

Minimizing Marriage: Marriage, Morality, and the Law; by Elizabeth Brake.

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Jan Deckers

School of Medical Education

Newcastle University

NE2 4HH

Newcastle-upon-Tyne

UK

tel. 0044 1912083340

email: jan.deckers@ncl.ac.uk

Minimizing Marriage. Marriage, Morality, and the Law.

E. Brake, 2012

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Brake argues that, in spite of the historical dominance of polygyny, many (Western) states legitimise and promote a different kind of relationship: marriage, conceived as an amorous, dyadic, monogamous relationship between two people of different sex. One aspect she questions about this tradition is the focus on other-sex bonds, and the alleged unification that takes place when people of different sex engage in sex. Brake argues that 'procreative sex does not unite bodies but a sperm and an egg' and that love does not depend on biological, but on psychological states (p. 74). In this light, Brake welcomes that some jurisdictions have opened up marriage to include same-sex partnerships, but she deplores that the legal and moral significance of marriage has remained largely unchanged, which she labels as the 'amatonormative ideal' (p. 81). This concept is modelled on the heteronormative ideal that normalises heterosexuality and gender differences: 'In Hollywood romantic comedies, for example, the single heterosexual man is stereotyped as an unkempt and irresponsible man-child, waiting for marriage to make him a responsible adult, whereas the unmarried woman is stereotyped as lonely, desperately seeking love, and filling her empty life with cats' (p. 93). The effects of the amatonormative ideal, however, extend far beyond Hollywood. Brake illustrates that US citizens receive preferential treatment in housing if they are married, and that workplace discrimination causes married men to be paid more than their unmarried male peers (p. 94). More generally, amatonormativity, and the associated 'wedding-industrial complex' (p. 101), undermines the development of caring relationships with those outside nuclear families, contributing to a lack of public engagement and social disconnectedness, and results in discrimination of people who (may wish but are pressurised not to) develop alternative relationships, including non-romantic friendships as well as polyamorous relationships.

I am at one with Brake in adopting the view that this discrimination is wrong, but at odds with her contention that everyone would agree to this by adopting public reason, leaving behind their comprehensive views of what marriage ought to be about. Brake stands firmly in the Rawlsian tradition that drives a wedge between comprehensive worldviews and public reason, ignoring that what counts as 'public reason' is itself the outcome of a comprehensive, liberal worldview, rather than the outcome of 'neutral' decisions that could be—in John Rawls's words in *Political Liberalism* (New York: University of Columbia Press, 1993, p. 193)—'endorsed by citizens generally'. Such a neutral position does not exist. Both Brake and I may hope that anyone who is willing to wear Rawls's veil of ignorance, thus not knowing whether or not they are male or what kinds of relationships they may prefer, would conclude that Western ideas of marriage are unjust, but this judgement may not satisfy those who adopt a different comprehensive worldview, for example those who adopt the stance that morality does not require one to wear such a veil, or those who disagree on what is reasonable even if they agree to wearing it.

This does not take away that I believe that Brake is right that there is much that is wrong about marriage apart from the effects the institution has upon others. Brake analyses wedding vows (e.g. 'I promise to love, honor, and cherish'), arguing that they cannot actually be promises at all because of a problem that Jane Austen summarised as follows: 'We can command our actions, but not our affections.' (p. 32; cited in John Wilson, 'Can One Promise to Love Another?' *Philosophy*, 64, 250 (1989): 557-563, p. 557). Brake comments that she is not arguing that one cannot love another forever, but that it is 'generally impossible to control whether one does', at least partly because 'if love responds to qualities in the other, then it depends on the (uncontrollable) other' (pp. 34-35). Brake then argues that marriage should rather be seen as a commitment, 'the attempt to bind oneself against the hazards of an unforeseeable future' (p. 43), weakening its obligations compared with the promissory account. The sheer facts that people and their values change provide good

reasons not to commit blindly: 'excepting the commitment to morality, commitments should not be unconditional' (p. 52).

Whereas strong commitments might create trust, Brake points out rightly that they may also facilitate emotional laziness: if exit options are limited, less work is required to develop one's relationship. Limiting exit options through the provision of legal and economic incentives, as well as social pressure, also creates real risks of increased vulnerability and unhappiness. In spite of the fact that exit options are limited by the persistence of an ideology that subordinates women, reflected in gendered jobs and pay inequalities, what Susan Maushart called 'wifework' in her *Wifework: What Marriage Really Means for Women* (New York: Bloomsbury, 2001), and the fact that women carry out the bulk of unpaid work, divorces are common, suggesting the need to exercise prudence: 'It is as important that citizens evaluate their choices as that they persist in the ones they've made.' (p. 63) Many people marry without knowing how this may affect them throughout their lives, and the promise to remain married 'until death do us part' ignores the possibility that it may not be prudent to stay with someone who either turns out to be or becomes violent or exploitative. Brake recognises that many people may wish to stay together for the sake of the children, but argues rightly that, absent financial considerations, children may not necessarily be better off in two-parent families.

Rather than discard marriage altogether, Brake proposes 'minimal marriage' as an alternative, where individuals are granted the legal right to make marital relationships with more than one person, provided that they are caring relationships (pp. 156-188). Rather than argue that the state should legitimise particular caring relationships, Brake adopts the view that the state ought to support all caring relationships, where she regards care as a primary good. The justification for some caring relationships to be designated as minimal marriages pertains to the value in allowing individuals to determine which relevant others should be granted the specific state-sanctioned entitlements that

can be justified to support some caring relationships. Where this complies with the demands of justice, minimal marriage might thus, for example, facilitate immigration, care-taking leave, and the transfer of financial benefits, for example pension funds. In the transition towards a society with no more than minimal marriages, however, greater financial and other material benefits may need to be made available to those who adopt them than would be the case in an ideal society. This is to ensure that those who are currently locked into unhappy traditional marriages through fear of increasing insecurity upon leaving are supported adequately, as well as to avoid the sudden removal of entitlements that people have come to rely on and to compensate women who have been harmed by the promotion of dependent conventional marriages.

I share most of Brake's views, but have some remaining, minor qualms, for example where she argues that 'arguments from nature' are irrelevant (p. 139). This could be countered, for example by pointing out that there may well be an upper limit to the number of partners one ought to be able to marry: as human beings are finite in space and time, a fact that cannot be altered by convention, we cannot care for everyone, lest to dilute the meaning of marriage. Brake is right, though, that any claim that is made about what is natural is tainted by socialisation. This applies to secular as well as religious forms of socialisation, questioning Brake's (perhaps unintended) restriction of her discussion of the dangers of 'closed communities' to the latter (p. 200). I thoroughly recommend this book to anyone who is married, and particularly to those who are not.

JAN DECKERS

Newcastle University