serves as reinforcement for the consummation of these marriages, but it also reinforces in the female adolescent minds that what they are experiencing is appropriate and acceptable. Again, these young girls may have a very limited knowledge of what other parts of society consider to be acceptable behavior. Thus, it is even more unlikely that they will know or understand that mainstream opinions regarding polygamy are grounded in firm be-

⁶³ *Id.* at 409.

⁶⁴ Note, *Inbred Obscurity: Improving Incest Laws in the Shadow of the Sexual Family*, 119 HARV. L. REV. 2464, 2469 (June 2006). For a discussion of incest laws and polygamy, see discussion *infra* Part III.B.

⁶⁵ *E.g.*, *O'Reilly Factor: Children of Polygamy Defend Families* (FOX News broadcast Aug. 22, 2006), available at EBSCOhost.

⁶⁶ *E.g.*, *id.*

⁶⁷ *E.g.*, *id.*

⁶⁸ Blake, *supra* note 49, at 289. (When Ruth Stubbs was only sixteen, her church leader and her father "instructed" her to marry a man seventeen years her senior).

⁶⁹ LEITER, *supra* note 2.

⁷⁰ See *Affidavit: Polygamist Ranch Rife with Sexual Abuse*, *supra* note 18.

liefs that polygamous behavior negatively impacts the well-being of the female adolescents subjected to these practices.⁷¹

In addition, even in those situations in which adolescent females have reached the supposed age of consent, it is still questionable whether their consent can be truly meaningful. Polygamous communities encourage uniformity and tradition.⁷² Therefore, female adolescents may be indoctrinated, pressured to conform, and discouraged from self-exploration. Despite the strong undertones of indoctrination and a lack of freedom to make choices, “the term consent is nonetheless used as if it actually means choice, mutuality, and desire.”⁷³ When a female adolescent is of consenting age, it can be argued that consent for the polygamous marriage can be freely given, setting aside the illegality of the marital agreement. However, this ignores the fact that the consent is given under extreme circumstances in which female adolescents are not truly able to exercise their own free will to decline entry into polygamous marriages. Female adolescents in polygamous communities who are of consenting age still are not truly able to give their free consent to marry because of the other psychological pressures that exist from the outside community such as parental encouragement, parental control, and a lack of mobility and financial independence.

E. Physical Abuse of Female Adolescents

In addition to sexual offenses, there are also cases of physical abuse against female adolescents reported in polygamous communities. One such example occurred in a 1998 case that involved a sixteen-year-old girl who made two attempts to escape her home in the polygamous community (“Kingston Case”).⁷⁴ After the first unsuccessful escape attempt, her father forced her to marry her uncle, who was more than twice her age.⁷⁵ The girl

⁷¹ See, e.g., *id.* (describing the jeopardy that underage females are placed in by being subjected to sexual abuse).

⁷² Anderson, *supra* note 24, at 27.

⁷³ MACKINNON, *supra* note 48, at 243.

⁷⁴ Rivera, *supra* note 61.

⁷⁵ *Id.*

again tried to escape because she desperately wanted to complete her high school education.⁷⁶ Unfortunately, on her second attempt to escape, the girl attempted to seek refuge with her mother, only to have her mother contact her father.⁷⁷ The girl's father then picked her up and drove her approximately eighty miles to a barn where he beat her until she was unconscious.⁷⁸ The location of the beating site has been noted by former polygamy members as a popular place for men to discipline their wives through beatings.⁷⁹

In addition to the surface level issues of incest and physical abuse apparent in this case, there are other underlying concerns which can affect the psychological, social, and educational well-being of these young girls. Further examination suggests that female adolescents in these situations are not only being pressured into arranged marriages, which may be incestuous, and subjected to physical abuse for their noncompliant behavior, but they are also deterred from forming their own individual opinions, beliefs, and decisions about important life events.⁸⁰ These female adolescents are experiencing overt acts of abuse, as well as more subtle forms of indoctrination.

III. UNITED STATES AND POLYGAMY

As time has passed since the establishment of the original polygamous communities in the United States, and public awareness surrounding these marriages has increased, laws have been established to criminalize this practice.⁸¹ Polygamy laws, however, have not traditionally been enforced.⁸² Various reasons

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ Sarah Smith, *Understanding Polygamy* (July 2005), http://www.humanistsofutah.org/2005/Understanding_Polygamy_July-05.html (last visited Jan. 14, 2011).

⁸¹ *Child Rape Could be Key to Prosecuting Polygamy*, 35 CONTEMP. SEXUALITY 8, 8 (2001), available at EBSCOhost.

⁸² Rower, *supra* note 15, at 719.

exist to explain the lack of enforcement: difficulty in prosecution, the belief that polygamy laws are not strong enough to address the ills presented by polygamous communities, police officer or public official involvement in polygamous practices in the communities, and the belief that enforcement of these laws may cause more harm than good.⁸³ Furthermore, although polygamy laws are enforced in some instances, it is difficult for these laws to address the more deeply rooted problems in polygamous communities.⁸⁴ Even if the polygamy laws were enforced, problems created within polygamous communities would not be effectively combated. The limited enforcement, and arguable ineffectiveness, of criminal polygamy laws suggest that there may be more efficient procedures, such as government interventions and education, which can be used to address problems created in the context of polygamous communities.

A. *Bans on Multiple Marriages*

The Morrill Act of 1862 was the first measure passed by Congress to criminalize bigamy.⁸⁵ The Morrill Act made it a criminal offense for any individual who was already married to marry another individual.⁸⁶ The Act eventually provided the basis for *Reynolds v. U.S.*, in which the Supreme Court held that the Freedom of Exercise Clause did not extend to the right to practice polygamy.⁸⁷ In *Reynolds*, the Court's reasoning relied to a limited extent on the Morrill Act.⁸⁸ As a result of *Reynolds*,

⁸³ David Von Drehle & Hilary Hylton, *The Sins of the Fathers*, 171 TIME 32, 34 (2008) (discussing difficulties of enforcing polygamy laws in polygamous communities); Terry Goddard, *Crimes Associated with Polygamy*, Senate Judiciary (July 24, 2008) (discussing reasons why polygamy laws have not been enforced in the past).

⁸⁴ Catherine Blake, *I Pronounce You Husband and Wife and Wife and Wife: The Utah Supreme Court's Re-Affirmation of Anti-Polygamy Laws in Utah v. Green*, 7 J.L. & FAM. STUD. 405, 406 (2005).

⁸⁵ Morrill Act, ch. 126, 12 Stat. 501 (1862) (no longer in effect).

⁸⁶ *Id.*

⁸⁷ *Reynolds v. United States*, 98 U.S. 145, 166 (1878).

⁸⁸ *Id.* at 168.

states were allowed to outlaw polygamy, and the practice is currently prohibited in all fifty states.⁸⁹

B. Other Criminal Laws

Aside from laws criminalizing polygamy, other criminal laws apply in the context of polygamous communities. Statutory rape laws apply in those cases in which female adolescents are involved in sexual relationships with older men.⁹⁰ Statutory rape is defined in state law as the act of an individual to engage in “sexual intercourse with any person under the age of sixteen years and not his or her spouse.”⁹¹ In polygamous communities these arrangements may appear to be protected by the marital relationship, but in reality, polygamous unions are invalid and therefore, do not protect against statutory rape.⁹²

Plural marriages are invalid unions and even in those cases in which a prospective wife is below the age of majority and parental consent is obtained, the union is still invalid.⁹³ As a result of this invalidity, any of the protections that a valid marriage with parental consent may offer to allow for sexual contact with minors is lost.⁹⁴ Any sexual contact that these girls are subjected to during the illegal marriage constitutes statutory rape.⁹⁵ The rationale behind this argument is that polygamous marriages are illegal, and therefore invalid; so when an individual is not of

⁸⁹ Jaime M. Gher, *Polygamy and Same-Sex Marriage - Allies or Adversaries Within the Same-Sex Marriage Movement*, 14 WM. & MARY J. WOMEN & L. 559, 578. See, e.g., UTAH CONST. art. III (1953); ARIZ. CONST. art. XX, pt. II.

⁹⁰ *Senator: Polygamous Sects are 'Form of Organized Crime,' supra* note 29.

⁹¹ See, e.g., Ga. Code Ann., § 16-6-3.

⁹² See Rower, *supra* note 15, at 717.

⁹³ See RICHARD A. LEITER, *Marriage Age Requirements*, 50 STATE STATUTORY SURVEYS: FAMILY LAW: MARRIAGE (2007), available at Westlaw 0080 SURVEYS 22.

⁹⁴ *People v. Barrows*, 677 N.Y.S.2d 672, 685 (N.Y. Sup. Ct. 1998), *rev'd in part on other grounds*, 709 N.Y.S.2d 573 (App. Div. 2d Dep't 2000) and *aff'd*, 2000 WL 727045 (N.Y. App. Div. 2000) (stating “everyone is presumptively on notice that sexual intercourse between a man of 55 and a girl of 13 is a crime *per se*, unless they are married to each other”).

⁹⁵ See LEITER, *supra* note 93.

consenting age, statutory rape is implicated.⁹⁶ An older male in a polygamous community who seeks to marry an underage female is not cloaked with the legal protections a valid marriage would have afforded him. Thus the polygamous marriage is not only criminal, but statutory rape is implicated.

Another criminal law that applies in some cases of polygamous marriages is incest. Incest is the act of an individual who engages in “sexual intercourse or deviate sexual conduct with another person, when the person knows that the other person is related to the person biologically as a parent, child, grandparent, grandchild, sibling, aunt, uncle, niece, or nephew.”⁹⁷ In the Kingston Case, the father and uncle faced criminal charges for the forced marriage.⁹⁸ Most notably, the uncle, who was considered her husband within the community, was charged with three counts of incest, although he was found guilty of only one count.⁹⁹ This case provides an example of how polygamous offenders can be targeted for other offenses besides polygamy.

Criminal laws may also be applied in cases in which a parent or spouse is found to have abused an adolescent female. In the Kingston Case, the focus on the excessive physical violence the adolescent endured turns attention to the clear violation of the physical well-being of the adolescent rather than the less severe crime of polygamy.

C. Child Welfare Laws

Abuse and neglect laws can apply in situations of female adolescent mistreatment in the form of rape, incest, forced marriage, inability to attend school, and other forms of indoctrination. Parents who fail to protect their children from foreseeable harm, or who expose their child to harm because of

⁹⁶ Barrows, 677 N.Y.S.2d at 685.

⁹⁷ E.g., IND. CODE ANN. § 35-46-1-3 (West 2004); *but see* State v. Tucker, 93 N.E. 3, 3 (Ind. 1910) (defining incest as “sexual intercourse between persons so nearly related that marriage between them would be unlawful”).

⁹⁸ See Vazquez, *supra* note 57, at 241-42.

⁹⁹ See *id.*

their own conduct, may be considered neglectful.¹⁰⁰ In addition to this common law duty to protect, child neglect laws vary from state to state.¹⁰¹ Although there is no agreed upon definition for neglect, most state statutes require a willful, unintentional, indifferent, or otherwise, disregard for the duty that one owes to provide care for a child.¹⁰² This may include either acts performed, or an omission of acts that result in a lack of care for a child.¹⁰³

1. Parental Rights and State Responsibilities

Parents do not have an absolute right to control their children. In *In re Sumey*, the Supreme Court of Washington held that “[t]he parent’s constitutional rights do not afford an absolute protection against State interference with the family relationship.”¹⁰⁴ The court held that although the “due process clause of the Fourteenth Amendment establish[es] a parental constitutional right to the care, custody, and companionship of the child,” if parental actions are found to “seriously conflict with the physical or mental health of the child, the State has a *parens patriae* right and responsibility to intervene to protect the child.”¹⁰⁵ The court found that the *parens patriae* power of the state, to act in a child’s best interests in at-risk situations and to intervene when necessary to protect a child, had to be balanced with the rights of the parent.¹⁰⁶ More specifically, the court discussed the need for weighing the state’s power and responsibility of protecting the child, with the parent’s constitutional right to the care and custody of the child.¹⁰⁷

¹⁰⁰ *In re Sumey*, 621 P.2d 108, 111 (Wash. 1980).

¹⁰¹ 43 C.J.S. *Infants* § 18 (West 2010).

¹⁰² 3 AM. JUR. PROOF OF FACTS 2d *Child Neglect* § 265 (West 2010).

¹⁰³ *Id.*

¹⁰⁴ *Sumey*, 621 P.2d at 110.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at 110-112.

¹⁰⁷ *Id.*

2. Child Neglect

Parents who fail to protect their children from foreseeable harm, or who expose their child to harm because of their own conduct, may be considered neglectful.¹⁰⁸ In addition to this common law duty to protect, child neglect laws vary from state to state.¹⁰⁹ Although there is no agreed upon definition for neglect, most state statutes require a willful, unintentional, indifferent, or otherwise disregard for the duty that one owes to provide care for a child.¹¹⁰ This may include either acts performed or an omission of acts that result in a lack of care for a child.¹¹¹

Parents who raise their children in polygamous communities may be found in violation of neglect statutes, which can generally be defined as “the deprivation, willful or unintentional, of the needs of the child, by a parent . . . ”¹¹² Specifically, if parents fail to protect their adolescent daughters from crimes of physical abuse, statutory rape, or incest, they have placed their children in situations in which their physical, mental, or emotional condition could be impaired.¹¹³ Children forced to remain in these situations continue to be in imminent danger of further harm. The parent’s lack of care presents itself in cases where adolescent females are forced into arranged marriages with significantly older males. In these instances, parents should be prosecuted for their neglectful disregard for the physical, emotional, and educational well-being of their adolescent daughters.

The current legal approach to enforcing child neglect laws in polygamous communities is varied. In some cases, including the 1953 Short Creek raid in Arizona, child neglect laws have been the basis for government raids.¹¹⁴ In this instance, despite the

¹⁰⁸ *Id.* at 111.

¹⁰⁹ 43 C.J.S. *Infants*, *supra* note 101.

¹¹⁰ 3 AM. JUR. PROOF OF FACTS 2d *Child Neglect*, *supra* note 102.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Mandatory Child Abuse Reporting, 50 STATE STATUTORY SURVEYS: CRIMINAL LAWS: CRIMES* (2010), available at Westlaw 0039 SURVEYS.

¹¹⁴ Jessica Weaver, *The Texas Mis-Step: Why the Largest Child Removal in Modern U.S. History Failed*, WM. & MARY J. WOMEN & L., 450, 486 (2010).

government emphasis on prosecution for child neglect claims, the government failed to provide sufficient evidence to prove these claims, and the children were returned to their homes.¹¹⁵

In other cases, raids have come under sharp criticism because of their failure to highlight and enforce child neglect laws.¹¹⁶ One such example occurred in the case of the Yearning for Zion Ranch (YFZ) raid in Eldorado, Texas in 2008.¹¹⁷ In the YFZ raid, hundreds of children were removed from their homes by the Texas Department of Family and Protective Services (DFPS).¹¹⁸ However, the DFPS failed to collect adequate evidence to individually address and try child neglect claims against the individual families.¹¹⁹ As a result, the children were returned to their homes.¹²⁰ Thus, until government resources can be sufficiently allocated to address child neglect claims, precedents suggest that charges for neglect will either not be prosecuted or will be prosecuted unsuccessfully.

IV. ADDRESSING THE ISSUES CREATED BY POLYGAMOUS COMMUNITIES

Given the problems and inequalities that continue to plague female adolescents in polygamous communities, changes must be made to the current legal approaches. By adapting the current legal framework, the multitude of crimes perpetrated against female adolescents, as well as the underlying indoctrinating effects of these crimes, can work to be acknowledged, prevented, and decreased. There are many ways in which societal resources can be utilized to address the specific challenges raised by polygamous communities. These challenges may be addressed by the targeted enforcement of criminal polygamy laws (as opposed to state marriage laws), the enforcement of

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.* at 450.

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 486.

¹²⁰ *Id.*

other criminal laws, and governmental involvement in interventions utilized in polygamous communities.

A. *Targeted Enforcement of Criminal Polygamy Laws*

The goal of reducing female adolescent indoctrination and abuse is not best served by a simple enforcement of current state laws against multiple marriages. The main reason for this argument is that the most serious problems that exist in polygamous communities demand the enforcement of those criminal laws that provide more severe penalties. If a man has engaged in plural marriages and has at least one arranged marriage with a teenage bride, he should be targeted for the more serious offense implicated, such as statutory rape or incest.

Another reason why simply enforcing the marriage laws is ineffective is because polygamous homes are not necessarily indicative of other criminal behavior. In other words, where there is a polygamous marriage, it does not necessarily follow that there are instances of statutory rape, physical abuse, incest, or other crimes. Many polygamous marriages take place between consenting adults and do not otherwise display signs of abuse.¹²¹ In these cases, it is a poor use of state resources to prosecute, arrest, or incarcerate these consenting and non-abusive adults. Broad enforcement of the marriage laws, without specific targeting of other criminal behavior, creates the potential for a substantial number of polygamous adults to be jailed and the unnecessary expenditure of judicial resources while more serious crimes go unchecked.

Broad enforcement of marriage laws may have other serious consequences. For example, prosecuting all polygamous offenders may leave many children and adolescents without support, supervision, or a home. As a result, these displaced children may require state resources if a parent, or both parents, are re-

¹²¹ Anderson, *supra* note 27 (providing accounts from members of a polygamous community that depict overall happiness and satisfaction with the life style).

moved from the community.¹²² Children of incarcerated adults may be displaced or forced to rely on state resources, including foster care or welfare benefits. This would create an even greater burden on the state to provide for not only the criminal adults but also their dependent children.

In contrast, increased emphasis on targeted enforcement of non-polygamy criminal laws would more readily address the needs of female adolescents in polygamous communities. This approach requires an assessment of any dangers to adolescent females in polygamous communities with an emphasis on instances of abusive or incestuous behavior. Crimes of incest and abuse should be prioritized and targeted. However, in cases where female adolescents are in imminent danger, enforcement of polygamy laws should be utilized as an additional mechanism to increase penalties against the perpetrator. The result of targeted enforcement of criminal polygamy laws would be the reduction of indoctrination and abuse of female adolescents in polygamous communities, without unnecessary burdens on the criminal justice system.

If criminal laws are applied in the context of polygamous communities selectively and especially reserved for cases when adolescents are being abused, raped, or forced into an incestuous marriage, then prosecution can be used as a mechanism whereby safety issues far exceed the importance of the illegality of a polygamous marriage. Therefore, in arrests of perpetrators and in the prosecution of criminal offenses in polygamous communities, considerations should be made first as to whether purported actions constitute a necessary and beneficial use of government resources. Criminal laws need to be adapted to include stricter enforcement of crimes arising in polygamous communities when there are cases of abuse, neglect, incest, or statutory rape.

¹²² Frosch, *supra* note 38.

B. Child Welfare Laws

In addition to looking to criminal laws to protect female adolescents in polygamous communities, the state should also put more focus on child welfare laws. In *In re Sumey*, discussed above, the court highlighted the importance of state protection for children who are exposed to emotional and physical harm from their parents.¹²³ The balancing of the parent's right to determine care with the state's power to protect an at-risk child is particularly applicable in the context of female adolescents living in polygamous communities. Parents' rights to raise their children in a polygamous community must be balanced with the state's power and obligations to intervene in cases when female adolescents are being abused, raped, subjected to incest, or when they are otherwise indoctrinated with a serious harm threatening their well-being. Arguably, measures that the state has taken to protect these adolescents have been unsuccessful in the past because of the swift return of children to their homes after their at-risk status was identified.¹²⁴ More investigation into the acts of abuse and focus on specific child welfare laws that have been violated is necessary to prevent this.

In some cases, there are arguments that State intervention violates the first amendment right to religious freedom for parents. But in other contexts there is precedent for calling a parent's religious practices into question based on the belief that they were neglectful.¹²⁵ In *Walker v. Superior Court*, the mother of an ill, four-year-old girl chose to treat the girl's illness with prayer, rather than medical assistance, because of the mother's dedicated beliefs to the Christian Scientist faith.¹²⁶ The court held that there is a compelling state interest in imposing liability when a parent fails to seek medical treatment for a severely ill

¹²³ *Sumey*, 621 P.2d 108.

¹²⁴ Frosch, *supra* note 38.

¹²⁵ *Walker v. Superior Court*, 763 P.2d 852 (Cal. 1988) (holding that the exemption of prayer treatment for religious reasons did not extend to prevent criminal charges of involuntary manslaughter and child neglect when the child was gravely ill and the mother failed to seek medical attention).

¹²⁶ *Id.* at 855.

child.¹²⁷ It is logical to extend this liability to those cases in which parents consent for their adolescent daughter to enter an illegal marriage, whereby she is subjected to statutory rape and other forms of abuse. The State has an equally compelling interest in protecting female adolescents who are forced into illegal marriages, subjected to statutory rape, and child-rearing as it does in protecting an ill, four-year-old child.

Parents should also be prosecuted for neglect when they do not act to prevent an illegal marriage arranged at the hands of the other parent. In these instances, both parents must be held accountable for either placing their daughter in this situation, or knowing their daughter is in this situation and not adequately protecting her.¹²⁸ Those parents who arrange for an underage daughter to be married and offer their consent must be held accountable for neglect because of a failure to exercise the minimum degree of care in preventing statutory rape, incest, or other abuse. Their lack of intervention in the arrangement of an inappropriate marriage should make them accountable for neglect under the theory that they are exposing their children to harm through their inaction.¹²⁹

Therefore, a better use of neglect statutes can work to deter both parents from placing or leaving their children in situations that may be emotionally, physically, or sexually abusive to the child. Enforcement of these laws may also encourage parents to intervene in cases where the other parent is arranging an inappropriate or illegal marriage for their daughter.

C. *Preventing Underage Marriages*

In those cases of polygamy in which legal recognition is sought for an underage marriage or in which an individual applies for other government benefits, there should be increased governmental investigation into whether the marriage is polygamous in nature. If there is any evidence to support this finding,

¹²⁷ *Id.* at 870.

¹²⁸ Kent, *supra* note 19, at 13-14.

¹²⁹ Walker, 763 P.2d at 860.

after a reasonable governmental investigation has been performed, then a marriage license should not be issued. In practice, this would call for heightened preliminary screenings; specific questions asked when marriage licenses are issued; and investigations when any government benefits are requested or when children are born to teenage mothers. This may also involve a stricter examination of individuals applying for social security benefits, welfare, child support, medical coverage, insurance, and retirement benefits.

These practices, however, may have limited effectiveness given that many polygamous marriages are undocumented and unlicensed.¹³⁰ It may be difficult to discover adolescent females who suffer from abuse and indoctrination in polygamous communities, particularly if they do not attend mainstream schools, do not receive medical treatment from doctors in the community, or do not have access to resources outside the community to seek assistance such as counseling or refuge. However, in cases in which a participant involved in a polygamous marriage applies for benefits, repercussions may be implemented for fraud or other deceptive practices.¹³¹ This punishment may be based on the existence of a marriage that is discovered to be invalid since the marriage is illegal, and therefore, the spouse¹³² applying for benefits is ineligible.¹³³ In addition, it may be beneficial for cases that involve female adolescents giving birth to be more heavily pursued, and criminal sanctions to be imposed, when the polygamous father can be ascertained. Thus, there would be resources for female adolescents in polygamous communities to help bring their identity and mistreatment into the

¹³⁰ See Kent, *supra* note 19, at 13-14 (discussing the legal implications of parental consent to minors for marriage in polygamist communities).

¹³¹ See Rower, *supra* note 15, at 717 (describing the practice of having plural wives apply for public benefits and the millions of dollars paid out to these families annually).

¹³² In some cases women may apply for benefits based on a "widow" status but be ineligible for benefits if they have never been widowed. For further discussion see Rower, *supra* note 5 at 718.

¹³³ JUDITH AREEN & MILTON C. REGAN, JR., FAMILY LAW: CASES AND MATERIALS 103 (5th ed. 2006); Kent, *supra* note 19, at 12-13.

open, allowing interventions in order to assist them and penalize their perpetrator.

Other external factors work to expose specific instances of the mistreatment of female adolescents in polygamous communities. For one, some women who were able to leave polygamous communities have felt the need to come forward with information about the abuse that adolescents endure.¹³⁴ Individuals who are called to testify at trial regarding polygamous community abuses may reveal information pertinent to the identification of other abused adolescents.¹³⁵ For cases not as easily ascertained, there could be an incentive-based system implemented that would provide for some type of reward or protection to those who report abuses associated with polygamy.

Thus, it is important that incentive-based systems are offered, and other government programs are closely monitored, so that female adolescents who are being mistreated can be identified. In this way, the government can work to maximize on the protections it offers to female adolescents in polygamous communities.

D. The Government's Role in the Regulation of Polygamous Communities

Both the state and federal government play an important role in the regulation of illegal behavior in polygamous communities. The government's role is crucial because of its resources and power. For example, the government has the authority to perform raids, remove abused children from households, and prosecute illegal behavior.¹³⁶

¹³⁴ See Greene, *supra* note 34.

¹³⁵ See Kent, *supra* note 25, at 14.

¹³⁶ See *Affidavit: Polygamist Ranch Rife with Sexual Abuse*, *supra* note 18.

1. The Need for Government Intervention in Polygamous Communities

Our current legal framework has allowed for government intervention in polygamous communities when misconduct has been reported.¹³⁷ In the future, it is important that this ability to intervene be maintained by the government and that new means of detecting a need for interventions are explored and developed. The crimes of statutory rape, incest, and physical abuse may be discoverable through methods such as medical examinations, teacher observations, the Department of Children and Family Services (DCFS) interventions, or even government raids. When these crimes are discovered, laws should be strictly enforced to help protect adolescent females living in polygamous communities.

The DCFS organizations found in the majority of states have procedures, resources, and mechanisms in place that address the removal of children from unsafe homes.¹³⁸ In the context of polygamous communities it is difficult to envision the DCFS' involvement in every affected home, but it is important to note that not all children living in polygamous communities should be removed from their homes. Instead, these community resources should be conserved and used in situations in which there are other criminal circumstances such as rape or physical abuse. It is important to note that the DCFS systems have a history of being overburdened¹³⁹ and accordingly, the organization's resources should be reserved for extreme cases only.

One way that unsafe polygamous homes can be more easily indentified, in those cases in which children are still attending school or visiting a doctor is to more strictly enforce and encourage a mandate on the DCFS reporting. This adaptation

¹³⁷ See AREEN & REGAN, *supra* note 133.

¹³⁸ Jennifer Halperin, *Embattled DCFS: The State of State Services to Children is Awful, but Can it Get Worse? Abuse and Neglect of Children are Rooted to Causes No One Agency Can Control* (1993), <http://www.lib.niu.edu/1993/ii930515.html> (discussing the role of DCFS in foster care, cases of abuse and neglect, and family first programs in Illinois).

¹³⁹ See *id.*

would ideally restructure the DCFS' role to have an increased level of investigation and intervention in polygamous communities. More specifically, allegations would be more carefully examined and interventions would be more liberally pursued after allegations of abuse. With an increase in DCFS' involvement, female adolescents living in extreme conditions could be removed from these communities and ultimately placed in homes where they could be raised free from abuse and other forms of indoctrination. However, as a condition precedent to this seizure, a finding of parental unfitness would likely be necessary.¹⁴⁰

In addition to the DCFS' interventions in polygamous communities, other mechanisms are in place that can allow for federal raids in polygamous communities based on suspected human rights abuses. In 1944, the Federal Bureau of Investigation conducted a raid in Short Creek, Utah.¹⁴¹ The raid resulted in some convictions, mostly targeting individuals for offenses of misconduct.¹⁴² One charge, brought against thirty-three polygamists, was based on allegations that there was a conspiracy to injure the public morals because of the overwhelming sense of encouragement that polygamy was receiving in the community.¹⁴³ More specifically, individuals were strongly pressured and pushed towards participation in polygamous traditions.¹⁴⁴ As a result of this charge, fifteen defendants were convicted and imprisoned.¹⁴⁵ The charges were soon dismissed and the prisoners were released, but the Utah Supreme Court, on appeal, reinstated the convictions of the defendants.¹⁴⁶

In 1953, almost a decade later, after little, if any, change in the Short Creek Community circumstances, an additional federal

¹⁴⁰ *Troxel v. Granville*, 530 U.S. 57, 68-69 (2000) (explaining that parents are presumed to be fit to care for their children and the state shall not interfere so long as the parent adequately provides this care).

¹⁴¹ *Kent*, *supra* note 25, at 11.

¹⁴² *Id.* at 11-12.

¹⁴³ *Id.* at 12-13.

¹⁴⁴ *Id.* at 13.

¹⁴⁵ *Id.* at 11.

¹⁴⁶ *Id.*

raid occurred.¹⁴⁷ This raid was significant because it brought to the public's attention the extreme abuses that were occurring upon younger females as they were married off to substantially older males.¹⁴⁸ This raid led to the issuance of arrest warrants for at least 107 defendants, 26 of whom were ultimately criminally charged, agreed to a plea bargain, and then pled guilty to a charge of conspiracy.¹⁴⁹ As a result of this raid, 263 children were removed from the Short Creek community and placed into foster care for a period of approximately two years, after which time the children were returned to their respective homes.¹⁵⁰ This raid also brought to the public's attention numerous examples of teenage wives, as well as teenage wives being forced to bear children.¹⁵¹

In addition to past government involvement in polygamous communities because of human rights concerns, the government has intervened based on suspicions of fraudulent requests for welfare benefits that arose from numerous women in the community applying for benefits and listing the same man as their husband.¹⁵² In the case of the 1953 Short Creek raid, the government was alerted by the overwhelming number of women who petitioned for support for their children.¹⁵³ Many of these women reported the same man as their husband, and some of the women who applied for these benefits were underage.¹⁵⁴ The welfare benefits sought helped the government become aware of fraudulent claims for benefits, which in turn helped reveal the prevalence of underage polygamous marriages.¹⁵⁵ The raid on the Short Creek community provides an example of how the use of raids in general may ultimately be helpful and neces-

¹⁴⁷ *Id.* at 12.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² AREEN & REGAN, *supra* note 133.

¹⁵³ Kent, *supra* note 19, at 12-13.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

sary to deal with situations in which several cases of abuse have been documented and other intervention efforts have failed.

Some argue that these raids do more harm than good, especially in cases in which children are ultimately returned to their homes.¹⁵⁶ However, it is important that raids be performed to address the most egregious human rights violations, and to raise public awareness both inside and outside of polygamous communities about the illegal behavior that is taking place. Despite the criticisms that raids have received for not creating an end to plural marriages or permanently removing adolescents from abusive homes, there is also praise for the public attention and subsequent trials.¹⁵⁷

Although raids and other government interventions have not proven completely effective in eliminating all of the problems associated with polygamous communities, it is important that the positive effects are taken into account. Other efforts should be employed by the government in the future, such as providing counseling and education to female adolescents who have been identified as suffering mistreatment. Without government involvement, abuse will exist in more situations and public attention will not be drawn to the problems arising within these communities.

2. Countering Arguments Against Government Intervention

Individuals have argued that polygamy laws limit an individual's rights to privacy and intimate association.¹⁵⁸ However, this argument holds little weight since these rights have only been acknowledged in cases in which consenting adults make personal decisions pertaining to them.¹⁵⁹ These rights should not extend to the context of parental decisions regarding the mar-

¹⁵⁶ *Affidavit: Polygamist Ranch Rife with Sexual Abuse*, *supra* note 18.

¹⁵⁷ Kent, *supra* note 19, at 12.

¹⁵⁸ Potter v. Murray City, 760 F.2d 1065, 1070 (1985).

¹⁵⁹ See Lawrence v. Texas, 539 U.S. 558, 567 (2003) (overruling Bowers v. Hardwick, 478 U.S. 186 (1986) and holding that adults have the right to enter into sexual relationships in the privacy of their home, and therefore statutes prohibiting sodomy are unconstitutional).

riage of their female adolescent children to older polygamous males.

Individuals who raise their children in polygamous communities may assert that they are free to practice polygamy based on the First Amendment Free Exercise Clause, which states that "Congress shall make no law respecting an establishment of religion."¹⁶⁰ In the case of *Reynolds v. United States*, however, the United States Supreme Court held that polygamous practices are not protected by this clause.¹⁶¹ The Court reasoned that because polygamy was legally prohibited by Congressional intent it would not be proper to allow an individual's religious beliefs to defy this law of the land.¹⁶²

Parents living in polygamous communities may also argue that they have a fundamental right to raise their children as they see fit under a number of precedents. For example, they may look to the case of *Meyer v. Nebraska*, in which the Court held that parents have the right to have their children learn German in school.¹⁶³ Another case that may be used is *Troxel v. Granville*, where the United States Supreme Court held that parents are presumed fit, and that parents are presumed to act in the best interests of their child.¹⁶⁴ In addition, parents may rely on the case of *Wisconsin v. Yoder* to assert that they have the right to raise their children in an independent culture and to perpetuate this culture.¹⁶⁵ In *Yoder*, the Court held that the mandatory school attendance policy could not be enforced against children living in Amish communities after the eighth grade.¹⁶⁶ The Court reasoned that the parents in these communities had the right to raise their children as they deemed fit, even if that

¹⁶⁰ U.S. CONST. amend I.

¹⁶¹ *Reynolds*, 98 U.S. at 166.

¹⁶² *Id.* at 168. For further discussion concerning the freedom of religion to practice polygamy see Mary Campbell, *Mr. Peay's Horses: The Federal Response to Mormon Polygamy*, YALE J. L. & FEMINISM, 229 (2001).

¹⁶³ *Meyer v. Nebraska*, 262 U.S. 390, 396-97 (1923).

¹⁶⁴ *Troxel*, 530 U.S. at 66.

¹⁶⁵ *Wisconsin v. Yoder*, 406 U.S. 205, 222 (1972).

¹⁶⁶ *Id.*

meant they would remove the children from school two years early.¹⁶⁷

While the above certainly provides precedence for the often cited fundamental right for parents to raise their children as they see fit, the courts have held that this right is not absolute.¹⁶⁸ The presumption that parents will act in the best interests of their children can be overcome by a showing of parental unfitness.¹⁶⁹ Typically, this burden has been placed on the challenging party to show that a parent is unfit to raise her child.¹⁷⁰ Unfitness typically requires a showing of harm.¹⁷¹

Arguments opposing state intervention and supporting parents' rights to raise their children as they see fit fail to address the harmful behavior that takes place in polygamous communities. Cases in which the Court has held that parents have the fundamental right to the care, custody, and control of their children are distinguishable from the rights of parents in polygamous communities. Although in all of these situations the parents begin with the same basic right to the care, custody, and control of their child,¹⁷² polygamous communities are distinguishable because of the documented cases of forced marriages, incest, abuse, and rape.¹⁷³ *Yoder* and *Meyer* did not involve documented cases of physical harm or abuse upon the children.¹⁷⁴ In a polygamous community, a parent's fundamental right to raise her children may require a closer examination in cases of documented abuse. There must be added protection for female adolescents in polygamous communities if there are documented cases of abuse, neglect, rape, or incest.

¹⁶⁷ *Id.*

¹⁶⁸ *In re Pope*, 547 S.E.2d 153, 157 (N.C. Ct. App. 2001) (holding that neglect of a child through lack of proper care, supervision, or discipline is sufficient grounds for terminating parental rights).

¹⁶⁹ *Id.* at 156.

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ See discussion *supra* Part II.

¹⁷⁴ *Yoder*, 406 U.S. at 232; *Meyer*, 262 U.S. at 403.

3. Other Methods of Assistance

Raids and other interventions are not enough without services. In cases in which abuses have been identified, and the government made an intervention, it is important that adolescent females be provided with resources so that they can better understand their life circumstances, particularly as they contrast with those of mainstream society. The current legal framework should be adapted to require that when raids, or any other government investigation or intervention, into a polygamous community happen, psycho-educational efforts are implemented. For example, after a raid is performed, if female adolescents have been identified as living in illegal marriages in which statutory rape or other abuse is present, such adolescents should be removed from the community and provided with regular counseling sessions. If this is not possible, then, at a minimum, these girls should be offered counseling services, especially if it is determined that they cannot be removed from the community.

Furthermore, the government should work to create a program through which former polygamous community members speak to the adolescents about their lives, highlighting the often systemic emotional, physical, and sexual abuse that may be happening to them. In the past, individuals who formerly lived in polygamous communities and now disagree with the practice of plural marriage have been particularly helpful in advocating for adolescents and exposing the realities of polygamous communities.¹⁷⁵ In these ways, the government can provide education and awareness to the female adolescents in an attempt to inform them about their life choices.

When it is determined that foster care is not the best option, returning daughters to their mothers may, in some cases, be an effective solution. In the April 2008 YFZ raid, nearly 440 children were removed from the community and placed in foster care for a period of approximately six weeks.¹⁷⁶ The Texas Su-

¹⁷⁵ Kent, *supra* note 19 at 13; Greene, *supra* note 34.

¹⁷⁶ *Judge Orders Girl in Sect to Foster Care*, N.Y. TIMES, Aug. 19, 2008, available at http://www.nytimes.com/2008/08/20/us/20polygamy.html?_r=1.

preme Court subsequently reversed the decision and ordered the majority of the children to be returned to their parents based on the state's lack of evidence to support accusations of abuse.¹⁷⁷ The court separately addressed those individual cases in which abuse was found.¹⁷⁸ Five of the adolescent females were eventually returned to the care of their mothers after it was determined that they were underage and had been subjected to polygamous marriages.¹⁷⁹ The arrangement to return the adolescents was based on their mothers' agreement that they would not return their daughters to the care of their former husbands.¹⁸⁰

Although removing female adolescents from polygamous marriages and returning them to the care of their mothers could be an effective solution, it is important to remember that in many instances these mothers were at least partially responsible for their daughters' initial entry into these abusive marriage situations. Therefore, additional measures must be put in place to protect these female adolescents. Examples of additional measures include individual and group counseling for adolescents and their family members, classes for adolescents and their family members that discuss health relationships and self-empowerment, and general parenting classes.

In addition, it could be beneficial for both the mothers and female adolescents to be exposed to interaction with former members of polygamous communities, information about the various crimes surrounding polygamy and their respective punishments, and information as to societal norms regarding plural marriage and abuse. These measures are extremely important for the empowerment of female adolescents and mothers living in polygamous communities. The methods of female adolescent education, counseling, and empowerment would positively contribute to the reduction of abuse and indoctrination of female adolescents in polygamous communities.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

V. CONCLUSION

The United States Supreme Court has found that parents can choose to make martyrs of themselves for a social or religious purpose, but they are not free to choose the same path for their children.¹⁸¹ Parents in polygamous communities are not free to force a polygamous lifestyle on their daughters. These parents must be prevented from arranging marriages that subject their adolescent daughters to statutory rape, incest, and physical abuse. Female adolescents should not be kept from attending school, forced to dress a certain way, or prohibited from exploring self-fulfilling lifestyles. In sum, changes must be made to our current legal framework to protect female adolescents in polygamous communities. These changes include a stricter enforcement or extension of our current laws, heightened investigations of abuse, and an increase in government interventions.

In addition to a changed legal framework, female adolescents must be provided with adequate schooling, counseling, or other community resources so they can truly understand their life circumstances and alternative life opportunities. It is imperative that female adolescents in polygamous communities be empowered so that they may realize they do not have to live as martyrs at the hands of their polygamous parents. Forced marriages, rape, incest, or physical abuse should not have to be the reality or future for any female adolescent living in a polygamous community; instead, these practices should be shunned, forbidden, and strictly enforced as illegal, as they are in mainstream society.

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¹⁸¹ *In re Pope*, 547 S.E.2d at 157.

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