Bara Zraik

Minimal Marriage

The main argument that I am to present in this paper was made by Elizabeth Brake in her book, *Minimizing Marriage,* and it entails that if a “Politically Liberal” state was to recognize the importance of Marriage Law, then that state should endorse her proposed idea of “Minimal Marriage,” rather than the currently popular “Amatonormative” institutions. Such institutions include and ARE currently limited to; monogamous heterosexual marriages, or any current variation of those aimed at the inclusivity of homosexuals. Minimal Marriage is minimal in that a marriage wouldn't necessarily entail the entire bundle of exchanged rights associated with our current understanding of the practice in question. Such a marriage could entail everything; if ‘everything’ was actually specified in contract. But that it shouldn’t be automatically assumed to do so as is the case with modern marriage. Minimizing Marriage therefore reduces the entire practice, or at least as far as any governing body is concerned, to a mere contract. And such a contract could be held in a variety of configurations, with only the parties coming to agreement upon the bundles of rights to be exchanged within the Marriage.

Minimal Marriage would recognize all existing marriages as such, as well as vastly broaden the inclusivity of Marriage as an institution. But in order to shift our method of thinking about such an institution, Minimal Marriage first entails that we rid our systems of any preconceived notions of marriage that we think a governing body that grants such contracts must endorse. We must then build a new system that recognizes any types of existing adult relationships (caring or not) that any consenting adults may have, rather than endorsing, or even promoting the “ideal way” that someone might think adult relationships ought to be. I should point out that Elizabeth Brake’s argument stressed the importance of the institutions of marriage in promoting “caring” adult relationships; “I argue that supporting caring relationships is an important matter of justice and that a rationale exists for this within constraints of public reason.”-158 This point I will return to however; in that I don’t think adult relationships even need to be labeled as “caring,” for Minimal Marriage to remain as, or even become more viable a replacement to the current Amatonormative marital institutions.

“Unlike current marriage, minimal marriage does not require that individuals exchange marital rights reciprocally and in complete bundles: It allows their disaggregation to support the numerous relationships, or adult care networks, that people may have.”-161 The reciprocal and complete exchange of rights within current marriage presents major restrictions. Such restrictions within “current marriage” would give way to a system where spouses would choose what rights to exchange, with whichever spouses they choose to have, and this exchange could be in whatever direction (does not have to be reciprocal) that they choose. As well as lifting the aforementioned restrictions, the new system would broaden the inclusivity and diversity within Marriage to include both homosexual and heterosexual monogamous marriages, as well as all other types of non-monogamous marriages, and all other relationships that wouldn’t necessarily currently be recognized as “marriages,” such as roommates, strictly financial partnerships, or even strictly caring ones for that matter, so long as they exist between two or more consenting adults. Parties to such marriages would in fact be able to specify in contract any such rights that they choose to exchange or share, and with however many people as their choice requires. I would add that any restrictions aimed at limiting a citizen’s choices within marriage must be justifiable in contexts outside the practice itself. As in restrictions on the number of spouses that a single person can bring into the country, and grant a citizenship to; that such limits must first be justified in contexts outside of marriage, as a limit on the number of newcomers to a country goes far beyond just a limit on the number of persons that any one citizen can minimally marry, even if such a marriage was only for the purpose of bringing that foreign spouse, or spouses into the country. Another such limits is debated in spheres of hospital and prison visitation; the same arguments used by a governing body to limit the number of spouses that can visit an individual, must also justify this restriction only to spouses. Why can’t we just have a system that allowed a certain number of people to visit, regardless of their relationship to the visited? I understand that this would be a redundant question if all relationships that consenting adults held were valued equally, but here I am merely reflecting upon the fact that we live in a society that favors a certain type of relationship over all others. And in its favoring, not only does society precast a mold of a certain type of “marriage,” but it also expects adults of all different backgrounds to engage only in that type of relationship. But again, such inherent problems wouldn’t necessarily accompany monogamous-heterosexual marriages alone, but rather are a result of what we have come to accept as “traditional marriage.”

Traditional Marriage is only traditional in that it has traditionally been regarded as the ‘superior’ form of adult relationships. But things having only turned out a certain way, in terms of norms and acceptability with the history of marriage which resulted in the current marital institutions, and I can only say that such results are due to influencing factors outside the practice itself. Government’s lack of recognition, didn’t prevent homosexuals engaging in relationships anyways, and I can imagine this same argument would also apply in the case of Polygamists. “Insofar as caring relationships depend on social arrangements for their existence and continuation, their social bases—the socially distributable conditions for such relationships, or the legal frameworks designating and supporting them—are subject to claim of justice. The status of caring relationships as a primary good, combined with the diversity of such relationships, provides a publically justifiable rationale for a capacious, flexible legal framework supporting them. Minimal marriage is this framework.”-176 Since it is human nature, or a “primary good,” for adults to engage in consenting, binding relationships. And assuming that adults would engage in such relationships with or without the existence of a governing body that recognized them (only recognize by friends & family), and ensured their bindingness. It just so happens that such governing bodies that granted marriage licenses throughout most of Human History favored one type of human relationships over all others, and thus we must engage in this moral deliberation. Minimal Marriage would at the very least destroy the existing mold of “A Marriage,” that any existent partnerships are expected to, and even must fit into, in order to be granted legal Marital recognition. The proposed idea would also reduce the governing bodies that recognized adult relationships to just that, rather than having them promote a specific variety of adult relationships. We can also assume that all consenting adult relationships are “caring,” in that consenting adults care to be a part of them, free of coercion. But delegating recognition only to “caring” relationships, is delegating recognition only to one type of relationship. And such a delegation would render our deliberation meaningless; in that it would undermine our search for a Marital system that is meant to support, and recognize all consenting adult relationships.

Political Liberalism entails that any restrictions placed on citizens by the state must be justifiable, within public reason, to benefit all citizens of the state. Our current restrictions on marital freedoms, the scope of the Marriage that we can choose to engage in, and the number of persons one can legally claim as a spouse are not justifiable, or not within public reason at least, to benefit all citizens of the state. A Politically Liberal state is thus left with no better system to recognize and document adult human relationships than Minimal Marriage. This is mainly due to it’s inclusivity to the multitude of acceptable forms of Marriage that could take place between two or more consenting adults. The Politically Liberal state’s objective would simply be to recognize and document such relationships as, “political liberalism requires that one can provide public reasons which one can reasonably expect all reasonable comprehensive doctrines to accept.”-152 No matter the gender, the sexual orientation, or the number of parties within the marriage, Minimal Marriage ensures that the state can at least recognize and is able to document all consenting adult relationships, should those adults wish for their relationships to be legally recognized. As well as providing legal recognition, and burdens to exit to relationships that currently don’t enjoy such benefits, such a system must bring about previously unknown benefits to all marriages due to its need to cater to all the different varieties of such relationships, rather than having catered only to one.

Minimal Marriage is also the simplest of its alternatives. Primarily it doesn’t require governments at all levels to come up with a new form of the institution every time its popular understanding is challenged, as does the current system. It also doesn’t require the legal dissolution of the entire institution, and with it all the benefits, and the protections that a recognizing legal body provides to marriages, as would full Marriage Privatization. We can also take Minimal Marriage as a partial Marriage Privatization, while maintaining, or even expanding legal marital protections. In fact, I think Minimal Marriage would do a better job at protecting Marriage as an institution, than would any other system of Marital Recognition, even the current. These protections would automatically apply to all marriages, rather than being stretched out to include less common forms of marriage, one a time. It would also leave no acceptable reason for any legal body not to recognize any of a countless number of configurations possible within adult human relationships.

“I argue that a liberal state can set no principled restrictions on the sex or number of spouses and the nature and purpose of their relationships, except that they be caring relationships.”-158 But I would count restricting the nature of adult relationships to “caring relationships” as no principled restriction, as not only is not caring pretty natural, but it could sometimes be purposive for the relationship too. This purposiveness could accompany a signal for a change of contract, or maybe even a change of feelings, as those too can, and often would change. And my previous assumption that all consenting adult relationships are caring because consenting adults cared to be in them, still holds for care is by virtue the only reason a consenting adult would, free of coercion, choose to legally self identify as having certain relationships.

Minimal Marriage is the best system to ensure that Marriages conform to an ever changing Human Nature. It would also protect human beings the most, should they go through any unfortunate events such as separation, or death of a spouse. It is a list of exchanged rights, in contract form, and either could be changed or annulled at any time, so long as all parties to that specific contract are on par with what is going on. Thus I think doing away with “Divorce” as an institution, but that is a different and unrelated topic altogether. But so is the case with such a widespread anomaly as marriage. Especially when the entire history of the enterprise only served one way consenting adult human relationships could be humanely held, only due to the fact that it has been held acceptable that only one form of human relationships prosper, and be given deliberate priority over all others.

But adult human relationships can and often do form outside the popular norm. It remains the job of whatever recognizing bodies that recognize such contracts to grant this same recognition to those relationships, even if they could only account for less than half the population, before such bodies can claim moral justice, let alone superiority, in their recognition at least. “The rationale for minimal marital entitlements is not, as in current marriage law, that the designee is the only source of emotional and material support for the other, but that she is party to a caring relationship that deserves protection.”-182 And thus all consenting adult relationships are caring, and they all deserve protecting. I have taken issue thus far with Brake’s insistence on the moral worth of consenting adult relationships’ coming from their “caring” character. But I have assumed that all Consenting adult relationships are caring as no consenting adult would enter a marriage if they didn’t care to do so. Caring, mainly for what we think is best for us, is only natural. Within choosing to marry, we choose what we think is best for us. Marriage therefore is exactly that, an act of caring.

It would follow then that in a society where Minimal Marriage was the norm. And the parties to marriages themselves chose their rights to be exchanges, and the type of relationship to be recognized by the governing body that granted such recognition. That in such a society we would expect to see more people holding multiple marriages at any time. We could also reasonably expect a growth in the various industries associated with marriage. But till then, Minimal Marriage will remain, or at least in theory, the most inclusive, most comprehensive, and most importantly the simplest of all its alternatives.