

**Teaching “Against Marriage,” or, “But, Professor, marriage isn’t a contract!”**

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It is one of the ironies of my professional calling that I spend my days drumming the conception of marriage as a romantic relationship out of my students’ heads, and my nights at home in one of the most harmonious marriages imaginable. By day, I teach classic philosophical texts containing arguments that marriage is a contract to which the state is an essential third party. I go home and think about the state’s part in my marriage very little, if at all, preoccupied with conversation and sharing dinner, relaxed in the comforts that privilege provides in spades.

Certainly, when my students ask, I do not deny that one dimension of marriage may be the hoped-for romantic relationship that most of my students idealize. So how did I come to a point in my teaching wherein the two texts I use to discuss marriage are by Immanuel Kant, who asserts that sex degrades humanity and is only permissible (though still a bit degrading!) within a marriage contract, and Claudia Card, a radical lesbian feminist philosopher, who argues against entering marriage at all, and insists it is never required to legitimize one’s behavior?<sup>1</sup> I didn’t used to use these two pieces so exclusively, and in my earlier teaching days, attended more to texts which explored ethics within interpersonal and intimate dyadic relationships.

Yet I have come to the conclusion that students don’t need to dwell any more than they already do on the intimate and romantic side of marriage, an aspect of which popular cultural depictions have already provided them abundant images. Even their direct, lived experiences with alternative possibilities, including their own family members’ happy and unhappy heterosexual unions, inside or outside of marriage, divorces, nonheterosexual unions, or the single or multiple parenting arrangements under which many of them were raised, do not usually diminish the view among most of my optimistic 18- to 21-year old students that their own personal destinies include “the fairy tale.” As I explain in more detail below, this turns out to be a deeply entrenched conception of a lifelong romantic relationship which is astoundingly isolated from any appreciation of the social or political context in which it would have to occur.<sup>2</sup>

The surpassing resistance I often meet to the idea of marriage as a contract has moved me to be all the more interested in teaching it, however. Students’ very distaste for the contractual reality is fascinating to me. I gather from class discussions and student papers that their distaste reveals an attachment to a conception of marriage which is understandably personal, tied to images of oneself and one’s longing for affection and intimacy, and often imagined as an escape from their previous or current social arrangements, which may have been unhappy, lacking affection, lonely, abusive, or economically distressed. The escapism of this image of marriage is borne out by the students’ connection of their own tropes to examples drawn from date movies and reality television. I take this to be all the more reason to redouble my pedagogical and moral commitments to bring students around to a view of marriage as socially and politically forceful.

In what follows, I argue for encouraging greater awareness of students' interrelatedness and social surround, and I advocate diminishing the vision of marriage as an isolated and perfectly free choice between two individuals in love. To ignore the extent to which marriage is, among other things, a social contract, is ethically, personally, and politically obtuse. I see students who engage in such ignorance as undertaking personal risk, lacking full understanding of the particulars of the commitment, as politically inarticulate, undermining appreciation for why nonheterosexuals would want a share of the privileges of marriage, and as morally well-meaning but trading on status for an unequal share of social benefits. If nothing else, though, I find students at such an individualistic and self-creating point in their lives to be under-appreciative of what their public avowals mean to others, and marriage, in one sense, is indeed public.

Before I advance my pedagogical arguments, however, I will briefly sketch the philosophical arguments which have become such useful teaching tools for me, and against which my students dig in their heels, beginning with Immanuel Kant's.

#### Part One: Great Minds Think Alike

In teaching my students about the social and political valences of marriage, I choose to use essays by Immanuel Kant and Claudia Card because they are so different, but in one respect (and in this context, only one), Kant and Card are exactly alike. They both assert their conviction that the sociopolitical dimension of marriage is essential to understanding its full meaning and its value or disvalue.

##### *Kant in brief*

For Kant, marriage is an inviolable social contract, and not to be understood merely as long-term cohabitation within an intimate relationship "without a preceding contract."<sup>3</sup> On this understanding, people who live as though they are married in every sense but in "name" are not married at all. Kant grants that the contract alone is also not enough if done faithlessly between two with no intention of living it out, that is, marriage is more than marriage "in name only," but this is consistent with holding that the contract is socially and morally weighty. He means here simply that the contractual vow of marriage must be uttered with some meaningful intention, just as with any promise or contract.

Why does the contract matter so, to Kant? He gives several reasons, almost all of which are predicated upon the equal moral value of individuals, and the Categorical Imperative, which in one formulation, says that we must never use a human being as a mere means to our own ends, because each person is an end-in-himself, with his own goals, ends and projects.<sup>4</sup> We may use someone as a means with their consent, but even in these cases, Kant argues that one must have some sort of recourse if one is to have full moral rights against bad treatment. When rights are being denied, neglected or infringed, one must have "ground, in the circumstances, to complain of a lesion of his right," that is, standing to lay a public claim against another.<sup>5</sup> The parallel also holds; one must be "legally held to the fulfillment of their promise" when they would otherwise fail in their promises to an equal full adult; "the relation of the married persons to each other is a relation of equality as regards the mutual possession of their persons, as well as of their goods."<sup>6</sup>

Readers familiar with the sexism that Kant displays in other works may be pleased, or puzzled, to find such strong assertions of equality between men and women in Kant's conception of marriage. I grant that it is rare for Kant to assert such equality, and yet assert it he does; whatever his personal and cultural perceptions of men's and women's differences in talent and ability, their human

worth is equal. This is never clearer than when he laments, in a line which always sends my students into vociferous objection, “Sexual love makes of the loved person an Object of appetite; as soon as that appetite has been stilled, the person is cast aside as one casts away a lemon that has been sucked dry.”<sup>7</sup> Whether or not this is always an inevitable outcome of sexual behavior, the fact remains that Kant was concerned with the well-being of men *and* women when they are reduced to sex objects.

Note that Kant apparently held that sex always succeeds in reducing a whole person to a mere part, a sex object:

The acquisition of a part of the human organism being, on account of its unity, at the same time the acquisition of the whole person, it follows that the surrender and acceptance of, or by, one sex in relation to the other, is not only permissible under the condition of marriage, but is further only really possible under that condition.<sup>8</sup>

In other words, you cannot possibly use someone sexually without using their whole body; bodies are not really divisible, despite the way sexual appetites can lend us to talk about a person’s parts like so many cuts of beef. So Kant gives us two choices: Either (1) yield (or acquire) one’s whole person with no promises at all and no standing to assert one’s equal worth when one’s rights are infringed, or (2) marry, that is, contract publicly with each other to yield (or acquire) each other for sexual purposes in the full presence of equal moral rights, and establish standing to assert those rights in a public and juridically enforceable way. Without equality in the contract, “it must be admitted by all that any one who might enter into it could not be legally held to the fulfillment of their promise if they wished to resile from it.”<sup>9</sup> According to Kant, in satisfying one’s sexual desires on another, one treats the other with less than the full respect he or she deserves.

*Card in brief*

Students who think Kant is almost entirely wrong would, one might think, then find much more friendly fare in the more modern sensibilities expressed by Claudia Card. In her widely reprinted essay, “Against Marriage,” Card agrees with my 21<sup>st</sup> century, respect-filled and sexually active students that marriage is not required for the legitimization or the moral worth of their sexual behavior. She further agrees that marriage guarantees neither love nor respect, and that enduring, intimate relationships are valuable in the absence of marriage.<sup>10</sup>

Students cheer when they begin reading Card; her account could not be more different from Kant’s. They are less enthused, however, when they reach the point at which Card suggests that, far from offering valuable legal protection to those who are violated, marriage actually may offer legal protection to spouses who are violators, that the state may take an interest in making marriage difficult to leave, and that divorce is costly and difficult. They often become completely disenchanted by the time Card criticizes “the legal rights of access that married partners have to each other’s persons, property, and lives,” which “make it all but impossible for a spouse to defend herself (or himself), or to be protected against torture, rape, battery, stalking, mayhem, or murder by the other spouse.”

Spousal murder accounts for a substantial number of murders each year. This factor is made worse by the presence of the second problem mentioned above (difficulties of divorce that lead many to remain married when they should not), which provides motives to violence within marriages. Legal marriage thus enlists state support for conditions conducive to murder and mayhem.<sup>11</sup>

Card is certainly not outlining a fairy tale. There is nothing reassuring in the picture of the legal institution of marriage as she describes it. Finally, she completely loses the more liberal students who advocate gay marriage, and who expect to find an ally in her but instead encounter her opposition: “I believe that lesbians or gays should be reluctant to put our activist energy into attaining legal equity with heterosexuals in marriage—not because the existing discrimination against us is in any way justifiable but because this institution is so deeply flawed that it seems to me unworthy of emulation and reproduction.”<sup>12</sup>

Given the above, she argues against entering into marriages even if a right to marriage is available. As my students argue vociferously against Kant, marriage is not necessary, right? “Let us not be eager to have the state regulate our unions,” she urges, and to the objection that marriage often comes with external goods one might need, such as affordable health care, insurance, hospital visitation, social security benefits, and inheritance rights, she replies that these are reasons to fight for such goods to be available to all, and not to argue for entrance into marriage.<sup>13</sup> On the contrary, for the state to hold such goods out only to those who enter into the legal institution of marriage rather clearly reveals that for many, marriage is coerced:

If marrying became an option that would legitimate behavior otherwise illegitimate and make available to us social securities that will no doubt become even more important to us as we age, [my partner and I] and many others like us might be pushed into marriage. Marrying under such conditions is not a totally free choice.<sup>14</sup>

Throughout, Card reiterates that she does not argue against loving, durable and intimate relationships. Rather, she argues against fighting for inclusion in a particular legal institution. As she says, in terms which my students reject as firmly as they ever rejected Kant, “I understand marriage as a relationship to which the state is an essential third party.”<sup>15</sup> Their rejection, and my pedagogical strategies for undermining their rejection, inform the second half of this paper.

#### Part Two: Beyond the Fairy Tale

The first time that I ever taught about marriage in an introductory ethics course, I thought that in using Kant and Card, I was presenting my students the dutiful “two sides” minimally required of a professor, using wildly different arguments – Kant for, and Card against, marriage. When the same students expressed strong rejections of both, they often did so by advancing their own conceptions of marriage as more attractive alternatives. Understandably, their evidence relied upon their limited experiences, that is, the material provided by their experiences with dating, with sex and cohabitation, and their idealized examples of love and marriage from popular culture, frequently citing examples from movies and from television. No stranger to reality television myself, I marveled aloud at the number of women, in particular, who mentioned “the fairy tale” on such shows. My students didn’t need to be told its contents, which they outlined for me with ease. It includes:

- Unsurpassed romantic love
- Exceptional sexual satisfaction
- Perfect, complete, and best friendship
- Social, economic and political security (usually assumed or implied rather than overtly explicated)
- At its best, in all respects *easy*, a finished end-point

Notably, almost all students specifically mention a proposal as either an easy end-point or a necessary step. And in not one year I’ve taught this do students

include getting a license in the fairy tale. (Many do, however, including getting a ring or a house.)

When we discuss the idealized conception of marriage that the fairy tale informs, students recognize the depiction as idealized but argue for the value of those elements which, in their eyes, disprove Kant's and Card's accounts of marriage. Although students' accounts certainly include variations, there are a few elements on which they tend to agree: (1) Marriage is a romantic relationship, meaningful and loving. (2) The act of getting legally married makes no difference to two people in a truly committed long-term relationship. (3) Most of all, students express strong distaste for the idea that the state is an essential third party.

I find that when I teach these texts, my first job is to point out, regarding (1), that neither Kant nor Card ever deny the possibility that a marriage could include a meaningful or loving relationship. Kant describes an ideal and equal marriage as one in which "two persons become a unity of will. Whatever good or ill, joy or sorrow befalls either of them, the other will share in it. Thus sexuality leads to a union of human beings."<sup>16</sup> Card takes pains to clarify that she is not arguing against durable intimate relationships, homes or families, saying, "When the family is credited with being a bulwark against a hostile world, ...the bulwark that is meant often consists of a variety of deeply committed personal (as opposed to legal) relationships, and the stability of caring that they represent."<sup>17</sup> The arrangement of marriage, then, is compatible with intimacy and commitment, for both authors, though not required. This is a good juncture at which I introduce the idea of a *necessary* condition to students who have never encountered the concept before; my aim is to bring students around to an appreciation of complex concepts as having many dimensions, but at this point, I enjoy urging them to consider if they are ready to commit to saying that loving affection is the *sine qua non* of marriage. Their endorsement of love as necessary is reduced when I take them through a thought experiment. I ask them to imagine that they meet someone who really attracts them, physically and emotionally, and noting the presence of one or more rings on their fingers, that they ask, "Oh, are you married?" The person says no, but several months of intimacy later, reveals that they have a spouse for whom they have no warm feelings, "so I didn't lie to you, we're not really married." Students generally agree that the absence of love is insufficient to render their desired one unmarried, and quickly move on to (2), the argument that after extended togetherness, acts of marrying make no difference to two people in a truly committed long-term relationship.

When I ask my students to explain what (2) means, they tend to summarize it as follows: "Nothing changes—you don't feel any different." Here, I have excellent personal experience to draw upon; my own marriage occurred after over four years of happy cohabitation, and my memories of "before" and "after" remain fresh. Indeed, changes occurred, but not in the way my students imagined. Four years was enough time to establish our relationship firmly. It's not as though we woke up feeling differently *about each other*. However, as it turns out, we are not alone in the world. What changed were small and large interactions with everyone who was in a position to recognize our relationship. As I describe these to my students, I tend to keep a piece of chalk held to the blackboard in my classroom, and drop it an inch or two with every example that follows.

Some of our experiences were small. "Before," invitations were highly likely to be issued to only one of us, and not always with the supplementary acknowledgement that the invitee might wish to bring a guest. My family members didn't always expect my partner at holidays and dinners, and were known to forget the partner's name, rough job description, and occasionally, existence. Expectations from coworkers and supervisors generally included the

assumption of easy availability for last-minute and late-night duties. Car repair, home improvement, and most any service provider could often seem dissatisfied with relaying information for one to a “boyfriend” or “girlfriend.” The experiences could be larger, too (and here, I start making longer drops with my chalk on the descending line on the board): Finances could be taken care of only on individual bases, even though our fortunes were thoroughly tied up in each other’s past and future expenditures. Joint applications for anything related to our university’s student benefits required robust signatures, proofs of identification, and often meetings to which we must both be present in person. Health care and insurance were available to one, not to both—though as young adults with uneventful lives, this seemed less consequential than it was. If my chalk isn’t already at the baseboard by this time, I add the example of what my family’s reaction would have been if I had become pregnant before marriage: “Oh, *no*, Kathryn.” Then I draw that line straight down to the bottom of the board.

“After,” social benefits flooded to us, and it wasn’t the largest ones that had the greatest impact. We quietly added each other to health insurance and financial benefits, and then forgot about them, living the illness-free and nearly penniless lives of most young graduate students. The day-to-day differences were in the innumerable acts of recognition by every source imaginable, and in marveling at them to my students, I always manage to convey my surprise in a way which surprises and interests them too. I now start lifting the hand holding the chalk up the board, adding another segment with each successive example. I tell them about the transformation among distant family members who now expected each partner at every event, remembering names, jobs, and even minor life circumstances with ease. I tell of the invitations issued to both of us, by friends seemingly suddenly realizing that we wanted each other’s company to an extent unnoticed for years prior. Coworkers and supervisors asked after new spouses, and seemed to presume my infinite availability less. Notably, every financial and trade service provider suddenly recognized our reliability and bonds of trust, granting each of us extraordinary amounts of information regarding the other’s queries, to an extent which was bizarre. We had not fully realized that “husband” and “wife” were secret passwords to the world of recognition of our shared daily lives. If my chalk line is not as high as I can reach at this point, I add what my family’s reaction would be if I had been able, at any point after marriage, to announce a pregnancy: “Hooray!” And I let the chalk shoot straight up the board.

When I elaborate on the extraordinary and daily impact of social recognition of our unitedness, my students laugh and exclaim at the giant  $\sqrt{\quad}$ -shaped line on the chalk board, but they don’t dispute my experience. Many of them have already had the limited experience of a romantic and intimate relationship which their parents do not recognize as permanent or likely to last, and most find it easy to imagine having commitments and relationships which go unacknowledged. As they become more engaged with the vision of marriage that I am outlining, they cease to concentrate on the clear image, previously dear to them, of two individuals making a free and unencumbered choice that affects only themselves. After my presentation, they take a new perspective, one which sees marriage as occurring in a thick relational context. And once I do this much to unseat assumption (2), I then find it a short step to discussing (3), their idea that the state is not an essential third party to marriage.

Of course, there are students who still hold out at this point, suggesting that if a couple managed to accomplish robust social recognition without the state-issued license, this would seem to satisfy most conceptions of marriage in everything but name. As a class, we usually tend to come to consensus at this point that very long-standing relationships sometimes get such recognition whether or not anyone actually “knows” if two are “really” married. And of

course, the presentation of oneself as committed to and united with another should, ideally, get exactly the sort of rich social recognition I described as having been showered upon me and my husband within days of our exchange of vows.

Yet such social recognition is contingent upon the beneficence of others; to extend Kant's earlier point, a member of such a noncontractual relationship has no standing to lay claims to membership in an equal union if the social surround chooses to deny them. Some forms of social recognition are more basic to life than others. At this point in the classwide discussion of marriage, the demand for recognition of commitments, intertwined fortunes and personal needs is understandable to most everyone in the room, and it is not news to my students that the state is in a position to endow its citizens with benefits it would otherwise deny. In a country like the U.S., in which health is seen as a commodity available to employed and wealthy people, and access to affordable medical care is not something to which anyone has a right, my husband and I are annually offered the opportunity to add each other to our health insurance. This is an astounding benefit for an academic to acquire in a context in which I must be willing to live anywhere to work in my field, and my partner must be willing to quit his benefit-granting job if he is to join me. As long as we operate in a system in which access to "just" health care is predicated upon one's employment and marital status, the state is clearly a necessary third party to one's marriage; it is the arbiter of what rights marriage endows upon participants, and who counts as a participant, who is allowed "into the club."<sup>18</sup>

It is my final job in this unit of the semester to impress upon my students the difference between a descriptive and a prescriptive claim. Card, for example, argues that the state should not be in the position to legitimize only some unions, as married and therefore deserving of certain basic social benefits. Citizens should not live in unjust situations in which marriage is not a perfectly free choice. These are prescriptive claims ("should" claims), and it is up to my students whether or not to agree with the prescriptions either author advances. Yet the descriptive claims about marriage are those on which I attempt to focus my students' attention, and absent full appreciation of the following descriptive claims, I do not believe my students are best positioned to work out what prescriptive claims they ought to hold.

Descriptively, it is the case, whether it ought to be or not, that marriage is a multi-dimensional concept, and a legal institution, with massive cultural import. It is a formal recognition of the union of two people which endows a pair with rights and obligations that they are held to by each other, by the state, and by other people in their lives, and grants each standing to lay claim to rights, including rights against the state, corporations, and each other, which unmarried individuals do not have. Because of the intrinsic involvement of the state it is also costly to exit. And the public nature of the commitment, and the cultural understandings of the unit of a married couple, result in unquantifiably high varieties of social and personal recognition which does make one feel different—more trustworthy with information about the other, more interested in the well-being of another than previously assumed, and more likely to prioritize the role of another in one's life in making decisions, than previously expected, again, whether such recognition ought to be tied to marriage or not. One is seen as no longer isolated, as if one ever was.

Teaching an ethics class about marriage is pedagogically challenging. Although I think students ought to care a great deal about how they conceptualize marriage and how those denied access to marriage live, telling students what they ought to care about is rarely successful. Further, pointing out unequal shares of social benefits to a room full of people who stand to gain from them can yield defensiveness. And the attraction of the entrenched fairy-tale has personal importance to young adults, who hope for futures filled with happiness,

affection and companionship with which reminders of divorce, state regulation and social injustices conflict. American students, in particular, operate in an exceedingly individualistic framework in which marriage is often described as an entirely private enterprise. This is what makes teaching the topic so exciting. It is my hope that by changing their perspective on marriage, I change my students' perceptions of their own selves as somehow isolated, and their choices as unaffected by social and legal institutions. With a more accurate apprehension of the multiple dimensions of marriage, every student is more likely to make informed and just decisions about their personal lives and the justice of their legal and social institutions.

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#### Endnotes

<sup>1</sup> My two primary sources for use in the classroom are Immanuel Kant's "Duties Toward the Body with Respect to Sexual Impulse," in *Lectures on Ethics*, trans. Louis Infield (London: Methuen and Co., 1963, 162-171), and Claudia Card's "Against Marriage," in *Same Sex*, ed. by John Corvino (Lanham, Md. Rowman & Littlefield, 1997, 317-330). In what follows, I more often explicate Kant's observations in the "Duties" by relying on his clearer, if drier, explanations of his view in "The Rights of the Family as a Domestic Society," from *The Science of Right* (Raleigh, N.C. Alex Catalogue, [www.netlibrary.com](http://www.netlibrary.com)), Chapter II., The Mode of Acquiring Anything External.

<sup>2</sup> Non-heterosexual students are less likely to hold the fairy-tale view, but are not immune; just as privilege is not a guarantee of ignorance, so, too, minority status is not a guarantee of keen social awareness.

<sup>3</sup> Immanuel Kant, "Rights of the Family," from *The Science of Right*, 40.

<sup>4</sup> Kant, *Groundwork of the Metaphysics of Morals*, in Kant, *Practical Philosophy*, trans. Mary Gregor (Cambridge, Cambridge University Press, 1996), 73, 80.

<sup>5</sup> Kant, "Rights of the Family," from *Science of Right*, 39.

<sup>6</sup> Ibid.

<sup>7</sup> Kant, "Duties toward the Body," from *Lectures on Ethics*, 163.

<sup>8</sup> Kant, "Rights of the Family," from *Science of Right*, 39.

<sup>9</sup> Ibid.

<sup>10</sup> Card, "Against Marriage," especially 317-320.

<sup>11</sup> Card, "Against Marriage," 323.

<sup>12</sup> Card, "Against Marriage," 318.

<sup>13</sup> Card, "Against Marriage," 321.

<sup>14</sup> Card, "Against Marriage," 322.

<sup>15</sup> Card, "Against Marriage," 320.

<sup>16</sup> Kant, "Duties toward the Body," from *Lectures on Ethics*, 167.

<sup>17</sup> Card, "Against Marriage," 320.

<sup>18</sup> Jennifer Crossen, quoted by Merlene Davis, in "What if 52 percent voted not to let blacks drink at the fountain?" (Lexington Herald-Leader, Nov. 23, 2008). Available online at [www.kentucky.com/181/story/602737.html](http://www.kentucky.com/181/story/602737.html). Accessed online 1/10/2009.