I. INTRODUCTION

On April 3, 2008 investigators from the Texas Department of Family and Protective Services raided the Yearning for Zion Ranch in Eldorado, Texas. A sixteen-year-old girl named Sarah had reported physical and sexual abuse at the ranch in an anonymous phone call. Home to a large community of members of the Fundamentalist Church of Jesus Christ of Latter Day Saints (“FLDS”), the ranch was raided at about 9:00 p.m. Interviews conducted throughout the night with both adults and children, as well as documents found at the Ranch led the Department to remove 486 children from the custody of their families. The department removed the children because of a concern that “the community had a culture of polygamy and of directing girls younger than eighteen to enter spiritual unions with older men and have children.” Sarah, the subject of the anonymous phone call, was never found.

The Texas FLDS raid is only the most recent major event in polygamy’s tumultuous history. The effect of polygamy on its participants, both historically and currently, is not clear. As the monologues which this note accompanies show, polygamy has two sides. Rowenna Erickson tells a sordid tale of thirty-four years “filled with confusion, heartache, and loneliness.” She explains that all those who participate in polygamy do so because they are being brainwashed. Contrarily, Martha Cannon with gratitude explained that she is “regarded as a mother to many” as she described her feelings of boundless love from her experiences as a plural wife.

The Texas FLDS case and the monologues only begin to illustrate the complex issues of polygamy. This note will define polygamy, provide a brief
overview of its history, discuss its effects on participants and society, and finally explain some of the issues surrounding the enforcement of polygamy laws and the best strategy for further enforcement.

II. DEFINITION OF POLYGAMY

While polygamy has been practiced within many cultures and in many locations, in the United States it is defined as “the state or practice of having more than one spouse simultaneously.” At common law, it was a crime to enter into a second marriage while the first was still in force; statutes now formalize the common law crime and employ the terms polygamy and bigamy interchangeably. The terms are inclusive of both, the more common practice polygyny, where one man marries multiple women, and polyandry, where one woman marries multiple men. “Plural marriage,” is often a preferred term by those who practice polygamy, because it carries less of a stigma than “polygamy.”

III. HISTORY OF POLYGAMY IN THE UNITED STATES

Polygamy, in one of its most widespread forms of practice within the United States, began with the early members of The Church of Jesus Christ of Latter-day Saints (the “Church”), under direction of its founder Joseph Smith. Historians speculate that polygamy began within the Church in the mid-1830s, and was initially practiced only in secrecy. Years after Smith was killed, the second President of the Church, Brigham Young, began publicly teaching the practice in 1852. However, participation was limited; even at its peak in the mid-1850s, less than twenty percent of Church members practiced polygamy.

9 BLACK'S LAW DICTIONARY 1197 (8th ed. 2004).
12 Id.
13 The Church of Jesus Christ of Latter-day Saints requests that “the Church” be used as an appropriate shortened reference for its name, as opposed to the commonly used nickname “the Mormon Church.” See The Church of Jesus Christ of Latter-day Saints Style Guide, http://newsroom.lds.org/ldsnewsroom/eng/style-guide (last visited Feb. 20, 2009).
15 Id.
Beginning in 1862, Congress passed the first of several acts systematically aimed at stopping the practice by criminalizing polygamy, financially crippling the Church, and even revoking women’s suffrage in Utah. In 1879, a member of the Church challenged the constitutionality of anti-polygamy statutes on religious grounds; the Supreme Court held that there was no constitutional right to practice polygamy, and that the government could restrict religious actions, but not beliefs.

The congressional acts were largely successful in stopping polygamy. The Church gave up the practice on September 25, 1890, when then Church President Wilford Woodruff issued an official statement known as “the Manifesto.” Four years later Congress passed the Utah Enabling Act permitting Utah to take steps to obtain statehood—conditioned upon the state constitution containing an irrevocable ordinance banning polygamy. Congress granted Utah statehood in 1896, and the adopted state constitution permanently banned polygamy in the state. The practice was also criminalized by statute. After publication of “the Manifesto,” the Church stopped practicing polygamy and began to excommunicate polygamists. As a result, splinter groups broke off which are now widely known as “Fundamentalists.”

Fundamentalists retreated to isolated communities seeking to avoid what they considered mass persecution. Since that time, the government has made periodic mass raids on polygamist communities. Mass arrests were made in 1935, 1944 and then Arizona undertook the largest raid yet in 1953. What is now known as the Short Creek Raid produced 107 defendants, but it became a public relations disaster. While still in the planning stage, the raid was reported in newspapers, and, when executed, news-footage showed children being torn from the hands of
their parents. The public responded sympathetically by condemning the government actions, and in court the Fundamentalists were able to demonstrate gross violations of due process rights. The traumatic events of the raid “created deep scars among the Fundamentalists,” which only served to exacerbate the problem by creating a deep fear of the government and distrust of outsiders.

For more than fifty years after Short Creek, there were no major raids on polygamous communities. With the exception of headline grabbing prosecutions of individuals like Tom Green, or Warren Jeffs, states have taken what some see as a very tolerant approach to the Fundamentalist communities and polygamists. However, recently Utah and Arizona have sought to increase their law enforcement of polygamous communities—especially in cases that “involv[e] child abuse, domestic violence, and fraud.”

After the nightmare of Short Creek, it was somewhat surprising that, in 2008, Texas would undertake an even larger raid of a polygamous community. Two weeks after raiding the Yearning for Zion Ranch, the Texas Department of Family and Protective Services requested a hearing on emergency orders to remove 486 children from their parents, and then limit parental access. An adversary hearing was held, and the court issued temporary orders to continue state custody of the children. Thirty-eight mothers petitioned the Court of Appeals, which vacated the custody decision of the district court, and the Department appealed. The Texas Supreme Court affirmed the decision of the Court of Appeals, overturning the temporary custody orders issued by the District Court. As in the Short Creek raid, the Fundamentalist group found vindication in the Court’s holding that “[o]n the record before us, removal of the children was not warranted.” The Court also found that there were many legal remedies available to the Department of Family and Protective Services, short of removing the children from their parents. The Texas FLDS raid has done little to stop the problems of polygamy and may have again set back the efforts of law enforcement as it has been recognized as another “disaster of Short Creek proportions.”

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29 Sigman, supra note 14, at 139.
30 Id.
31 Id. at 6.
32 Duncan, supra note 17, at 322.
33 Id.
34 The Primer, supra note 16, at 6.
36 Id. at 615.
37 Id.
38 Id.
39 Id.
40 Id.
41 Billie, supra note 11, at 133.
IV. EFFECTS OF POLYGAMY

Polygamy is somewhat unique as a criminalized activity in that many of its participants claim that there are no victims. Its effects are far reaching—both for good and bad—on those who participate and on society at large. The experiences of Martha Cannon and Rowenna Erikson clearly illustrate two of the most common viewpoints of polygamy. Erikson’s Escape from Polygamy may more easily be understood, since polygamy commonly receives the negative limelight. On the other hand, there is no way to tell if Cannon’s experience is not more typical of women within polygamy. The secrecy of these polygamist communities, and their fear and mistrust of outsiders, make it difficult to really know which of the two perspectives more accurately defines polygamy.

A. Positive Effects of Polygamy

Although their stories are less often told, there are many women like Martha, who prefer to live in polygamy. Adult women offer varying explanations for their participation in polygamy, ranging from sororal friendships with sister-wives, and assistance in providing for children, to religious and cultural reasons. Elizabeth Joseph is one of the very few women who has come forth to share some of her experiences. She described her experience within polygamy as a “paradox” with compelling social reasons that make the lifestyle attractive to the modern career woman. For her, the help offered by sister-wives allows for the flexibility necessary to juggle the high demands of a career, raise a young toddler, and meet the needs of a husband, in a fulfilling way which she would not be able to do outside of polygamy. The relationship also accommodates the “longing for intimacy and comfort that only he can provide, and when those feelings surface, [she] ask[s] to be with him.” She told an audience with the National Organization of Women that polygamy “offers an independent woman a real chance to have it all” and represents “the ultimate feminist lifestyle.”

In light of the benefits that some polygamist women claim, it has become more difficult for the government to justify the ban on polygamy. Studies have shown “there is no evidence that polygamy per se creates abuse or neglect.”

43 Sigman, supra note 14, 173–74.
44 Id. at 172–73.
46 Id.
47 Id.
48 Id.
50 Sigman, supra note 14, at 173.
Additionally, the studies have shown no greater propensities for abuse within polygamous families than monogamous ones. Proponents of polygamy also argue that it is a better option than the much more common societal alternative, serial monogamy. They argue that children are better off growing up with a committed polygamist father, than “today's alpha males who've dumped a series of wives and families.” These stories, studies, and arguments support the conclusion that it has been paternalistic for society to remove the choice of polygamy. However, positive effects aside, the problems associated with polygamy are real.

B. Negative Effects of Polygamy

Opponents of polygamy argue that it subjugates women by forcing them into abusive or neglectful relationships. Problems with corporal punishment, domestic violence, and religious, verbal, and emotional abuse have been found in Fundamentalist communities. There are accounts of physical and emotional abuse, not only between husbands and wives, but between sister-wives as well. Abuse is not limited to the adults; wives are abusive to the children of their sister-wives, and there are cases where children have been locked up, and even smothered until they choked or gasped for air.

The tragic reports of domestic violence are not the only problems of polygamy. Many families within Fundamentalist communities live in poverty and often rely on food stamps to survive. The FLDS church advocates “bleeding the beast,” the practice of abusing and exploiting governmental assistance programs, which it considers a righteous endeavor to assist God in destroying the evil U.S. government. The Hilldale and Colorado City communities rank within the top ten cities in western states for the amount of federal poverty aid which they receive.

However, the most destructive problem of polygamy may be underage marriage. Adolescent girls as young as thirteen are forced into arranged marriages without any meaningful or informed consent. Their extremely young ages make these girls especially vulnerable to sexual abuse, which seems fostered in the

51 Id.
52 Tierney, supra note 49.
53 Id.
54 Id. at 171.
55 See id. at 168.
56 Duncan, supra note 17, at 328.
57 Id.
58 Id.
59 Id. at 330.
60 The Primer, supra note 16, at 7.
61 Duncan, supra note 17, at 330.
62 Sigman, supra note 14, at 178–79.
community not only by husbands, but fathers and brothers as well.\textsuperscript{63} Surveys show that approximately sixty percent of Fundamentalist wives were married as teenagers.\textsuperscript{64} The sexual abuse and arranged marriages, which are often incestuous, result in high-risk pregnancies, birth defects, and high maternal mortality rates.\textsuperscript{65} Additionally, the mathematical result of plural marriages in FLDS communities is also a problem for young boys, who are forced out of the communities to allow the older men to take younger wives.\textsuperscript{66}

V. ENFORCEMENT OF POLYGAMY LAWS

The problems stemming from polygamy are obviously complex and fully engrained within the Fundamentalist communities. They have also been exacerbated by the increased public support of polygamists and animosity towards the government as the result of raids like Short Creek.\textsuperscript{67} Enforcement disasters like Short Creek, and more recently the Texas FLDS raid, have created barriers to enforcement, barriers that have even been adopted as policy. The Utah Office of the Attorney General states, “Polygamy is illegal in Utah and forbidden by the Arizona constitution. However, law enforcement agencies in both states have decided to focus on crimes within polygamous communities that involve child abuse, domestic violence, and fraud.”\textsuperscript{68} This strategy has been characterized as the “main problem with polygamy enforcement.”\textsuperscript{69} Some see Utah’s polygamy laws as sufficient to stop many of the problems but only if the laws are fully enforced. Conversely, others see even this limited strategy of enforcement as too much and some strong arguments have been made for the legalization of polygamy.\textsuperscript{70} Calls for either extreme in rejecting the adopted strategy of the state against polygamy are overly simplistic.

Pragmatically, it is not possible for the state to fully enforce the polygamy laws; calls for full on enforcement do not show a full understanding of the history of polygamy. As Utah’s Attorney General Mark Shurtleff stated: “Would you truly have us arrest every polygamist? Do you want a Short Creek again? We barely have the resources to prosecute crimes within these organizations.”\textsuperscript{71} The Texas

\begin{itemize}
\item \textsuperscript{63} Id.
\item \textsuperscript{64} Duncan, supra note 17, at 327.
\item \textsuperscript{65} Id.
\item \textsuperscript{66} See generally Sigman, supra note 14, at 182; Duncan, supra note 17, at 327.
\item \textsuperscript{67} Billie, supra note 11, at 148.
\item \textsuperscript{69} Billie, supra note 11, at 146.
\item \textsuperscript{70} See Duncan, supra note 17, at 331–37.
\item \textsuperscript{71} Sigman, supra note 14, at 141.
\end{itemize}
raid cemented these predictions as it again became a disaster and a setback for law enforcement.\textsuperscript{72}

Legalizing polygamy is also not a viable alternative and may not even be a legal possibility in Utah. As discussed above, statehood was conditioned upon adoption of an irrevocable ordinance banning polygamy and, as such, the ban became a part of the state constitution.\textsuperscript{73} In 2005, the constitutional issues were further complicated when the people of the state adopted a constitutional amendment limiting the recognition of marriage to one man and one woman.\textsuperscript{74} Therefore, legalizing polygamy in Utah would require amending two parts of the Utah constitution, which would likely prove difficult.

VI. CONCLUSION

The state needs to make protecting the victims of polygamy a higher priority. This is possible under the current strategy of polygamy enforcement. Allegations of abuse within polygamist communities need to be investigated as thoroughly as they are investigated outside of those communities, if not more so because of the chilling effect on reporting which is culturally pervasive in Fundamentalist communities. The state’s highest priority for investigation and enforcement needs to be the protection of children—and more specifically—protecting under-aged girls from being forced into polygamist relationships without their consent. State officials must make special precautions to avoid repeating the mistakes of Short Creek, not by turning a blind eye, but by making sure that due process protections are afforded to Fundamentalist communities just as they are to the rest of society. The Texas FLDS case is demonstrative; the Texas Department of Family and Protective Services went straight to its strongest remedy, emergency removal of the children.\textsuperscript{75} The Court recognized that less intrusive remedies, including removal of alleged perpetrators from the child’s home and issuing orders to assist in investigation, were available to protect the children.\textsuperscript{76} Similar remedies are available to law enforcement in all other states. Using the least intrusive remedies will garner public support, instead of disdain for the actions of enforcement officers.

If allegations and investigations of abuse are scrutinized within polygamist communities the same as they are without, enforcement officials will not be subjected to the public outcries of the past. Increasing the prioritization and focus of the current law enforcement strategy will allow the state to effectively police polygamist communities and limit abuses while working towards long term solutions that reconcile the two sides of polygamy.

\textsuperscript{72} See Duncan, \textit{supra} note 17, at 326.
\textsuperscript{73} UTAH CODE ANN. § 76-7-101 (2008).
\textsuperscript{74} UTAH CONST., art. I, § 29.
\textsuperscript{75} \textit{In re} Tex. Dep’t of Family & Protective Serv., 255 S.W.3d 613, 614 (Tex. 2008).
\textsuperscript{76} Id. at 615.