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Legal recognition of polyamory: Notes on its feasibility

ABSTRACT: This paper aims to analyse legal recognition of polyamorous relationships and to examine the main obstacles to its feasibility in the short run. Preliminarily, I shall make a few notes on the state of the art in the matter of polyamory, discuss relevant terminology issues, and enumerate some of the main features of polyamorous relationships with a view to framing the debate on their legal recognition. Polyamorous relationships are then contextualized in the light of the radical changes which the traditional family has undergone since the second half of the 20th century. It is my claim that polyamorous relationships can be considered only the latest stage in that process of transformation, and that they will enjoy legal recognition at a sooner or later date. However, I shall acknowledge that this will probably not occur in the short term, and I shall analyse the main reasons why. My concluding argument is, nevertheless, that legal recognition of such relationships may be hailed as desirable.

INTRODUCTION

Since the beginning of the 20th century, the nuclear, heterosexual, monogamic family has undergone a disruptive process of transformation in Western liberal democratic states (BUDGEON & ROSENEIL 2004; COGSWELL 1975; CUTAS 2019). Starting from the improvement of gender equality within the family, this process of transformation paved the way for the spread and recognition of several unconventional kinds of nonmarital relationships, and it reached its peak with legal recognition of same-sex marriage, or marriage-like institutions like civil unions, in most North American and European countries. Two of the main pillars of the traditional nuclear heterosexual family have been eroded. These are gender inequality (OKIN 1989) and heteronormativity (FOLGERØ 2008), undermined by feminists and LGBT+[1] movements calling for gender equality and same-sex marriage.

[1]   The acronym LGBT stands for lesbians, gays, bisexuals and transgender minorities. The '+' at the end of the acronym serves the purpose of including other sexual minorities, such as queer,

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However, until the last decade, the pillar of mononormativity[2] (Pieper & Bauer 2005) still seemed to remain inherent in all kinds of family, from traditional to less conventional ones. At this point, though, even mononormativity is starting to be questioned by the increasing spread and visibility of a particular kind of intimate relationship: the polyamorous relationship.

My claim is that the increasing prevalence and visibility of polyamorous relationships should be considered an integral part of the process of transformation affecting the traditional nuclear family. For this reason, we can expect that a future step in this process of transformation may be legal recognition of polyamorous families (Palazzo 2018: 234). Having said that, I acknowledge that the recognition of such families will probably not occur very soon, not least because of contingent obstacles to its feasibility. Yet, there are strong reasons to believe that sooner or later this development will be included in the political agenda. I also claim that the feasibility and desirability of recognition for polyamorous families are issues that should be addressed separately. Indeed, legal recognition of polyamorous families by a liberal democratic state would always be desirable for two main reasons: to protect the vulnerable partners, and to provide fair treatment to anyone choosing unconventional relational styles.

This paper aims to provide an overview of the debate on the feasibility of legal recognition for polyamorous relationships, especially in the form of plural marriage. Firstly, I shall make a few notes on the state of the art of the sociological, legal and philosophical literature in Italian and English in the matter of polyamory and of legal recognition of polyamorous relationships. I shall also discuss the controversy surrounding the term polyamory, suggest a different label and emphasise the differences between polyamory and traditional polygamy. This will help to remove

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intersexual and asexual people. Whether polyamorists could be considered a sexual minority is debatable because it remains controversial whether polyamory is a sexual orientation or not (Emens 2004; Den Otter 2015). Thus, even if the LGBT+ and the polyamorous community sometimes overlap (polyamorists can be gay, lesbian, transgender etc.), I shall keep considering them as separate communities for reasons that will be developed later.

[2]   Mononormativity is a term coined by Pieper and Bauer (2005) to refer to "the forms of power which help establish the monogamous couple bond as an idealized and normative model" (Gusmano & Motterle 2019: 352). In other words, monogamy is usually considered the norm in intimate relationships, and this is a powerful assumption as long as every relationship that deviates from this alleged norm is stigmatized and marginalized. Mononormativity is closely linked to heteronormativity; the latter claims that heterosexuality is the norm in intimate relationships, thus establishing a hierarchy between heterosexual and non-heterosexual kinds of relationships.

one of the main obstacles to widespread social acceptance of polyamorous relationships. I shall subsequently give a brief account of the main features of polyamorous relationships. In so doing, I shall underline how fluidity, heterogeneity and non-conformity are crucial for polyamorists, providing a convincing reason to resist all attempts at normalization and assimilation into the normative model of the monogamous heterosexual family. This aspect is key: fluidity, after all, has a strong bearing on whether polyamory should be recognized at all.

Secondly, I shall contextualize polyamorous relationship in the light of the radical changes which the traditional family has undergone since the second half of the 20th century. I shall present polyamory as the most recent step in the process of transformation affecting the notion of family. In fact, polyamorous relationships represent one of the most radical challenges to the idea of the traditional heterosexual family based on monogamous heterosexual marriage, and they have significant potential for deconstructing the pillar of mononormativity. This is part of a continuum encompassing the deconstruction of other pillars of the traditional family, notably heteronormativity, undermined by recognition of same-sex unions. Thus, I shall claim that, along the lines of what happened with same-sex couples, we should expect recognition of polyamorous relationships to become a relevant issue at a sooner or later date.

Finally, I shall claim that legal recognition of polyamorous families will not probably occur in the short run, and I will analyse some contingent obstacles to its feasibility. Specifically, I shall foreground the obstacles to the institutionalization of plural marriage, addressing four main issues: (i) The lack of social acceptance and solid alliances, caused by the limited visibility of polyamory in the "society at large" (SHEFF 2011), a hostile attitude of society towards polyamory when confused with inegalitarian forms of polygamy (BROOKS 2009), and a suspicious attitude by the LGBT+ community towards legal recognition of polyamorous relationships (CALHOUN 2005). (ii) The lack of strong and unanimous calls for recognition coming from the polyamorous community itself (AVIRAM 2008). (iii) The difficulties involved in finding a common regulatory framework due to diversity and intrinsic fluidity among polyamorous relationships. (iv) Concrete problems that governments would face when called upon to reshape pre-existing legal systems in an effort to legalize multiple marriage (AVIRAM & LEACHMAN 2015). In conclusion, I will briefly argue for the desirability of

legal recognition of polyamorous relationships, preferably in such a way as to secure rights for individuals in polyamorous relationships, but without constraining the transformative potential of this kind of relationships within an excessively rigid legal institution.

1. Definition and main features of polyamorous relationships

The phenomenon of polyamory started to arouse academic interest at the beginning of the 21st century (Barker & Langdridge 2010), but most of the research has been conducted in the fields of sociology and psychology (Anapol 2010; Barker 2005; Conley *et al.* 2015; Moors *et al.* 2017). From a sociological perspective, there is only one recent quantitative study about polyamorous relationships[3]. It took place in 2016 thanks to the Canadian Research Institute for Law and the Family and investigated the perceptions of polyamory in Canada. Its purpose was "to obtain demographic and attitudinal information about Canadians involved in non-dyadic relationships, better understand how they see themselves and how they believe the general public sees them, and expand our knowledge of the frequency and nature of non-dyadic relationships" (Boyd 2017: xvi). However, being among the first pieces of relevant quantitative research so far, it has many limits and does not provide information about non-polyamorists' perception of polyamorous families. Scarce interest in quantitative research on polyamory might probably reflect the marginality and invisibility (Sheff 2011) of this kind of intimate relationships until the last decade.

Sociological research on polyamory points to an important issue concerning its geographical limits: the few qualitative studies available in English almost always refer to the situation in the United States and Canada. Polyamory in European countries and especially in Italy is all but neglected. Crucial contributions in North America concern polyamorists' different approaches to recognition of polyamorous relationships and multiple marriage (Aviram 2008); the debate on multiple marriage (Sheff

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[3]   Other two quantitative studies were conducted in the United States in the late 1990s. In 1999 Jasmine Walston delivered a survey through a mailing list; she received 430 responses and she discussed the results at the Building Bridges Conference of the Institute for Twenty-First Century Relationships in Seattle. Her paper is titled "Polyamory: An Exploratory Study of Responsible Multi-Partnering". Some data was also collected from 1000 people who attended polyamorous conferences in the late 1990s, and the results were published by the magazine "Loving more" in 2002. The article, written by Adam Weber, is titled "Survey Results: Who Are We?" (Anapol, 2010).

2011); the classification of polyamory within the broader discourse on ethical non-monogamies (Barker & Langridge 2010) and multi-parenting (Sheff 2010; Goldfeder & Sheff 2013; Pallotta-Chiarolli *et al.* 2020). The little systematic sociological research done in Europe about polyamorous relationships, published in English and Italian, comprises the works of Christian Klesse (2006; 2017; 2019) – who focused on several aspects of polyamory, like the meaning of the term *polyamory*, polyamorous parenting, gay male and bisexual non-monogamists in United Kingdom – and the European project 'INTIMATE – Citizenship, Care and Choice: The Micropolitics of Intimacy in Southern Europe'[4]. However, of fifty publications, only two refer explicitly to polyamory, namely Gusmano (2018) and Pérez Navarro (2017), and Pérez Navarro himself is not directly concerned with polyamory, focusing on a theoretical investigation of monogamy "as a constitutive element of marriage-like institutions" (Pérez Navarro 2017: 441) from the standpoint of Spanish law. Thus, only Gusmano investigates polyamory, consensual non-monogamies and other forms of multiple intimate relationships by accounting for the Italian polyamorous community through interviews and a survey of the main websites and forums.

If the sociological research lacks systematic qualitative research, and quantitative research is almost missing, works in political philosophy and law do not get us much further. Very few legal scholars address the topic of legal recognition of polyamorous families in liberal democratic states: Emens (2004), who sketchily advocates the repeal of the adultery laws in the United States at the end of a broader talk about polyamory in general; Aviram and Leachman (2015) in their work on polyamorous marriage in the United States; Palazzo (2018), who mainly focuses on legal recognition of non-conjugal families in the United States and Canada, but also refers to polyamorous relationships as potentially "the next frontier of family law in U.S. and Canada" (234); an Italian volume edited by Grande and Pes (2018) with some insights about the possibility of legal recognition of polyamorous families in Italy. As far as political philosophy is concerned, only a couple of recent contributions by Brake (2014) and Den Otter (2015; 2018) directly investigate the philosophical underpinnings of recognition and

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4   INTIMATE is a comparative qualitative study which "addresses intimacy from the perspective of those on the margins of social, legal and policy concerns in Southern Europe (Portugal, Spain, Italy) – lesbians, gay men, bisexuals and transgendered people". The first strand of this project (the micropolitics of partnering) investigated, among other topics, polyamory.

regulation of polyamorous relationships from a liberal perspective. These works are accompanied by a number of works on the related topic of recognition of polygamous relationships and plural marriage (Calhoun 2005; De Marneffe 2016; Macedo 2015; March 2011). Indeed, to some extent recognition of polygamy and polyamory are intersecting issues, notwithstanding the difference between the two kinds of relationships, which will be discussed later.

Regarding terminology, when I talk about polyamory I refer to the practice of engaging in multiple romantic and potentially sexual relationships with the awareness and consent of all the partners involved. However, the terminology referring to non-monogamous relationships and especially polyamory is still very fuzzy, probably as a result of gaps in visibility and knowledge, of stigma, and of social hostility towards non-monogamy. First of all, the practice of engaging in multiple relationships with the consent of all the partners involved, which I call polyamory, is often referred to interchangeably as 'consensual' or 'responsible' or 'ethical' non-monogamy (Barker & Langridge 2010), or as a 'multi-partner relationship' (Klesse 2017). However, the term polyamory was specifically coined in 1990 to replace 'responsible' non-monogamy (Aviram & Leachman 2015), with a view, I believe, to stopping framing the practice of engaging in responsible multiple relationships only in opposition to the monogamous norm. Thus, I avoid the use of 'responsible' or 'consensual' or 'ethic' non-monogamy in the place of polyamory in order to respect the will of the polyamorous community to be identified for itself as such.

The second issue concerns the meaning of the term 'polyamory'. The word 'polyamory' was included in the *Oxford English Dictionary* in 2006 with the following meaning: "the practice of engaging in multiple sexual relationships with the consent of all the people involved". However, it is not clear whether polyamory necessarily involves sexual relationships (Emens 2004), as scholars and many polyamorists (Avriam 2015) stress the fact that not sex but "love, intimacy and friendship" are central to polyamorous discourse (Klesse 2006). Moreover, polyamory is considered a different practice in respect to other kinds of consensual non-monogamies, such as open relationships, casual sex and swinging (Barker & Langridge 2010), which are instead "sex- or pleasure-centred" (Klesse 2006: 565). I believe that what emerges from this discussion is the centrality of the romantic bond in qualifying an intimate relationship in polyamorous terms, whether

sex occurs or not. This is the reason why I refer to polyamory as the custom of consensually and simultaneously engaging in different romantic *and potentially* sexual relationships.

The third concern regards mixing the concept of polyamory with the one of traditional polygamy[5]. When I refer to traditional polygamy, I mean the custom of having more than one spouse, mostly practised within religious or ethnic communities. The only form of traditional polygamy practised consistently throughout history has been polygyny. Both polyamory and traditional polygamy are non-monogamous kinds of relationships and are consequently often mistaken for each other. However, they do differ in some key features. In fact, polyamory is an egalitarian form of non-monogamy, for it allows both men and women to engage in multiple relationships, and it is gender-neutral because it "allows participants to have same-sex relationships too" (Goldfeder & Sheff 2010: 157). In other words, "the versatility of genders, sexual orientations and sexual identities distinguishes the polyamorous community from other groups that practice nonmonogamy as a part of religion of ethnic tradition" (Aviram & Leachman 2015: 299). Traditional forms of polygamy are instead clearly not gender-neutral, for they are heterocentric kinds of relationships (Goldfeder & Sheff 2010), and they are inegalitarian in both their polygynous and polyandrous forms, for they allow only the male or female partner to engage with other partners.

Notwithstanding the remarks above, I am not assuming that every traditional polygamous relationship is intrinsically inegalitarian, nor that every polygynous relationship is necessarily bad for women. Moreover, I am aware that many criticisms about traditional polygamy are influenced by a Western-centric anthropological approach to intimate relationships. However, it is not the purpose of the present work to ascertain whether or not we should dismiss our Western-centred anthropological lens and open a debate on the decriminalization and recognition of traditional kinds of polygamy – even if we probably should. My purpose here is to build on the debate on recognition of polyamorous relationships in Western countries.

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5   The term 'polygamy' "refers to the state of having more than one spouse at the same time. It includes both polygyny and polyandry. Polygyny is the practice of a male having multiple female spouses. Polyandry is the converse, a female with multiple male spouses" (see https://www.bccourts.ca/jdb-txt/SC/11/15/2011BCSC1588.htm). However, the term 'polygamy' is often used regardless of whether state legislation sanctions the relationship.

Thus, due to the stigma and social hostility directed at traditional forms of polygamy, I believe that underlining the differences between egalitarian and non-egalitarian forms of polygamy is crucial if we want to broaden social acceptance of polyamorous relationships. The terms polyamory and even 'multi-partner relationship' do not help to make this distinction clear to the less informed. For this reason, I suggest introducing a label such as 'egalitarian and gender-neutral polygamy' to stress these specific features of the relationship. This label also has the advantage of keeping legal issues separate from sentimental ones by erasing any direct reference to love in its name.

Polyamorous relationships are heterogeneous in their structure, and very few studies analyse the demographic composition of the polyamorous community. Therefore, I shall only give a few hints which are crucial to framing the debate on recognition of polyamorous relationships. According to Sheff, the polyamorous community is mostly composed of "white, middle-class, well-educated, liberal adults" (2011: 497), and we find similar remarks in Gusmano when she describes her sample of polyamorous respondents as holding a "high relational and cultural capital"[6] (2018: 64). This is also in line with the findings of the quantitative research paper 'Perceptions of Polyamory in Canada' (Boyd 2017), where the vast majority of respondents were white and showed higher levels of education and income compared with the general population in Canada.

Even though the composition of the polyamorous community appears homogeneous, the possible configurations of polyamorous relationships are limitless, as the number of partners is theoretically unlimited (Emens 2004). Hence, there may or may not be a hierarchical structure with a primary relationship, and the partners may or may not be required to be faithful to the other members of the group (Emens 2004). What polyamorous relationships have in common is their commitment to a few foundational principles: "self-knowledge, radical honesty, consent, self-possession, and privileging love and sex over other emotions and activities such as jealousy" (Emens 2004: 283). It is evident that fluidity, non-conformity, heterogeneity, formalization issues and resistance to the assimilation into a mononormative and heterocentric family model are essential features of polyamorous relationships. Moreover, polyamorous relationships have great potential

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[6]   My translation from Italian.

for deconstructing the traditional family as they question the paradigm of mononormativity. On the one hand, these two remarks show why it is hard to imagine how polyamorous relationships might be institutionalized in the form of a rigid legal institution. On the other, they make any attempt at recognizing polyamorous families even worthier, because this attempt would pave the way for more flexible regulations benefiting many other kinds of more or less conventional intimate relationships.

2. Legal recognition of polyamorous families

2.1 Polyamorous relationships in changing families

Before assessing the feasibility of legal recognition for polyamorous relationships, it is crucial to contextualize recognition of these families in the light of the larger empirical transformation of the family unit. My claim is indeed that the increased visibility of polyamorous families should be considered a recent step in that process of transformation; thus, we should expect such families to be recognized at some point in future. As already mentioned in the introduction, we can observe that the nuclear, heterosexual, monogamic family has undergone a disruptive process of transformation in Western countries since the beginning of the 20th century. The changes include the enhancement of gender equality within the family (Cogswell 1975; Bengston 2001; Macedo 2015); higher divorce rates (Furstenberg 1987; Roseneil & Budgeon 2004); many more polynuclear blended families or stepfamilies (Furstenberg 1987; Bengston 2001); voluntary singlehood or single-person households (Barker & Langridge 2010; Roseneil & Budgeon 2004); serial monogamy[7] (Barker & Langridge 2010; Jamieson 2004); cohabitations and *de facto* unions[8] (Blumberg 2004; Budgeon & Roseneil 2004; Levin 2004); out-of-wedlock births and more children being raised by single parents (Parolin & Perrotta 2012; Roseneil & Budgeon 2004); couples "living apart together"[9] (Levin 2004) and same-sex unions. If we look at the number and complexity of all these different family forms, it becomes clear that the family cannot be

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[7] 'Serial-monogamy' is the custom of having a number of sexual or romantic relationships one after another (but never more than one at a time), sometimes dissolving a previous marriage and initiating a new one.

[8] A *de facto* union is a legal status sanctioning a relationship in which partners live in an arrangement of cohabitation without being married.

[9] 'Living apart together' is a kind of relationship where the individuals involved do not share a home but perceive themselves as partners.

considered an immutable entity. The constellations of family relationships are indeed so variegated that we can no longer talk of the family in the singular, but of *families* (Budgeon & Roseneil 2004). Families are indeed social phenomena that "reshape themselves in response to shifting social conditions" (Sheff 2011: 491), and most of them have finally abandoned the idea of the traditional heterosexual nuclear family (Budgeon & Roseneil 2004; Cutas 2019).

As far back as in 1975 Cogswell claimed the "rejection of the myth of the idealized traditional nuclear family", because the nuclear family was seen as "inadequate, restrictive, and counterproductive in meeting individual goals, aspirations and desired lifestyles" (392). Cogswell also reported the presence of 'variant family forms', referring to any deviation from the traditional nuclear family – including single parents, three-generation families, cohabiting couples and homosexual unions –, thus opposing the idea of the sole existence and relevance of the heterosexual nuclear family. Moreover, since divorce became legal in most of the Western countries, traditional relationships based on life-long marriage have been challenged. The increased rate of divorce (Furstenberg 1987) and single parenting (Parolin & Perrotta 2012), and the predominance of extra-marital relationships (Jamieson 2004) and 'serial monogamy' habits (Barker & Langdridge 2010; Jamieson 2004), show that the institution of marriage has been radically undermined and that its key role in disciplining intimate relationships between adults (and even between adults and children) has gradually waned.

The process of deconstruction of the traditional nuclear family started with the erosion of its patriarchal structure due to the improvement of gender equality (Cogswell 1975; Bengston 2001; Macedo 2015). The feminist movements played a pivotal role in this sense, but also many cultural, political, economic and technological advancements contributed to the achievement of this goal, e.g. higher levels of education, the welfare state, the development of hormonal contraception and legal improvements in protecting women and children's rights. Meanwhile, the institution of marriage, too, was challenged for two main reasons: the weakening of the myth of life-long commitments in intimate relationships, and the spread and visibility of many forms of nonmarital relationships. On the one hand, when the divorce rate started to increase, marriage proved to be a very fragile institution (Furstenberg 1987). On the other, the erstwhile moral censure

of sexual intercourse outside marriage now seems widely overcame, while marriage itself has often been replaced by "long-term arrangements outside marriage" (JAMIESON 2004) involving cohabitation and child-rearing. Nowadays, many countries provide specific legal tools for recognition and regulation of these different kinds of nonmarital families (CIRINNÀ 2016; BLUMBERG 2004; PALAZZO 2018); consequently, "marriage has no longer the monopoly as the ideal state for adult life" (JAMIESON 2004: 35).

At the end of the 20th century, another of the main pillars of the traditional family started to be eroded, i.e. heteronormativity. Indeed, a landmark event in the path leading to less conventional family relationships is represented by the spread and greater visibility of same-sex relationships during the last thirty years (BLUMBERG 2004; MILLBANK 2008; NUSSBAUM 2009; STACEY 1996). This process of evolution reached unprecedented heights when the same-sex family started being broadly institutionalized in Western countries through legal recognition of same-sex marriage or marriage-like institutions like civil unions[10]. Recognition of same-sex marriage radically challenged the conservative claim regarding the social and legal predominance of the 'natural' heterosexual family (FOLGERØ 2008).

According to Blumberg (2004), legal regulation of nonmarital relationships and legal recognition of same-sex families are different but very closely related trends. I claim that the emergence of polyamorous families should be considered the most recent development in that same trend. In other words, I claim that the rising visibility of polyamorous relationships represents only the latest stage in a process of transformation affecting the family, which started with the erosion of gender roles between spouses, saw the institutionalization of many different forms of unconventional nonmarital relationships and culminated in the questioning of heteronormativity through recognition of same-sex unions. For this reason, we can very well hazard that the erosion of mononormativity through legal

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[10]   According to the Human Rights Campaign Foundation, same-sex marriage is currently recognized in twenty-nine countries, including Australia, Canada, the United States of America, New Zealand, as well as seventeen European countries: Austria, Belgium, Denmark, Finland, France, Germany, Iceland, Ireland, Luxembourg, Malta, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and the United Kingdom (Human Rights Campaign Foundation, Marriage Equality Around the World, retrievable at https://www.hrc.org/resources/marriage-equality-around-the-world). European countries which instead only recognize civil unions include Croatia, Cyprus, the Czech Republic, Estonia, Greece, Hungary, Italy, Liechtenstein and Slovenia.

recognition of polyamorous relationships will be the next step in this series of sea changes affecting our notion of family.

However, we cannot forget that polyamory is still "invisible to society at large" (Sheff 2011) and that mononormativity still seems to inform the vast majority of family configurations, from the traditional heterosexual family to many nonmarital family forms and even same-sex relationships. In addition, as we shall see in the next section, social stigma towards polygamy, limited awareness about polyamory, lack of vindication of the polyamorous community and a shortage of alliances are clear signs that recognition of polyamorous relationships will not come to pass very soon. But if it is true that recognition of polyamorous relationships will probably not occur within the next couple of decades, this does not mean that polyamorous relationships will *never* be recognized. Polyamorous relationships are indeed becoming more visible to society and, at least in Canada and the United States, the political arena is starting to be aware of the existence and needs of polyamorists: in 2020 and 2021 for the first time two US cities, Somerville and Cambridge (both in Massachusetts), recognized a polyamorous domestic partnership. Moreover, now that same-sex marriage has been institutionalized in most Western countries, there is the leeway to strive for recognition of other unconventional kinds of relationship, especially the polyamorous one, and also scope for an alliance between the polyamorous and LGBT+ communities, even if it is just the side of the latter which is most concerned with same-sex marriage.

In my opinion, the main difference between the path towards recognition of same-sex relationships and the one leading to recognition of polyamorous families will be their result. Unlike same-sex relationships, polyamorous relationships are very diverse in their structure and it is hard to make them all fit a single model, because fluidity in the interaction and freedom to shape non-normative kinds of intimate relationships are essential features of the polyamorous community. Thus, I doubt that mere recognition of institutions like plural marriage might be desirable or even feasible. However, this should not represent an obstacle to recognition of polyamorous relationships, but a great chance to radically rethink our way of regulating intimate relationships in the first place. That way, public institutions will become more inclusive towards all kinds of unconventional families, even those that do not conform to the monogamous norm.

2.2 Legal recognition of polyamorous relationships: A feasibility assessment

I claimed above that the increasing visibility of polyamorous relationships represents the most recent step in the process of transformation of the family, following the institutionalization of same-sex unions. Thus, the path towards vindication of same-sex marriage ideally represents the privileged term of comparison for a possible path towards recognition of polyamorous relationships. Indeed, recognition of same-sex marriage could be seen as a sign that the time is ripe to question mononormativity and institutionalize polyamorous relationships. According to Aviram and Leachman (2015), the mobilization of the LBGT+ community for legal recognition of same-sex marriage "has created greater traction for legal arguments to expand marriage to poly relationships" (278). As a result, the LGBT+ campaign for marriage equality clearly has important implications for the polyamorous community, which turns out to be affected by the debate on marriage equality and by the subsequent recognition of same-sex marriage.

The issue of recognition of multi-partner relationships is considered so closely related to that of recognition of same-sex unions that the 'slippery slope' argument is one of the most frequently invoked against recognition of the latter (Aviram & Leachman 2015; Baltzly 2012; Sheff 2011). Once the process of recognition of same-sex marriage in the United States came to an end, conservative advocates of the traditional family alerted public opinion that, according to the 'slippery slope' argument, multiple marriages would only be the next step, followed by "adultery, prostitutions, masturbation, bigamy, fornication, incest, paedophilia, bestiality, and ultimately the deconstruction of monogamous marriage itself" (Sheff 2011: 494). For their part, LGBT+ advocates of same-sex marriage usually resist this claim by rejecting the analogy between same-sex and polygamous marriage (Calhoun 2005). The reason for this political choice is that "social hostility to polygamy is invoked [by conservative opponents of same-sex marriage] as a reason not to permit same-sex marriage" (Calhoun 2005: 1026). It is clear, then, why LGBT+ advocates of same-sex marriage strategically refuse to link their struggle with endeavours to have plural marriage recognized.

Another reason why the institutionalization of same-sex unions influences the debate on polyamorous relationships is that these two kinds of intimate relationships are to some extent considered similar. First of all, polyamorists and LGBT+ minorities are marginalized groups which had

to develop similar 'adaptive strategies' in response to analogous social circumstances so as to resist social stigma and a hostile social environment (SHEFF 2011). In other words, polyamorists are stigmatized and marginalized for their sexual and relational style, just as much as homosexual, bisexual and other sexual minorities are discriminated against for their sexual orientation. In each of this cases, stigma and discrimination are largely connected with social and political institutions "that define and regulate sexuality" (AVIRAM & LEACHMAN 2015: 307). Secondly, both groups tend to show flexible approaches to family and intimate relationships, which might "provide positive role models for other groups in society and thus merit legal recognition as legitimate families" (SHEFF 2011: 489). Finally, the LGBT+ and polyamorous communities tend to overlap (BOYD 2017; SHEFF 2011). The quantitative study conducted in Canada (BOYD 2017) shows that 37.3% of polyamorous respondents describe themselves as heterosexual, while 31.7% of respondents identify as bisexuals, 24.4% as pansexuals, 12.7% as polysexuals, 4.2% as homosexuals, 2.1% as queer, 1.9% as asexuals and 3.5% as other.

However, notwithstanding the various similarities between the LGBT+ and the polyamorous community, I claim that the discussion on the feasibility of legal recognition for polyamorous relationships in the near future should be kept separate from the debate on same-sex marriage. Even if the struggle for recognition of same-sex marriage stands out as a benchmark and a starting point for the discussion on legal recognition of polyamorous families, some fundamental differences still deserve attention. It is important to map out the different path towards vindication of the polyamorous community and to acknowledge the desirability of legal tools other than plural marriage. More precisely, in opposition to the frequently invoked 'slippery slope' argument, I claim that we cannot take it for granted that legal recognition of same-sex relationships will automatically open the way for any kind of institutionalization of polyamorous relationships in the short run, and especially not in the form of plural marriage, for at least three reasons.

To begin with, the polyamorous community cannot, as of now, count on widespread social recognition and acceptance, nor on strong alliances with other marginalized sexual minorities. As I mentioned earlier, polyamorous relationships remain "virtually invisible to society at large" (SHEFF 2011: 489). This is remarkably different from the situation of the gay and

lesbian minorities, as almost everyone is already aware of their existence. And even if more visibility sometimes means more stigma, it also makes for more widespread interest, knowledge and debate. However, when poly-amorists come out, they are surrounded by social stigma and hostility, too, especially because polyamory is often associated with traditional and ine-galitarian forms of polygamy (Brooks 2009; Calhoun 2005). Moreover, they can barely count on the support of that part of the LGBT+ commu-nity which is more committed to marriage equality because, as mentioned above, it tends to strategically resist the 'slippery slope' argument, thus implicitly downplaying the significance of potential recognition of mul-tiple marriage or equivalent institutions. The polyamorous community is therefore deprived of a powerful ally, and I venture that this will further slow the process leading to legal recognition of polyamorous relationships.

It is not even true that same-sex marriage, viewed as a challenge to heteronormativity, clears the way for the challenge that plural marriage would represent for mononormativity. And that is because same-sex mar-riage could be seen as an institution not only reinforcing the monogamous norm, but even reproducing a homonormative[11] family model, thus eras-ing non-normative relationships like the polyamorous one (Folgerø 2008; Warner 1999). In other words, laws on marriage, and even on same-sex marriage, uphold "a traditional model of how the family *ought* to be formed, particularly through its privileging of marriage/civil partnerships, the two-parent model and binary constructions of both homosexual/hetero-sexual and male/female" (Garwood 2016: 6). This also negatively impacts the chances of polyamorous relationships being recognized, for this kind of relationship would preferably require far more flexible legal institutions than plural marriage.

However, I assume that both the relative invisibility of polyamory and the attitude of the LGBT+ community towards it will soon shift. As men-tioned above, the political debate is slowly becoming more aware of the existence and needs of polyamorists, and in 2020 the polyamorous domes-tic partnership was recognized by a municipal ordinance of the city of Somerville, Massachusetts, for the first time in history, followed in 2021 by the city of Cambridge, Massachusetts. In addition, it is important to

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[11]   Homonormativity means the normalisation and hierarchisation of some forms of homosex-uality over others, privileging (but not limited to) the gay or lesbian, cisgender, middle-class, white, monogamous, married couple.

remark that the most radical fringe of the LGBT+ community, which is sceptical about recognition of same-sex marriage, represents a natural ally for the polyamorous community (Calhoun 2005; Ettelbrick 1997). However, even the section of the LGBT+ movement that is more committed to marriage equality may probably become more supportive of polyamorists, now that same-sex marriage has been broadly institutionalized.

The second obstacle to recognition of polyamorous relationships in the near future is that the polyamorous community itself is not yet striving for recognition. It particularly opposes legal recognition in the form of "mere inclusion in traditionally oppressive institutions (such as marriage)" (Pérez Navarro 2017: 454). Indeed, there is unrelenting and widespread unwillingness to give up fluidity and the freedom to arrange intimate relationships in favour of the constraint within the rigid and formalized legal institution of, say, multiple marriage (Aviram 2008; Gusmano 2018; Sheff 2011). There are at least two key explanations for the polyamorous community's negative attitude towards marriage.

The first specific reason is addressed by Sheff when she argues that the race and class privileges of polyamorous individuals, compared with members of the LGBT+ community, provide a 'buffer against discrimination' (2015). In other words, polyamorists' socioeconomic status and cultural level provide a kind of security that "is scarce for lesbigay and/or working class people" (Sheff 2015: 503). This intuition is strictly connected with the demographic composition of the polyamorous community, which, as mentioned above, mainly consists of white, middle-class, well-educated and wealthy individuals (Boyd 2017). Hence, most polyamorists have many social privileges, and this allows them to discount the struggle for the right to marry (Sheff 2011). This does not hold true for the LGBT+ community, whose composition is much more diverse, thus making the right to marry important for its less privileged members (Sheff 2011). Moreover, being well-educated and wealthy, polyamorists can easily access different forms of legal protection of their intimate relationships, like private arrangements and contracts. And we must not forget that polyamorous individuals can even access heterosexual dyadic marriage, thus having a wider range of options as to how they choose to manage their polyamorous relationships, and this might be another reason for the weakening of their wish to access multiple marriage. In addition, access to heterosexual marriage represents a chance to dissimulate their unconventional way of living intimate

relationships, since heterosexual dyadic marriages "make them socially intelligible as heterosexual couples with 'close friends'" (SHEFF 2011: 502).

The second reason is that polyamorists strongly oppose marriage as an oppressive, rigid and too formalized institution. In opposition to supporters of same-sex marriage, they see plural marriage as a despicable form of assimilation and normalization (AVIRAM 2008). Moreover, they do not seem eager to give up the freedom to arrange their private, intimate, family relationships in many different and flexible ways in exchange for public protection through such a rigid and formalized legal institution as plural marriage. Polyamorists have showed not to be politically or personally committed to plural marriage (SHEFF 2011), and most of them expressed great individualism and, as a result, a dislike for any governmental interference in their intimate life (AVIRAM 2008).

However, it bears repeating that neither does the LGBT+ community unanimously agree on the desirability of recognition of same-sex marriage (ETTELBRICK 1997; WARNER 1999). A very large share of the community remains ambivalent in this regard, advocating more flexible alternatives to marriage in order to "redistribute privileges and benefits independently from marital status" (SHEFF 2011: 493). This group strongly opposes assimilation and homonormativity and claims the equal worth and dignity of all kinds of families. Due to the similarities between the two communities and their paths towards recognition, it could be the case that a part of the polyamorous community will at some point become more committed to recognition of plural marriage. According to Barker and Langridge, there is a concrete possibility of some non-monogamous relationships reproducing and bolstering heteronormativity and mononormativity rather than undermining them (2010). Thus, future calls for plural marriage are still not to be excluded. Moreover, polyamorists' refusal of plural marriage does not mean a total rejection of any kind of regulation. Polyamorous individuals are inclined to more flexible forms of recognition so as to retain the freedom to arrange their intimate lives and to avoid assimilation into the heteronormative and mononormative family model (AVIRAM & LEACHMAN 2015). However, the multiplicity of partners involved and the heterogeneity and fluidity of polyamorous relationships make it especially hard to find a common regulatory framework that may not only be apt to discipline all specific kinds of intimate arrangements but also be legally viable.

Finally, the third obstacle to the feasibility of recognition for polyamorous

relationships in the short term is closely connected with the difficulty of finding a suitable regulatory framework. Indeed, even when all forms of opposition to recognition of polyamorous relationships are somehow overcome, the concrete implementation of a plural marriage model, or even of some different and flexible regulatory measures, would require great adaptive efforts on the part of pre-existing legal and administrative public structures and procedures. This concern was not shared by the LGBT+ community, for recognizing the dyadic same-sex relationship "was hardly a radical move" (AVIRAM & LEACHMAN 2015). The legal structures and administrative processes proceeding from dyadic marriage were already in place when same-sex marriage was recognized, and the only change that legal systems had to make had to do with gender. Plural marriage, instead, would necessarily cause a rethinking of taxation, immigration laws and healthcare, to mention but a few, and this might represent a significant challenge for governments, especially in the short term. However, this effort is undoubtedly worth pursuing, and among the most interesting philosophical approaches already suggested is Brake's 'minimal marriage' (2014), introducing radical reforms of marriage with a view to including non-normative and multiple relationships like polyamorous ones, as well as relevant care networks and networks of friends. Even if not altogether feasible right know, the provision of at least some flexible forms of regulation for polyamorous relationships is both desirable and urgent. A still better measure would be the introduction of flexible forms of regulation *and* of plural marriage to finally protect polyamorists' fundamental freedom of choice as regards their intimate lives. The time has come for governments to start providing fair treatment to all individuals living in same-sex, polyamorous and every other non-oppressive form of intimate relationships, on grounds of equality, dignity and freedom.

Conclusion

Problems with the feasibility of recognition for polyamorous relationships do not imply that polyamorous relationships *should not* be recognized. The lack of vindication or support, along with all the other obstacles mentioned above, do not rule out a considerable public interest in recognizing polyamorous families and every other kind of unconventional family with a similar aim. Indeed, as with any other intimate relationships of care, polyamorous relationships deserve recognition for at least

two fundamental reasons: to protect the rights and interests of vulnerable partners in the relationship; and to provide fair treatment to everyone who chose unconventional relational styles.

In addition, polyamorous relationships have the potential to deconstruct a traditional institution like marriage from the inside. They can even help build radically new and more flexible forms of interaction between the law and the sphere of intimate relationships (Pérez Navarro 2017). I claim that this potential must be enhanced and not repressed, and that for this reason, if recognition of polyamorous relationships is not yet on the political agenda, we should strive for it to be included. We urgently need policies that may add value to difference and fluidity in every kind of unconventional family and radically question normative kinds of intimate relationships. Recognition of polyamorous relationships would definitely be a fundamental step in that direction, hopefully followed by a more radical deconstruction of the hierarchy of intimate relationships and by the recognition of non-amatonormative[12] relationships of care, like networks of friends. In other words, we need polyamory "to put into crisis the monogamous legal paradigm in such a way that, along with its untreatable inner heterogeneity, it may force a radical restructuring of the relationship between the state and the intimate sphere" (Pérez Navarro 2017: 453). Thus, we should keep the issue of the feasibility of recognition for polyamorous families separate from that of its desirability. Even if recognition is not feasible right now, it will probably become in future, and its desirability is not in question regardless.

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References

Anapol D., 2010, *Polyamory in the Twenty-first Century. Love and Intimacy with Multiple Partners*, Rowman and Littlefield Publishers, Inc, Lanham.

Aviram H., 2008, "Make Love, Now Law: Perceptions of the Marriage Equali-

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[12] Amatonormativity is a term coined by Brake (2012) which means that "a central, exclusive, amorous relationship is normal for humans, is a universally shared goal, and that such a relationship is normative, in that it should be aimed at in preference to other relationship type" (89).

ty Struggle Among Polyamorous Activists", in *Journal of Bisexuality*, 7 (3-4): 261-286.

Aviram H., Leachman G., 2015, "The Future of Polyamorous Marriage: Lessons from the Marriage Equality Struggle", in *Harvard Journal of Law & Gender*, 38: 269-336.

Baltzly V. B., 2012, "Same-Sex Marriage, Polygamy, and Disestablishment", in *Social Theory and Practice*, 38 (2): 333-362.

Barker M., 2005, "This is My Partner, and This is My… Partner's Partner: Constructing a Polyamorous Identity in a Monogamous World", in *Journal of Constructivist Psychology*, 18: 75-88.

Barker M., Langdridge D., 2010, *Understanding Non-Monogamies*, Routledge, London.

Bengston V. L., 2001, "Beyond the Nuclear Family: The Increasing Importance of Multigenerational Bonds", in *Journal of Marriage and Family*, 63: 1-16.

Blumberg G. G., 2004, "Legal Recognition of Same-Sex Conjugal Relationships: The 2003 California Domestic Partner Rights and Responsibilities Act in Comparative Civil Rights and Family Law Perspective", in *UCLA Law Review*, 51: 1555-1617.

Boyd J.-P. E., 2017, *Perceptions of Polyamory in Canada*, Canadian Research Institute for Law and the Family, Calgary.

Brake E., 2012, *Minimizing Marriage: Marriage, Morality and the Law*, Oxford University Press, Oxford.

Brake E, 2014, "Recognizing Care: The Case for Friendship and Polyamory", *Syracuse Law and Civic Engagement Journal*, <https://slace.syr.edu/issue-1-2013-14-on-equality/recognizing-care-the-case-for-friendship-and-polyamory/>, (retrieved May 2021).

Brooks T., 2009, "The Problem with Polygamy", in *Philosophical Topics*, 37 (2): 109-122.

Budgeon S., Roseneil S., 2004, "Editors' Introduction: Beyond the Conventional Family", in *Current Sociology*, 52 (2): 127-134.

Calhoun C., 2005, "Who's Afraid of Polygamous Marriage? Lessons for Same-Sex Marriage Advocacy from the History of Polygamy", in *San Diego Law Review*, 42 (3): 1023-1042.

Cirinnà M., 2016, "Unioni civili, una legge di libertà: dal diritto di famiglia al diritto delle famiglie", in *Notizie di Politeia*, 32 (122): 105-113.

Cogswell B., 1975, "Variant Family Forms and Life Styles: Rejection of the Traditional Nuclear Family", in *The Family Coordinator*, 24 (4): 391-406.

Conley T. D., *et al.*, 2013, "The Fewer the Merrier?: Assessing Stigma Surround-

ing Consensually Non-monogamous Romantic Relationships", in *Analyses of Social Issues and Public Policy*, 13 (1): 1-30.

Cutas D., 2019, "The Composition of the Family", in Gheaus A., *et al.* (ed)s., *The Routlege Handbook of the Philosophy of Childhood and Children*, Routledge, London: 191-201.

De Marneffe P., 2016, "Liberty and Polygamy", in Brake E. (ed)s., *After Marriage. Rethinking Marital Relationships,* Oxford University Press, Oxford: 125-159.

Den Otter R. C., 2015, *In Defence of Plural Marriage*, Cambridge University Press, New York.

Den Otter R. C., 2018, "A Perfectionist Argument for Legal Recognition of Polyamorous Relationship", in Brake E., Ferguson L. (ed)s, *Philosophical Foundations of Children's and Family Law*, Oxford University Press, Oxford: 138-162.

Emens E. F., 2004, "Monogamy's Law: Compulsory Monogamy and Polyamorous Existence", in *New York University Review of Law & Social Change*, 29: 277-376.

Ettelbrick, P., 1997, "Since When is Marriage a Path to Liberation?", in Sullivan A., Landau J. (ed)s., *Same-sex Marriage, Pro and Con. A Reader,* Vintage Books, New York: 118-124.

Folgerø T., 2008, "Queer Nuclear Families? Reproducing and Transgressing Heteronormativity", in *Journal of Homosexuality*, 1-2: 124-149.

Furstenberg F., 1987, "The New Extended Family: The Experience of Parents and Children after Remarriage", in Pasley K., Marilyn I. T. ed(s)., *Remarriage and Stepparenting: Current Research and Theory*, Giulford Press, New York: 42-61.

Garwood E., 2016, "Reproducing the Homonormative Family: Neoliberalism, Queer Theory and Same-sex Reproductive Law", in *Journal of International Women's Studies*, 17 (2): 5-17.

Goldfeder M., Sheff E., 2013, "Children of Polyamorous Families: A First Empirical Look", in *Journal of Law and Social Deviance*, 5: 150-243.

Grande E., Pes L., 2018, *Più cuori e una capanna. Il poliamore come istituzione*, Giappichelli, Torino.

Gusmano B., 2018, "Oltre le frontiere dell'amore romantico: poliamore, altre intimità e non monogamie consensuali LGBTQ in Italia", in Grande E., Pes L. (ed)s., *Più cuori e una capanna. Il poliamore come istituzione*, Giappichelli, Torino: 55-77.

Gusmano B., Motterle T., 2019, "The micropolitics of choice in Italy: How the law affects lesbian and bisexual women's daily life", in *Journal of Lesbian Studies*, 23 (3): 336-356.

Jamieson L., 2004, "Intimacy, negotiated non-monogamy and the limits of the couple", in Duncombe J. *et al.* ed(s)., *The State of Affairs: Explorations in Infidelity and Commitment,* Lawrence Erlbaum Associates, Mahwah: 35-57.

KLESSE C., 2006, "Polyamory and its Others. Contesting the Terms of Non-Monogamy", in *Sexualities*, 9 (5): 565-583.

KLESSE C., 2017, "Theorizing multi-partner relationships and sexualities - Recent work on non-monogamy and polyamory", in *Sexualities*, 0 (0): 1-16.

KLESSE C., 2019, "Polyamorous Parenting: Stigma, Social Regulation, and Queer Bonds of Resistance", in *Sociological Research Online*, 24 (4): 1-19.

LEVIN I., 2004, "Living Apart Together: A New Family Form", in *Current Sociology*, 52 (2): 223-240.

MACEDO S., 2015, *Just Married. Same-Sex Couples, Monogamy & the Future of Marriage*, Princeton University Press, Princeton.

MARCH A. F., 2011, "Is There a Right to Polygamy? Marriage, Equality and Subsidizing Families in Liberal Public Justification", in *Journal of Moral Philosophy*, 8: 246-272.

MILLBANK J., 2008, "The role of 'functional family' in same-sex family recognition trends", in *Child and Family Law Quarterly*, 20 (2): 155-182.

MOORS A. C., *et al.*, 2017, "Investigation of Consensually Nonmonogamous Relationships: Theories, Methods, and New Directions", in *Perspectives on Psychological Science*, 12(2): 205-232.

OKIN S. M., 1989, *Justice, Gender, and the Family*, Basic Books, Inc., New York.

PALLOTTA-CHIAROLLI *et al.*, 2020, "Polyamorous Parenting in Contemporary Research: Developements and Future Directions", in Goldberg A. E., Allen K. R (ed)s.., *LGBTQ-Parent Families. Innovations in Research and Implications for Practice,* Springer, Cham: 171-184.

PAROLIN L. L., PERROTTA M., 2012, "On the Fringes of Parenthood Othering and Otherness in Italian Assisted Kinship", in *AboutGender*, 1 (2): 100-131.

PÉREZ NAVARRO P., 2017, "Beyond Inclusion: Non-monogamies and the Borders of Citizenship", in *Sexuality & Culture*, 21: 441-458.

NUSSBAUM M., 2009, "A Right to Marry? Same-sex Marriage and Constitutional Law", retrieved May 2020, from *Dissent:* https://www.dissentmagazine.org/article/a-right-to-marry-same-sex-marriage-and-constitutional-law

PALAZZO N., 2018, "The Strange Pairing: Building Alliances Between Queer Activists and Conservative Groups to Recognize New Families", in *Michigan Journal of Gender and Law*, 25 (2): 161-237.

PIEPER M., BAUER R., 2005, "Polyamory und mono-normativität", in Méritt L., *et al.* (ed)s., *More than one love: Polyamoros relationships,* Orlanda, Berlin: 59-69.

ROSENEIL S., Budgeon S., 2004, "Cultures of Intimacy and Care Beyond 'the Family': Personal Life and Social Change in the Early 21st Century", in *Current Sociology*, 52 (2): 135-159.

Sheff E., 2010, "Strategies in Polyamorous Parenting", in Barker M., Langdridge D (ed)s., *Understanding Non-Monogamies,* Routledge, New York: 169-181.

Sheff E., 2011, "Polyamorous Families, Same-Sex Marriage, and the Slippery Slope", in *Journal of Contemporary Ethnography*, 5: 487-520.

Stacey J., 1996, *In the Name of the Family: Rethinking Family Values in the Post-modern Age*, Beacon Press, Boston.

Warner M., 1999, "Normal and Normaller. Beyond Gay Marriage", in *GLQ,* 5 (2): 119-171.