

Note

Throuples and Family Law

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As throuples and other forms of polyamorous relationships gain visibility and acceptance, courts will have to confront the legal issues that will likely arise when a throuple forms and when it dissolves. How should courts determine child custody for three equally situated parents? How should courts divide assets among three people who have cohabitated in a marriage-like relationship? This Note describes some of the legal problems throuples are most likely to encounter, especially regarding child custody and division of assets. This Note outlines some of the ideal solutions to these problems, such as forming contracts with the help of an attorney. Lastly, this Note argues that courts should expand family law doctrines for unmarried cohabitants to include throuples as well.

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INTRODUCTION

In 2017, Ian Jenkins, Alan Mayfield, and Jeremy Hodges made history when they became the first family in California to list three fathers on a birth certificate.¹ Jenkins, Mayfield, and Hodges are in a throuple, a form of polyamorous relationship involving three people.² Jenkins and Mayfield married in 2003, and the two later met Hodges, who joined their relationship.³ With the help of three women—an egg donor and two surrogates—the three men had their first child, Piper, in 2017, and their second child, Parker, in 2019.⁴ Not surprisingly, their road to parenthood was not simple: the journey to being listed on Piper’s birth certificate involved over \$120,000 in legal and medical fees, and over twenty contracts.⁵ Despite these hurdles, the throuple has happily resolved various legal barriers and can provide a secure and loving home for their children.⁶ The children seem utterly unfazed by their family’s structure.⁷ As the

1. Marisa Dellatto, *Gay Poly Throuple Makes History, Lists 3 Dads on a Birth Certificate*, N.Y. POST (Mar. 2, 2021), <https://nypost.com/2021/03/01/poly-throuple-makes-history-3-dads-on-a-birth-certificate> [<https://perma.cc/DRE7-S3XD>].

2. See Edward Stein, *How U.S. Family Law Might Deal with Spousal Relationships of Three (or More) People*, 51 ARIZ. ST. L.J. 1395, 1396 n.2 (2019) (“A triad (also sometimes called a ‘throuple’) is a marriage-like relationship among three people in which all three are romantically involved with each other.”); see also Andrew Solomon, *How Polyamorists and Polygamists Are Challenging Family Norms*, NEW YORKER (Mar. 15, 2021), <https://www.newyorker.com/magazine/2021/03/22/how-polyamorists-and-polygamists-are-challenging-family-norms> [<https://perma.cc/GT32-NA8N>] (“Unlike polygamy, which is usually religiously motivated and typically involves a man with multiple wives who do not have an erotic relationship to one another, polyamory tends to be based on utopian ideas of sexual liberty and may involve a broad range of configurations. In the end, however, the real difference is what term fits people’s paradigms; as with much of identity politics, affiliations are self-determined.”).

3. Rachel DeSantis & Amy Eskin, *Calif. Throuple Raising 2 Kids Say Their Unique Road to Parenthood Is ‘Like Winning the Lottery,’* PEOPLE (Mar. 16, 2021), <https://people.com/human-interest/calif-throuple-raising-2-kids-reveal-unique-road-to-parenthood-like-winning-the-lottery> [<https://perma.cc/RTN2-JR7H>].

4. *Id.*

5. *Id.*

6. *Id.* (“We have two beautiful kids. I have two more partners than I thought I might. For me, it’s kind of like winning the lottery.” (quoting Jenkins)).

7. *Id.* (“Jenkins is Papa, Mayfield is Dada and Hodges is Daddy.”).

throuple's daughter, Piper, proudly told a classmate: "You have two parents. I have *three* parents."⁸

Jenkins, Mayfield, and Hodges are just one example of a throuple.⁹ Although the word "throuple" is relatively new,¹⁰ three-parent families are not.¹¹ It is not unusual for parents—particularly those who are single or have low incomes—to incorporate relatives or friends as informal co-parents.¹² A 2014 Pew Research Report found that fewer than half of American children live with two parents on their first marriage (a "traditional family environment").¹³ Divorce and remarriage also create family structures that involve three or more parents.¹⁴ Furthermore, the concept of having multiple spouses is not especially new—the difference is simply that people now have multiple spouses serially (i.e., people marry, divorce, remarry, etc.), rather than simultaneously.¹⁵

8. Dellatto, *supra* note 1.

9. See, e.g., Karen Heller, *Meet Janie and Maggie and Cody, a Throuple Surviving the Pandemic Together*, WASH. POST (Jan. 31, 2022), <https://www.washingtonpost.com/lifestyle/2022/01/31/throuple-polyamory-pandemic> [<https://perma.cc/5TNA-HE38>] ("Cody Coppola, 31, and Maggie Odell, 28, have been together for six years, and married for four. Janie Frank, 26, is Cody's girlfriend of more than than [sic] five years. She is also Maggie's."); Evan Sterrett, *A Throuple's Tricky Geometry*, N.Y. TIMES (Oct. 31, 2022), <https://www.nytimes.com/2022/10/28/style/modern-love-a-throuples-tricky-geometry.html> [<https://perma.cc/T4B4-Y7EU>] (describing the dynamics of adding a "Third" to a relationship); Molly Young, *He & He & He*, N.Y. MAG. (July 27, 2012), <https://nymag.com/news/features/sex/2012/benny-morecock-throuple> [<https://perma.cc/QHG3-CJCS>] ("The three men work together, raise dogs together, sleep together, miss one another, collect art together, travel together, bring each other glasses of water, and, in general, exemplify a modern, adult relationship.").

10. Heller, *supra* note 9 ("Throuple is a new word, younger than the century and sounding oddly like a board game, but it reflects an old tradition.").

11. See, e.g., Angela Chen, *The Rise of the Three-Parent Family*, ATLANTIC (Sept. 22, 2020), <https://www.theatlantic.com/family/archive/2020/09/how-build-three-parent-family-david-jay/616421> [<https://perma.cc/3BZ2-E52D>] ("Three-parent families are not a new phenomenon . . .").

12. *Id.* ("Many parents, particularly those who are single or have low incomes, have long cobbled together child care by bringing relatives and friends in as informal co-parents . . .").

13. *Id.* ("The idea that the default family unit consists of two straight parents and their children is outdated and doesn't reflect the U.S. today.").

14. *Id.* ("Divorce and remarriage are more common than they once were, as are blended families and stepfamilies—many of which feature a third parental figure.").

15. Adrienne D. Davis, *Regulating Polygamy: Intimacy, Default Rules, and Bargaining for Equality*, 110 COLUM. L. REV. 1955, 1965 (2010) ("[T]he vast

In short, the concept of three (or more) co-parents is nothing new. What may be new, however, is the possibility for throuples to formalize their relationships through the law.¹⁶ As throuples and other forms of polyamorous relationships gain visibility and acceptance, courts will have to confront the legal issues that will likely arise when a throuple forms and when it dissolves. How should courts determine child custody for three equally situated parents? How should courts divide assets among three people who have cohabitated in a marriage-like relationship? Diana Adams, the founder of the Chosen Family Law Center, describes how the lack of three-parent legal recognition could mean a third, non-legal parent would be denied child custody in the event that the throuple dissolves.¹⁷ Or, if the two legal parents die without wills, the third parent again might be unable to claim parental rights—particularly if a surviving relative disapproves of the throuple’s relationship.¹⁸

Part I of this Note describes some of the legal problems throuples are most likely to encounter, especially regarding child custody and division of assets. Part I focuses particularly on challenges the third person in an acute isosceles triangle throuple might face, given that this person has the fewest legal protections.¹⁹ Part II outlines the ideal solutions to these problems—particularly forming contracts with the help of an

majority of marital practitioners believe law should permit more than one spouse, albeit serially instead of simultaneously.”).

16. Chen, *supra* note 11 (“[F]ormalizing these families through law . . . is a relatively new possibility.”).

17. *Id.* (“According to Adams, in tri-parenting arrangements that aren’t legally recognized, a break between the two legal parents might mean that the third parent can be denied access or custody to the child, even if they’ve always been an important and beloved part of the child’s life.”).

18. *Id.* (“The nonlegal parent’s status is also vulnerable in the case of a tragedy—for example, if the two legal parents were to pass away without wills, and without formalizing the role of the third parent, a disapproving relative could take the child away and the third parent would have little legal recourse.”); *see also* V.B. v. J.E.B., 55 A.3d 1193, 1200, 1205 (Pa. Super. Ct. 2012) (overturning the lower court’s decision to limit parental rights to a biological father due to his “previous experiment with a polyamorous lifestyle,” finding instead that the allegation of “past practices of polyamory harm[ing] the children” lacked evidence).

19. This Note uses the term “acute isosceles triangle throuple” to describe an arrangement in which two out of the three people in the throuple are married to one another, while the remaining person is not married and thus has fewer legal rights.

attorney, but also gaining a constitutional right to polygamy and receiving employee benefits. Because solutions other than forming contracts may be unattainable, at least in the short term, Part III argues that courts should expand family law doctrines for unmarried cohabitants to include throuples as well.

Ultimately, the challenges throuples face are not too different from those of couples. The difference, though, is that there are fewer default assumptions governing throuples. Consequently, there is particular pressure on people in throuples to communicate clearly about each person's role in the relationship. Although couples might not face this same pressure as acutely, it likely behooves people in all relationship structures—whether dyadic (two-person) or polyamorous—to have frank conversations about assets, contributions, and children. The important conversations through which people in throuples establish their rights are equally useful for people in non-polyamorous relationships. In other words, a legal system that empathetically considers and respects people in polyamorous family structures is likely to benefit all.

I. THROUPLES WILL LIKELY FACE DIFFERENT CHALLENGES IF ALL THREE PEOPLE ARE UNMARRIED AS OPPOSED TO IF TWO MEMBERS OF THE THROUPLE ARE MARRIED TO EACH OTHER

Part I identifies some of the legal challenges throuples encounter. For throuples with children, these challenges vary depending on the throuple's structure: (1) if all three members are unmarried and nonbiological parents, or (2) if two members are married to each other or are the biological parents to a child. To distinguish these two structures, this Note uses the terms "equilateral triangle throuple" and "acute isosceles triangle throuple," respectively.

A. THE EQUILATERAL TRIANGLE THROUPLE

The equilateral triangle throuple is one in which all three people are on more or less equal legal footing. People in an equilateral triangle throuple are likely to struggle with the law's presumption of a two-parent relationship. Child custody decisions tend to assume that there are two people—the biological

parents—who have the highest claim to the child.²⁰ This assumption would cover throuples in which one or two members are the biological parent or parents. However, in a situation where none of the people in the throuple are biological parents—for instance, if they adopted a child together at the same time—a court would likely struggle to determine which one (or two) out of the three deserves primary custody rights. Although courts increasingly recognize three (or more) parents, it is not yet clear whether courts will also recognize that three parents can share equal status with one another as well as equal rights to a continuing relationship with the child.²¹

B. THE ACUTE ISOSCELES TRIANGLE THROUPLE

In an acute isosceles triangle throuple, one person has fewer legal protections relative to the other two by virtue of being unmarried or unrelated biologically to the child.²² Such a structure might arise when two people in the throuple are married to each other, but a third person has joined the relationship.²³ In the acute isosceles triangle throuple, unlike the equilateral triangle throuple, there is a two-person relationship: the married couple. Courts will likely prioritize this relationship and its corresponding legal rights over those of the third, unmarried person.²⁴ A problem that could arise in the acute isosceles triangle throuple is the throuple might erroneously believe the third person is on equal legal footing with the other two people. In fact, the third person is likely the most vulnerable—with limited legal claims to assets or to parenthood rights.

Take, for instance, Andrew, Bennie, and Charlie.²⁵ Andrew and Bennie are married and have been together for twenty

20. See *infra* Part III.A.

21. See generally Naomi Cahn & June Carbone, *Custody and Visitation in Families with Three (or More) Parents*, 56 FAM. CT. REV. 399, 399 (2018) (“This article maintains that the problem is not the recognition of three parents in principle Instead, the difficulty comes from insistence that all adults receiving the title ‘parent’ have not only equal status with each other but equal rights to a continuing relationship with a child.”).

22. As is true in an acute isosceles triangle, two of the three people share a closer relationship with one another than they do with the third person.

23. See, e.g., Heller, *supra* note 9 (describing a throuple involving a married couple and a third person who “has no legal rights within their union”).

24. See *infra* Part III.A.

25. Zoom Interview with Andrew (Feb. 19, 2023); Zoom Interview with Charlie (Feb. 20, 2023). I use pseudonyms for this family out of respect for their

years. Charlie joined their relationship about five years ago. Initially, the three men had a more casual relationship. Over time, though, they developed stronger emotional bonds, to the point that they now all live together as a family. They view themselves as coequal partners as well as coequal parents to Zach, their five-year-old son. Andrew and Bennie are Zach's legal parents, however, and Charlie's lack of parental status has posed some challenges. For instance, when Charlie was taking care of Zach while Andrew and Bennie were traveling, Charlie had to be given power of attorney so he could more easily care for Zach if Zach needed emergency medical attention. Additionally, Charlie does not have the authority to register Zach for extracurricular activities. According to Andrew, if he and Bennie were to die, Charlie would not have any default parental rights to Zach, and Andrew's sister (who is Zach's biological mother) would gain custody of Zach. Even though Charlie has known Zach since Zach was one year old, courts might not recognize that Charlie has any parental rights at all.²⁶ In addition to these questions about Charlie's parental status, Charlie says he cannot obtain health insurance through Andrew and Bennie. While Andrew and Bennie, as a married couple, can share an insurance plan, Charlie must take out his own, much more expensive policy.

This throuple experiences just some of the challenges facing people in an acute isosceles triangle relationship. In short, the law tends not to contemplate family structures that include more than two partners or more than two parents. This lack of inclusion leaves throuples—particularly the unmarried person in an acute isosceles triangle throuple—in a precarious legal position.

II. UNLESS POLYGAMY BECOMES LEGAL, THE BEST SOLUTION FOR THROUPLES IS TO ENGAGE LEGAL COUNSEL

Part I outlined the main legal problems throuples face. Part II presents and assesses the ideal solutions to these problems: legal counsel and shifting societal views.

privacy. Unless otherwise noted, the information in this paragraph comes from a combination of these two interviews.

26. See generally Cahn & Carbone, *supra* note 21 (explaining the difficulties in attaining equal legal rights for all three members of a throuple).

A. THE BEST SOLUTION IS FOR THROUPLES TO DEFINE THEIR
RELATIONSHIP CLEARLY AND FORMALLY WITH THE HELP OF
AN ATTORNEY

Throuples, like other polyamorous relationships, can take many forms.²⁷ As Evan Sterrett writes in a piece for *Modern Love*, “[t]he geometry of a throuple is complex. With a couple, there’s only a straight line connecting two dots. But introduce a third point, and so many more possibilities emerge — only one of which is an equilateral triangle.”²⁸ Of course, some throuples may take the “equilateral triangle” form Sterrett describes: the throuple might share equal financial and parenting duties.²⁹ But it may be incorrect to assume that the roles in a throuple are completely equal³⁰—perhaps the throuple contains a married couple, who take the primary role in terms of financial and parenting duties, and a third person who takes a more secondary role.³¹ An unequal structure is not inherently problematic—and it may be unavoidable, given that only two out of the three people in a throuple can legally marry. Problems do arise, though, when people do not communicate clearly about the nature of the relationship.³² A throuple might fall apart, either fully or in part. Consequently, throuples should ideally discuss and define how they view each person’s role in the relationship.³³

The ideal solution is for people in throuples to meet with an attorney, communicate clearly, and plan in advance of making any major decisions. Diana Adams (pronouns: they/them), a

27. See, e.g., Kaiponanea T. Matsumura, *Beyond Polygamy*, 107 IOWA L. REV. 1903, 1912 (2022) (“[I]t is important to recognize that not all polygamist or polyamorous relationships are alike.”).

28. Sterrett, *supra* note 9. *Modern Love* is a weekly *New York Times* column about “relationships, feelings, betrayals and revelations.” *Modern Love*, N.Y. TIMES, <https://www.nytimes.com/column/modern-love> [https://perma.cc/Q2Q7-BCWF].

29. Sterrett, *supra* note 9.

30. See, e.g., Heller, *supra* note 9 and accompanying text.

31. See Matsumura, *supra* note 27, at 1916 (describing various kinds of “asymmetric” polyamorous relationships where “members are linked to some, but not all, of the other members”).

32. See Chen, *supra* note 11 (describing some of the problems that can arise in throuples without formal legal agreements).

33. See *id.* (“Just as marriage provides benefits that cohabitation doesn’t, legal tri-parenting creates stability and rights that less formal arrangements lack.”).

leading attorney in the realm of polyamory and the law,³⁴ offers a variety of tools throuples can use to protect their rights. In the parenting context, they encourage people in multi-person parenting arrangements to clarify whether a third adult is, in fact, a *parent* as opposed to someone with more of an aunt- or uncle-like role; that is, a loving adult in the child's life, but not with the same legal status as a parent.³⁵ If the throuple determines that the third person is a parent, Adams recommends that the throuple consider third-parent adoption, which is available in some states.³⁶ Regardless of whether third-parent adoption is possible, Adams strongly encourages throuples to create co-parenting agreements with the assistance of an attorney.³⁷ It is not entirely clear whether these kinds of co-parenting agreements would be legally enforceable, though "courts may defer to the parties' agreement to include a third parent, even where state law does not explicitly recognize the possibility."³⁸ Still, although these agreements may or may not be enforceable in court, the drafting process allows throuples to have conversations that Adams has found are "incredibly useful at helping to prevent disputes and misunderstanding between parties."³⁹

To manage throuples' financial choices, Adams applies business association principles. For polyamorous clients who would get married if they legally could, Adams has used an LLC

34. Solomon, *supra* note 2 ("Diana Adams, a family lawyer in New York, has become the leading figure in the conversation surrounding the application of existing laws to polyamorous and other unorthodox arrangements."); *see also Meet Our Team: Diana Adams, Esq., Founder and Principal*, DIANA ADAMS L. & MEDIATION, PLLC, <https://dianaadamslaw.net/diana-adams%2C-principal> [<https://perma.cc/J5VB-C4Q5>].

35. Diana Adams, *What Polyamorous & Multi-Parent Families Should Do to Protect Their Rights*, LGBTQ+ BAR: PRIMA FACIE (Dec. 11, 2018), <https://lgbtqbar.org/bar-news/what-polyamorous-multi-parent-families-should-do-to-protect-their-rights> [<https://perma.cc/3JD6-A7SW>].

36. *Id.* (advising such a path, where possible, to "ensure the parenting rights of all three parents"); *see also* Chen, *supra* note 11 (explaining that California, Maine, Rhode Island, Vermont, and Washington State recognize three-parent adoption).

37. Adams, *supra* note 35 (suggesting that attorneys can help by facilitating vulnerable conversations between potential co-parents before drafting a legal agreement).

38. Cahn & Carbone, *supra* note 21, at 403.

39. Adams, *supra* note 35.

model⁴⁰ to allow these clients to share their finances in the way they wish: “they own properties in multiple places, have a common health-insurance plan and bank accounts, and pay taxes as an L.L.C.”⁴¹ Of course, as is true for co-parenting agreements, it is not yet clear whether courts will recognize this kind of LLC arrangement for throuples. As of the publishing of this Note, though, the LLC solution appears to be effective—a search of upcoming cases reveals none involving challenges to a polyamorous family’s LLC.⁴²

Other attorneys, such as Zachary Trinkle of Connally Law Offices in Kentucky, have taken a similar approach.⁴³ Trinkle describes helping Ruby, Jordan, and Elliott (three people in a throuple) form an LLC—essentially a family-owned business—to manage their finances.⁴⁴ The three are equal owners of the LLC, which they can use to manage family business matters and protect family assets.⁴⁵ Trinkle also helped this throuple draft a Polyamorous Relationship Agreement, which serves a purpose similar to that of a prenuptial agreement.⁴⁶ The Agreement provides marriage-like rights for the three people and is highly customizable.⁴⁷ For instance, Ruby and Jordan co-own a car, but Elliott does not drive.⁴⁸ Consequently, Ruby and Jordan decided that their car belongs to only the two of them but not to Elliott.⁴⁹ If Elliott ever left the throuple, the Polyamorous Relationship

40. An LLC (Limited Liability Company) is a type of business organization allowed by state statute. *Limited Liability Company (LLC)*, IRS, <https://www.irs.gov/businesses/small-businesses-self-employed/limited-liability-company-llc> [<https://perma.cc/JXR9-5APX>].

41. Solomon, *supra* note 2.

42. Search for “Polyamorous LLC,” WESTLAW, <http://www.westlaw.com> (choose “Advanced Search”; then search “all of these terms” field for “polyamorous LLC”).

43. Zachary Trinkle, *Legally Protecting Polyamorous Families in a Monogamous World*, CONNECTING RAINBOWS, <https://connectingrainbows.org/legally-protecting-polyamorous-families-in-a-monogamous-world> [<https://perma.cc/VW5Q-4NZG>].

44. *Id.*

45. *Id.* (“This gives the three of them essentially the same benefits that a married monogamous couple would have when they carry on their business as a single unit.”).

46. *Id.* (“[The Agreement] can grant rights previously reserved for monogamous couples to every member of a polyamorous relationship.”).

47. *Id.*

48. *Id.*

49. *Id.*

Agreement would provide helpful clarification that he does not have a claim to the car as an asset. If a family wanted to raise children, Trinkle states he could draft additional agreements to cover parental rights and responsibilities.⁵⁰ These kinds of innovative solutions can provide people in throuples with a sense of security that they otherwise could not access without marriage rights.

Trinkle's clients report that these legal interventions have given them greater assurance that they have the tools they need "to best navigate the legal world that simply wasn't built for [them]."⁵¹ For instance, one client was able to complete advance directives and name her two partners in roles that would otherwise have defaulted to her parents.⁵² She warns other similarly-situated people, "[d]on't just assume it will work out okay, because with a system not built to support poly and queer people, it likely won't without some intentional effort."⁵³

Adams and Trinkle are not the only people to apply business association principles to the context of polyamorous families. Professor Adrienne D. Davis has considered how existing commercial partnership rules can serve as a guide for regulating "plural marital associations" if and when polygamy becomes legal.⁵⁴ However, Professor Davis also anticipates some of the additional problems people in polygamous or polyamorous relationships might encounter: namely, what happens when one member leaves or is expelled.⁵⁵ Professor Davis focuses on polygamy, but many of her arguments could even extend to today's unmarried (or partially married, in the acute isosceles triangle scenario) throuples. For instance, she notes that spouses can designate assets as marital or separate property in pre- or post-nuptial

50. *Id.* ("Everything is possible and since it is just a contract and not a 'marriage' it has the full backing of the law for all three of them.").

51. *Id.*

52. *Id.* ("[T]he steps we are taking with Connally Law will provide further validation in the eyes of our families of origin and institutions. Being able to [legally define and protect relationships] as an unmarried person is powerful.").

53. *Id.* (quoting Ruby).

54. Davis, *supra* note 15, at 2004 ("Of course, marriage and commercial partnerships are different. . . . Still, commercial partnerships share some crucial characteristics with long-term intimate associations.").

55. *Id.* at 2012 ("In dyadic marriage, when one spouse leaves, the union is definitionally and unilaterally dissolved. This is not necessarily the case in plural marriage. In fact, it is at least as likely that the remaining spouses will want the marital association to continue.").

agreements.⁵⁶ There does not appear to be any reason why unmarried people in a throuple could not similarly designate their property in accordance with their preferences.

Although the business association approach shows remarkable ingenuity, it has several limitations. Perhaps the clearest limitation is that a business association is simply not the same as a marriage.⁵⁷ There may be a dignitary harm to throuples whose relationship is relegated to the business association solution—yet another reminder that their relationship is viewed by some as less legitimate. When asked about whether the LLC solution is appealing to his family, Charlie said that he, Andrew, and Bennie know it is an option, but he expressed some discomfort with the idea of acting as if their family is a business association.⁵⁸

Additionally, although some family law attorneys, like Adams and Trinkle, have publicized their use of business associations for polyamorous families, it is not yet clear how these arrangements will fare in courts. So far there have not been any cases testing whether a court will recognize a polyamorous family as an LLC.⁵⁹ This lack of reported judicial intervention could indicate that the LLC approach works, but it also could mean it is working only for the moment.

Finally, throuples may experience the same reluctance many others have when faced with a complicated legal situation. For instance, Andrew explained that part of the reason why he, Bennie, and Charlie have not sought legal counsel is simply due to the expense.⁶⁰ It was expensive enough when just he and Bennie had to hire a lawyer to assist with estate planning—it would be even more expensive and complicated for them to redraft these documents as a throuple.⁶¹ Furthermore, two-person couples have a traditional, formal legal device to bind them: marriage. Throuples do not have the same structure available to formalize their relationship. Without marriage, there is less of an

56. *Id.* at 2013 (answering, in part, the question of how to “define and distribute property in plural marital associations”).

57. *See id.* at 2045 (sympathizing with readers who “remain skeptical” that partnership principles “can have anything meaningful to say about the bargaining uncertainties and vulnerabilities generated in plural marriage”).

58. Zoom Interview with Charlie, *supra* note 25.

59. *See supra* note 42 and accompanying text.

60. Zoom Interview with Andrew, *supra* note 25.

61. *Id.*

impetus for throuples to formalize their relationships through other forms of contracting.

B. THE TIDIEST SOLUTION IS FOR THROUPLES TO GAIN THE RIGHT TO MARRIAGE, BUT THIS CHANGE IS UNLIKELY TO HAPPEN IN THE NEAR FUTURE

Ultimately, the simplest solution for throuples would be gaining the right to polygamy. A right to marriage would permit people in throuples to enjoy the same default assumptions given to married couples, even if the law would need to develop new systems to regulate polygamy.⁶² Although the Supreme Court is unlikely to strike down anti-polygamy laws in the near future, scholars have made constitutional arguments in favor of polygamy.⁶³ As nontraditional forms of marriage grow and find acceptance, the law may become less restrictive when it comes to plural marriage.⁶⁴

At the same time, not all throuples would necessarily leap at the opportunity to become married, even if plural marriage were legal. For Charlie, part of what is appealing about being in a throuple is that it is unlike marriage.⁶⁵ The solution for some throuples, at least, is not for the institution of marriage to expand to include them, but rather for society to recognize and respect throuples as a distinct relationship structure.

C. THIRD PARTIES, SUCH AS EMPLOYERS, MAY PLAY A ROLE IN MAKING THE LAW MORE INCLUSIVE OF THROUPLES

The legal strategies that same-sex couples employed before gaining the right to marriage illustrate some of the opportunities for third parties to provide greater security to people in throuples. In 2005, married heterosexual couples qualified for

62. Davis, *supra* note 15, at 1959 (arguing that legal regimes outside of family law, such as commercial partnership law, may offer conceptual models more capable of accommodating marital multiplicity).

63. See, e.g., Ronald C. Den Otter, *Three May Not Be a Crowd: The Case for a Constitutional Right to Plural Marriage*, 64 EMORY L.J. 1977, 2044 (2015) (finding constitutional support for polygamy on substantive due process and equal protection grounds).

64. *Id.* at 2043 (“Alternatives [sic] lifestyles are a more visible phenomenon than they used to be, and their increased visibility may induce more Americans to be less dogmatic about the morality and constitutionality of numerical restrictions.”).

65. Zoom Interview with Charlie, *supra* note 25.

around 1,500 workplace benefits, “of which 1,100 [we]re conferred under federal laws, such as those governing retirement plans, medical leave, and Social Security”⁶⁶ By contrast, same-sex couples were ineligible for any of the federally granted benefits; they could receive only about 400 benefits if they lived in states that recognized civil unions or domestic partnerships for same-sex couples.⁶⁷ To address this inequity, some employers took it upon themselves to extend benefits to their employees in same-sex relationships.⁶⁸ Although these inclusive policies benefitted employees while also helping employers stay competitive and attract talent, employers faced the risk of increased expenses, such as losing favorable tax treatment if they extended benefits to unmarried partners.⁶⁹

In the throuple context, employers similarly could create benefits packages that would extend benefits to a third partner. In this way, all three people in a throuple could share the same health insurance plan. Of course, there may be concerns that an employee could abuse the system, pretending to be in a throuple to gain benefits for a third person. But employers are not powerless: they can develop tests and procedures to ensure that the third person involved is truly part of the relationship. As was true in 2005, attitudes toward seemingly unconventional relationships evolve,⁷⁰ and employers recognize that it behooves them to attract and retain talented employees.⁷¹ Over time, employers may realize that accommodating polyamorous employees may be good for business.

66. Martha Neil, *Same-Sex Benefit Bind*, A.B.A. J., Sept. 2005, at 22, 22 (quoting Karen Doering, National Center for Lesbian Rights).

67. *Id.* (describing one lawyer’s characterization of this reduced access to benefits as “marriage light”).

68. *Id.* at 24 (“[N]early half of Fortune 500 companies are offering health care benefits to employees’ domestic partners, meaning the question of equalizing benefits has turned from one of ‘whether’ to one of ‘how.’”).

69. *Id.* (describing the limitations of federal tax incentives for spousal benefits in the context of same-sex partnerships).

70. *Id.* (“I think, a decade from now, workplaces will look very, very different than they do today. I think we’ll have domestic partnership of some sort, some sort of nonmarital relationship recognition.” (quoting Karen Doering, National Center for Lesbian Rights)).

71. *Id.* (“[Employee benefits policies for same-sex couples] improve employee morale and contribute to a company’s ability to stay competitive and attract talent.”).

Social attitudes toward throuples and other polyamorous families may become more accepting in the future. In the meantime, it is perhaps wisest for people in throuples to seek legal counsel. Though potentially expensive and difficult, working with an attorney will enable throuples to formalize their relationship and protect themselves against unpredictable applications of the law.

III. IN THE ABSENCE OF A THROUPLE'S FORMAL AGREEMENTS, COURTS SHOULD EXTEND EXISTING MULTI-PARENT AND UNJUST ENRICHMENT DOCTRINES TO ACCOMMODATE THROUPLES

Part II discusses ideal solutions, which depend on clear communication and access to a family law attorney—preferably one with experience working with polyamorous clients. Part III focuses on what happens when throuples fail to formalize their relationship in advance of disputes. Part III also discusses how courts have, and should, decide cases involving child custody, financial contributions, and other property in the throuple context.

A. THROUPLES WILL LIKELY STRUGGLE TO ESTABLISH RIGHTS TO CHILD CUSTODY

1. An Unmarried Member of a Throuple May Struggle to Establish Themselves as a Functional Parent

Because courts are more accustomed to recognizing only two parents,⁷² an initial question is whether courts would be likely to recognize a third parent at all—particularly if the individual attempting to gain parental rights is the third person in an acute isosceles triangle throuple.

Lanfear v. Ruggerio, one of the few existing cases about the dissolution of a throuple, provides a glimpse of how a court might determine a third person's parental rights in the polyamory context, as well as the challenges a nonbiological parent in a throuple may face to establish parenthood.⁷³ In *Lanfear*, the

72. See generally Cahn & Carbone, *supra* note 21, at 400 (“The law typically promotes the recognition of two parents for each child . . .”).

73. *Lanfear*, 254 A.3d at 168. The *Lanfear* opinion does not use the term “throuple,” but the individuals involved appear to meet Professor Edward Stein’s definition of a “relationship among three people in which all three are

plaintiff “appeal[ed] the family division’s decision declining to adjudicate her a de facto parent” of a child from a partner with whom she had been in a polyamorous relationship.⁷⁴ The Supreme Court of Vermont affirmed that she “failed to demonstrate by clear and convincing evidence four of the seven factors” needed for the court to recognize her as a de facto parent under the relevant statute, 15C V.S.A. § 501(b).⁷⁵ According to these factors, the person seeking de facto parentage needs to show they:

“undertook full and permanent responsibilities of a parent of the child without expectation of financial compensation”; held out the child as their own; “established a bonded and dependent relationship with the child that is parental in nature”; and that “continuing the relationship between the person and the child is in the best interests of the child.”⁷⁶

Part of the problem for the *Lanfear* plaintiff was the “controlling nature” of her relationship with the child’s biological mother, which supported the court’s conclusion that continuing her relationship with the child “was not in [the child’s] best interests.”⁷⁷

However, in a situation with less extreme animosity between two members of the throuple, it is less clear how a court would weigh the other de facto parent factors. The *Lanfear* court’s opinion suggests that the unmarried member of an acute isosceles triangle throuple might particularly struggle to show that they “undertook full and permanent responsibilities of a parent of the child without expectation of financial compensation” and “held out the child” as their own.⁷⁸ The court concluded that the plaintiff’s role in the family was “more akin to that of a nanny than a parent” because she took care of the child “on a set schedule during the day when mother was at work,” despite the plaintiff’s argument that “the unique division of labor in her polyamorous relationship with mother and father required her to stop caring for the child once mother was home from work so that

romantically involved with each other”—though it is less certain whether this relationship qualifies as “marriage-like.” Stein, *supra* note 2, at 1396 n.2. Still, the appellee’s brief refers to the three as a “former polyamorous triad.” Appellee’s Brief at *5, *Lanfear*, 254 A.3d 168 (No. 2019-408).

74. *Lanfear*, 254 A.3d at 171.

75. *Id.*

76. *Id.* (quoting VT. STAT. ANN. tit. 15C, § 501(b) (2018)).

77. *Id.* at 178.

78. *Id.* at 173 (quoting VT. STAT. ANN. tit. 15C, § 501(b) (2018)).

she could fulfill nonchildcare-related tasks necessary for the household.”⁷⁹

The court also concluded that the plaintiff did not demonstrate she held out the child as her own, in part because the throuple “agreed to keep the nature of their polyamorous relationship a secret.”⁸⁰ However, the plaintiff argued that this determination “failed to consider the social complexities and nuances of a polyamorous relationship.”⁸¹ Although the child’s mother acknowledged in two Facebook posts that plaintiff was a parent, the court did not assign much weight to “two statements over the course of four years.”⁸² It is unclear how other courts might weigh the secrecy some throuples might feel compelled to exercise.⁸³ It is also not clear how a person in a throuple who is not a biological parent can successfully distinguish themselves from a nanny. Finally, although *Lanfear* sheds some light on the acute isosceles triangle throuple, it does not answer what could happen in the “equilateral triangle” throuple where all three parents have been together since the child’s birth.⁸⁴

The *Lanfear* approach illuminates a few areas of concern for throuples. For one, *Lanfear* suggests that parental rights could turn on something as technical as how the child refers to the people in the throuple.⁸⁵ The *Lanfear* court noted that the child referred to the plaintiff “in public and private by her first name.”⁸⁶ Although the plaintiff argued that “it is not unusual for a child to refer to a nonbiological mother by her first name,”⁸⁷ the court appeared to interpret this fact as weighing against the notion that the plaintiff had “held [the child] out as her own.”⁸⁸

In Andrew, Bennie, and Charlie’s family, Zach refers to Andrew as “Daddy,” Bennie as “Papi,” and Charlie as “Charlie”—

79. *Id.* at 175.

80. *Id.* at 176.

81. *Id.*

82. *Id.*

83. See Matsumura, *supra* note 27, at 1925 (“Many people in plural relationships conceal those relationships from co-workers, friends, and family.”).

84. See, e.g., DeSantis & Eskind, *supra* note 3 (describing an equilateral triangle throuple).

85. *Lanfear*, 254 A.3d at 173.

86. *Id.*

87. *Id.* at 176.

88. *Id.* at 174.

or, alternatively, as “my Charlie.”⁸⁹ In fact, Charlie wonders whether Zach thinks of the name “Charlie” as a title as much as he thinks of it as a name.⁹⁰ For instance, when introducing people to his three parents, Zach will say, “That’s my Daddy, that’s my Papi, and that’s my Charlie.”⁹¹ Both Andrew and Charlie (Bennie was not interviewed) emphatically state that Zach calling Charlie by his first name in no way suggests that any of them views Charlie as less of a parent.⁹² In fact, it was Zach’s own decision to call Charlie by his first name, and the three parents want to respect Zach’s choice. To them, it would feel disingenuous and forced to insist that Zach call Charlie anything else.⁹³

More broadly, it seems absurd to expect people in throuples to demand that any children they raise together call them by traditional parental titles, such as “Daddy” or “Mommy.” While these kinds of names might work for some families, for others first names might feel more natural, even if the throuple sees all three adults as equal parents. As courts consider more cases involving throuples, they should hesitate to demand that the children of throuples call each of their three parents by a traditional parental title. As Charlie put it, “Zach already has a Daddy and a Papi—he doesn’t need a ‘Father.’ He needs a ‘Charlie.’”⁹⁴

Additionally, people in throuples might have good reason to be secretive given the social stigma associated with polyamory.⁹⁵ In Andrew, Bennie, and Charlie’s case, each person is “out” to a different degree: Andrew has told virtually everyone in his life that he is in a throuple, and Bennie has recently come out to coworkers about being in a throuple, but Charlie has not told his

89. Zoom Interview with Andrew, *supra* note 25; Zoom Interview with Charlie, *supra* note 25. Unless otherwise noted, the information in this paragraph comes from a combination of these two interviews.

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.*

94. Zoom Interview with Charlie, *supra* note 25.

95. See Matsumura, *supra* note 27, at 1923 (“Studies show that the public holds negative perceptions about consensual nonmonogamy. Polyamorous people are thought to be immoral and untrustworthy. They are perceived, wrongly, to practice unsafe sex and to be less satisfied in their relationships. They are also negatively associated with several arbitrary traits: They are perceived as less caring, less satisfied with life, less kind, less successful in their careers, and even less likely to recycle regularly.” (footnotes omitted)).

immediate family anything about being in a throuple.⁹⁶ In an acute isosceles triangle throuple, the unmarried person may be particularly unlikely to be totally open about their relationship status, given their limited legal rights.⁹⁷ Also, it is currently uncertain whether being in a throuple is a protected status under employment discrimination laws.⁹⁸ In short, there are rational reasons why someone might choose to be secretive about being in a throuple. Given social stigma and other personal choices,⁹⁹ courts should not necessarily expect all people in throuples to be completely open about their relationship status.¹⁰⁰ Rather than focusing only on the public-facing dimensions of the family relationship, courts should consider whether a person acted as a parent *within* the family structure.

2. Even with a Co-parenting Agreement, Nonbiological Parents May Struggle to Establish Themselves as Third Parents

For Andrew, Bennie, and Charlie, one of the ideal solutions would be multi-parent adoption.¹⁰¹ However, *Adoption of E.B. v. Department of Social Services Adoptions Services Bureau* illustrates some of the challenges a third person in an acute isosceles triangle throuple might have in establishing themselves as a parent.¹⁰² The appellant and her two partners, J.O. and M.B., had “been in a committed, polyamorous relationship for more than 15 years” when they decided to have a child together.¹⁰³ J.O. and

96. Zoom Interview with Andrew, *supra* note 25; Zoom Interview with Charlie, *supra* note 25.

97. *See generally* Stein, *supra* note 2, at 1396–97 (“[T]here is no jurisdiction in the United States where a person who is married to another person may legally marry a third person.”).

98. Matsumura, *supra* note 27, at 1925 (“Antidiscrimination laws do not clearly prohibit discrimination against people in plural relationships, so people can be fired from their jobs or denied housing for being in a plural relationship.”).

99. *See id.* at 1924 (finding that some people in polyamorous relationships often chose not to disclose their relationship status in therapy due to “fear of rejection or uncomfortable conversations”).

100. *See generally* Lanfear v. Ruggiero, 254 A.3d 168, 171 (Vt. 2020) (finding the secret nature of the polyamorous relationship detrimental to the plaintiff’s case for de facto parentage).

101. Zoom Interview with Andrew, *supra* note 25; Zoom Interview with Charlie, *supra* note 25.

102. 291 Cal. Rptr. 3d 409 (Cal. Ct. App. 2022).

103. *Id.* at 411.

M.B. were the biological parents.¹⁰⁴ Before the child, E.B., was born, the throuple executed a co-parenting agreement to “formaliz[e] their intention to be the child’s equal co-parents.”¹⁰⁵ All three parents were present for E.B.’s birth, and medical staff treated the appellant as an equal parent.¹⁰⁶ Unfortunately, when E.B. was born, he suffered complications.¹⁰⁷ Even with the co-parenting agreement, the appellant was initially not permitted to enter the neonatal intensive care unit, though the staff eventually allowed her to join J.O. and M.B. and to discuss E.B.’s care with physicians.¹⁰⁸ After E.B. came home, the appellant took a maternity leave to care for E.B. full-time for six months, including bottle-feeding him, taking him to doctors’ appointments, and taking him to swim lessons and library story time events.¹⁰⁹ E.B. would call appellant “Momma” and treated her as he did his two biological parents.¹¹⁰

When the throuple executed an “Independent Adoption Placement Agreement” to establish legal parenthood for each parent, the trial court denied appellant’s petition to adopt E.B.¹¹¹ The trial court reasoned that appellant “had not fulfilled E.B.’s physical and psychological needs for a substantial period of time” given that E.B. was only one year old.¹¹² The court also found that the appellant had not shown any danger that the child would be removed from the appellant “because the biological parents supported [her] ongoing relationship with the child.”¹¹³ Finally, the court said the appellant could address her concerns through other means, such as J.O. and M.B. “drafting a will reflecting the intent for the appellant to become E.B.’s guardian” in the event that something should happen to his biological

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.* at 411–12 (noting that E.B. was admitted to the neonatal intensive care unit (NICU) for five days following birth to be treated for complications).

108. *Id.* (“M.B. and J.O. were permitted to enter the NICU to be with E.B. without question, appellant was not.”).

109. *Id.* at 412.

110. *Id.* (“Like he does with J.O. and M.B., E.B. seeks out appellant for comfort, he complains to her when he is hungry, and giggles at her efforts to amuse him.”).

111. *Id.* at 412–13.

112. *Id.* at 413.

113. *Id.*

parents.¹¹⁴ In sum, the court stated that not enough time had passed in E.B.'s life to establish that this would be "one of the 'rare cases' where 'recognizing only two parents would be detrimental to the child.'"¹¹⁵

On appeal, however, the California Court of Appeal reversed, finding that the trial court failed to evaluate the appellant's adoption under the appropriate provision: namely, the independent adoption provisions of the California Family Code.¹¹⁶ Under the correct provisions, a child's existing parents consent to the adoption, agree either to terminate or retain their parental rights, and then place their child directly with the adoptive parent.¹¹⁷ The court held that, under the independent adoption provisions, it was possible for a child to have more than two legal parents.¹¹⁸ This case illustrates, though, the significant barriers a throuple might face, even in a state that purportedly recognizes third-parent adoption.¹¹⁹ In a state that does not provide this recognition, it is possible a trial court could similarly deny a third person from becoming a legal parent, even with the clear consent of the two biological parents. Although the California Court of Appeal eventually corrected the lower court's decision in applying the incorrect adoption provision, the lower court's error illustrates how the third-party adoption process is not straightforward.

3. If a Court Does Recognize Three Parents, It Must Also Determine Whether the Parents Hold Equal Roles

The law already recognizes three- (or more) parent families, such as those with two biological parents and one stepparent.¹²⁰

114. *Id.*

115. *Id.* (quoting *In re Donovan L.*, 198 Cal. Rptr. 3d 550, 563 (2016)).

116. *Id.* at 414 ("The trial court erred in relying on [California Family Code] section 7612, subdivision (c) to deny appellant's petition, finding she failed to meet her burden under that section. Section 7612, subdivision (c) does not apply to adoptions like the one at issue here, where an existing parent (or parents) consents to an adoption, but maintains their parental rights. These adoptions, are governed by section 8617.").

117. *Id.* at 415–16 (explaining the provisions of Cal. Fam. Code § 8617).

118. *Id.* (holding existing parents' parental rights could be retained while they conferred parental rights on another).

119. *See also* Chen, *supra* note 11 (recognizing that California is one of five states that allows third-parent adoption).

120. *See* June Carbone & Naomi Cahn, *Parents, Babies, and More Parents*, 92 CHI.-KENT L. REV. 9, 9 (2017) ("The possibility of three parents has arrived.

One of the questions that arises in such situations, though, is whether “all parents, whatever their numbers, acquire equal parental standing . . . to seek custody and visitation.”¹²¹ Professors June Carbone and Naomi Cahn argue that the principle of equal parent status should not necessarily extend to the recognition of more than two people as legal parents.¹²² They argue instead:

[W]here three parents are recognized, custodial decision should be determined, as they are for any child, in accordance with the best interest of the child. . . . [I]n determining the child’s interests, the courts should apply a primary caretaker presumption; that is, a presumption that the child’s interests lie with the strength of the child’s relationship to the primary parent and that the other parents’ custodial rights should be structured to avoid interference with the strength of that bond.¹²³

The question, then, is whether this multi-parent approach that considers the child’s best interests should apply to throuples. The answer likely depends again on whether each person in the throuple had a truly equal role. Factors that could indicate unequal roles might be a biological relationship to the child(ren) and contributions to parenting (financial or otherwise). Less equal throuple structures (such as the acute isosceles triangle) more easily fit existing approaches to determining custody. If, for instance, only one person in a throuple is the child’s biological parent, that parent would presumptively have primary custody, while the other two people would perhaps have visitation rights.

The equilateral triangle throuple, on the other hand, poses more complications. If, for instance, the throuple existed before the child’s birth, all three adults took on an equal parenting role, and no adult had a biological relationship with the child, how would a court determine which parent is the “primary caretaker”? The presumption might be that each adult has an equal (i.e., one-third) right to custody. A completely equal three-person

A growing chorus of law review articles favors such recognition, and several states authorize such a result either explicitly or through doctrines such as de facto parentage or third party visitation statutes.” (footnotes omitted)).

121. *Id.* at 10.

122. *Id.* at 10–11 (arguing that extending equal parental status to more than two parents “fail[s] to address the possibility that a person may be a legal parent without [equal] rights and responsibilities” and such an extension “poses a major obstacle to full recognition of the realities of the parenting arrangements of many families”).

123. *Id.* at 12.

custody situation—one in which the three parents live in three separate households—then raises practical concerns.

Professors Carbone and Cahn emphasize that when “one parent typically has consistently provided care and stability for the child . . . it is that parent who should be given more rights.”¹²⁴ In the throuple context, it is possible there is one parent out of the three who has most consistently taken the parenting role. Nonetheless, Carbone and Cahn also acknowledge that

a presumption of unequal roles, like other custody presumptions, should be rebuttable, leaving open the possibility of treating all three parents on equal terms where the three agree, or where the three have been involved on an equal basis since the child’s birth and an allocation of rights and responsibilities is workable.¹²⁵

A remaining question, though, is what should be the presumption for throuples: that there is one primary parent, that there are two primary parents, or that there are three equal parents? Even with an additional parent, perhaps the same rebuttable presumption should apply: that there is likely one out of the three parents who has provided the most consistent care and should therefore be given more rights.

Given that Professors Carbone and Cahn have outlined the challenge of administering rights and responsibilities between more than two adults,¹²⁶ perhaps it is unwise for people in throuples—even in an equilateral triangle throuple—to assume each person would have an equal right to child custody in the event of a dissolution. For ease of administrability, a court may still default to identifying just one or two people with primary custody—especially if they find that a three-person custody split would be unworkable. However, courts should be open to the possibility that some throuples actually are able to allocate rights and responsibilities in a workable system.¹²⁷ For instance, it is possible that two out of the three people in a throuple may stay

124. *Id.* at 52.

125. *Id.* at 52–53; *see also* Chen, *supra* note 11 (describing a throuple that decided that the third, nonbiological parent would be “as close to an equivalent third parent as possible”).

126. Cahn & Carbone, *supra* note 21 (arguing that the challenge arises from the three parents having “equal rights to a continuing relationship with a child”).

127. *See* Carbone & Cahn, *supra* note 120, at 12 (arguing for an approach for child custody in throuples that “leaves open the possibility of treating all three parents on equal terms where the three agree . . . [on] allocation of rights and responsibilities”).

together when the third person decides to leave. In this kind of situation, there would be only two households—just like a two-person split.¹²⁸ This kind of arrangement is unlikely to be any harder to administer than a two-person divorce.

B. COURTS SHOULD RECOGNIZE THE MONETARY AND
NONMONETARY CONTRIBUTIONS THAT INDIVIDUALS IN
THROUPLES MAKE TO THE RELATIONSHIP

1. If a Throuple Dissolves, Courts Should Extend Unjust
Enrichment Principles to Award Contributions Individuals
Made to the Relationship

Courts may apply equitable remedies, such as unjust enrichment, to distribute property upon a throuple's dissolution.¹²⁹ Although case law on this issue does not yet exist, courts may extend doctrines for unmarried cohabitants to the throuple context.

For instance, if a throuple dissolved, a court might award contributions on a theory of unjust enrichment. In *Cates v. Swain*, Mona Cates and Elizabeth Swain cohabited from 2000 to 2006.¹³⁰ When their relationship fell apart, Swain filed suit to recover her monetary contributions toward the purchase and improvement of their joint residences.¹³¹ Although the Mississippi Supreme Court refused to recognize a constructive trust, the court granted relief on the basis of unjust enrichment, even though the two were unmarried cohabitants.¹³² The court

128. See Jessica Feinberg, *Multi-Parent Custody*, 108 MINN. L. REV. 1489, 1536 (2024) (“There are various factual contexts in which the question of whether a multi-parent custody dispute should nonetheless be treated as a two-entity dispute may arise.”).

129. See, e.g., *Cates v. Swain*, 215 So. 3d 492, 494 (Miss. 2013) (en banc) (“Unjust enrichment ‘applies to situations where there is no legal contract and the person sought to be charged is in possession of money or property which in good conscience and justice he should not retain but should deliver to another.’” (quoting *Miss. Dep’t of Env’t Quality v. Pac. Chlorine, Inc.*, 100 So. 3d 432, 442 (Miss. 2012))).

130. *Id.* at 493.

131. *Id.*

132. *Id.* at 494 (affirming the lower court’s rejection of a constructive trust and its finding of Cates’s unjust enrichment by Swain’s contributions).

distinguished cases in which an unmarried cohabitant sought an equitable distribution of assets.¹³³

Applied to a throuple scenario, even if a throuple had not set up an LLC or similar legal arrangement, it is possible a court would consider an unjust enrichment theory to reimburse one of the member's monetary contributions. Still, a person in a throuple is unlikely to receive an equitable distribution of assets simply by virtue of being an unmarried cohabitant.

2. Courts Should Also Recognize Nonmonetary Services People in Throuples Contribute to the Relationship

Cates dealt with unjust enrichment as applied to monetary contributions,¹³⁴ but it is less clear how a court would handle nonmonetary contributions in a throuple context. In other words, how would a court decide a case in which one member of the throuple did not contribute money, but rather *services* (such as homemaking)? Another two-person case involving unmarried cohabitants, *Connell v. Francisco*, might also indicate how a court would deal with this issue.¹³⁵ In *Connell*, the two parties had a meretricious relationship; that is, “a stable, marital-like relationship where both parties cohabit with knowledge that a lawful marriage between them does not exist.”¹³⁶ During their relationship, Shannon Connell and Richard Francisco operated a bed and breakfast together.¹³⁷ Connell “prepared breakfast, cleaned rooms, took reservations, laundered linens, paid bills, and maintained and repaired the Inn,” receiving no compensation for these services from 1986 to 1988.¹³⁸ The court held that “[t]he property that would have been characterized as community property had the couple been married [was] before the trial court for a just and equitable distribution.”¹³⁹ Even though Connell and Francisco were unmarried, the court was willing to treat

133. *Id.* at 495 (distinguishing two other cases where the plaintiffs argued for equitable division of assets based on their relationship).

134. *Id.* at 496–97 (noting the monetary contributions at issue were funds Swaine contributed to her and Cates’s previously shared residence that Cates retained after their split).

135. 898 P.2d 831 (Wash. 1995).

136. *Id.* at 834.

137. *Id.* at 833.

138. *Id.*

139. *Id.* at 837.

the property they acquired together as communal and therefore subject to an equitable division between the two parties.¹⁴⁰

In the throuple context, a court might similarly consider what might qualify as “community property”; that is, “property acquired during marriage.”¹⁴¹ Even if none or only two of the people in the throuple are married, a court should assess the nature of the relationship between the three individuals and their property accumulations and then determine a just and equitable distribution.¹⁴² *Connell* involved a plaintiff who contributed services to a joint business venture, but a court should consider other services, such as childcare or homemaking, to constitute community property as well. Although courts have been slow to recognize these forms of nonmonetary contributions, courts in Kansas have recognized homemaking and childcare as contributions worthy of distribution of property.¹⁴³ This growing recognition has applied to unmarried *couples*, but it seems possible courts could extend the same principles to throuples. If, for instance, one person in a throuple gave up their career to act as a homemaker or as a stay-at-home parent, a court should recognize that person’s nonmonetary contributions just as they would recognize community property.

As is true in two-person relationships, people in throuples make monetary and nonmonetary contributions to the relationship, regardless of their marital status. Just as courts increasingly recognize these contributions in two-person relationships, courts should similarly apply this logic to throuples.

CONCLUSION

In recent years, the law has expanded to accommodate more diverse family structures, such as same-sex couples and families with three or more parents. The next step is for the law to consider how it could also accommodate throuples and other forms

140. *Id.* at 836–37 (applying state statute on separate property of a spouse to *Connell* and Francisco’s non-spousal meretricious relationship).

141. *Id.* at 836.

142. *See id.* at 835 (discussing steps to determine equitable distribution, including first “evaluat[ing] the interest each party has in the property acquired during the relationship”).

143. *See* Albertina Antognini, *Nonmarital Coverture*, 99 B.U. L. REV. 2139, 2208–09 (2019) (discussing the Kansas Court of Appeals’ acknowledgement that homemaking and childcare create an ownership interest in the property equal to that of the person who holds the property title).

of polyamorous relationships. Throuples are already choosing to live together and raise children, regardless of polygamy's legality. Courts should not continue simply to apply two-person principles to families with three equal partners.

Ultimately, people form throuples out of an abundance of love. These relationships afford the people within them an additional dimension of companionship. As Charlie stated, a throuple includes one three-person relationship and three two-person relationships, each of which has meaning.¹⁴⁴ For throuples raising children, an additional parent provides yet another source of the care and attention that children need to thrive. These values—of the importance of multiple sources of love—permeate all familial relationships. It is time for the law to protect these values for polyamorous families as well.

144. See Zoom Interview with Charlie, *supra* note 25.