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Untying the Knot: Marriage, the State, and the Case for their Divorce.

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This lucid, thoughtful, and cogently argued book makes a significant contribution to the literature on marriage. It will advance debates over marriage law beyond the question of which form of marriage the state should recognize to the deeper question of why the state should recognize marriage at all. Specialists in social and political philosophy, feminist philosophy, and the history of liberal thought will profit from it, but it is also accessible to the student or general reader.

Both sides in the same-sex marriage debate assume that the state should be involved in marriage; they dispute the form of marriage required by justice and the common good. But the assumption that the state should define and regulate marriage and support it with economic benefits and legal privileges needs defense. A proper justification would explain why a particular form of marriage should be state-supported and why such support does not violate liberal principles of non-interference in ethical or religious matters. Metz argues that there can be no such justification: a liberal state should not be in the marriage business. While marriage law serves instrumental public welfare goals such as supporting caregiving, such purposes are insufficient to justify state involvement in marriage. State-supported marriage conflicts with liberal commitments such as freedom of religion and equal treatment of citizens with conflicting ethical views, not only because some forms of marriage go unrecognized, or because unmarried people do not benefit, but because marriage has an irreducible ethical dimension. Just as an established church interferes with citizens' liberty and equality, so does established marriage.

Marriage does not merely provide instrumental goods; it is a 'formal, comprehensive social institution' which aims to transform the self-understanding of individuals who enter it and connect them to the community (107). As Hegel, who influences Metz's account, wrote, marriage must be performed by an ethical authority. However, a liberal state should not assume the role of an ethical authority, because it should remain neutral between competing ethical and religious views. It may aim at promoting publically justifiable goals such as public health, but not contested ethical or religious views. Metz borrows an example from Locke: the state may not require baptism, though it may, for public health purposes, require the washing of children (118). In chapters examining the history of liberal thought and U.S. judicial decisions on marriage, Metz reveals a schizophrenic attitude to marriage. Liberals such as Locke, Mill, and Susan Moller Okin sought to apply principles of liberty and equality to marriage but resisted

the implication that marriage, as a legal status, should be abolished due to its essentially ethical nature. Metz's readings of Locke and Mill are illuminating (though Kant, whose account of marriage also illustrates problems for liberal justifications of it, is perhaps too quickly dismissed!). While liberal theorists have sought to reconcile marriage law with liberty by providing instrumental justifications for it and ignoring its ethical dimension, recent U.S. judicial decisions have acknowledged the ethical meaning of marriage, its connection to ideals of character and conduct, without addressing how support for such ideals comports with principles of liberty and equality. Not only does this leave inconsistencies with liberal principles unresolved, it also, Metz argues, harms marriage. Insofar as marriage is an ethical status, it depends on the acknowledgement of an ethical authority. Because the state is not an appropriate ethical authority, its control of marriage weakens the institution; the state cannot endow marriages with the thick communal regard which, for example, religion could.

On Metz's view, state withdrawal would better serve marriage, as an ethical institution, but it would also allow more efficient promotion of the explicit instrumental goals of marriage law. With its current narrow scope, for example, marriage fails to support caregiving broadly enough. Marriage protects caregiving relationships from state intrusion through privacy rights, and it protects caregivers from the risks of uncompensated caring labor through provisions for property division. However, because such benefits are restricted to marriage, much caregiving is left unprotected.

In the final chapters, Metz argues that marriage, liberalism, and caregiving would all be better served by abolishing legal marriage and replacing it with an 'intimate caregiving union [ICGU] status'. ICGUs would support caregiving, without—unlike marriage—conveying an ethical status. ICGUs would confer on designated relationships bundles of privileges, such as next-of-kin rights and joint ownership rights. They would better accomplish the instrumental function of marriage than marriage currently does, and they would respect liberal principles by removing the state from the ethical realm. The ICGU proposal has far-reaching significance for liberal thought. First, it recognizes and institutionalizes the fact of our inevitable dependency, which is sometimes obscured by the liberal focus on autonomy. Second, as Metz makes clear, it suggests a redrawing of the public-private distinction enshrined by traditional liberalism and criticized by feminists as masking injustices such as marital rape, domestic violence, and exploitation of caring labor. While aware of such criticisms of the private sphere, Metz endorses a Millian harm principle shielding self-regarding behavior and consensual association from state interference, and thus she upholds a public-private division. ICGUs, like marriage, straddle the border between public and private and hence provide a model for how a liberal state can respect privacy while promoting important public goods.

Many questions arise regarding ICGUs—first, whether the proposal itself respects principles of liberty and equality. One might ask whether defining ICGUs as *unions* treats all conceptions of intimacy equally, since caregiving can take place in

disunified networks or between those who do not see themselves as united. Furthermore, the term suggests the ‘unit’ theory of marriage, in which the wife often legally disappeared within the union. But Metz acknowledges the possibility of networks and various forms of intimacy, and gender equality is one of her commitments, so this objection is probably only terminological. A deeper problem is the extent to which state support for non-dependent caregiving relationships can itself be properly justified within liberalism. Metz’s justification for ICGUs depends on the claim that caregiving is an important good. As she says, the ICGU proposal does not imply that ‘anything goes’ within such a framework (148); rather, it attributes a special value to intimate caregiving. But while it is easy to show public goods which issue from caregiving for children—the reproduction of society—and for dependent adults—relief for the healthcare system—it is more difficult to show why (merely) emotional caregiving between otherwise independent adults is a good the state should support. Unlike state support for material caregiving, support for emotional caregiving could be seen as reflecting a contested ethical valuation of a particular form of life; in this light, it is unclear why the state should support it through ICGU privileges, any more than it should support any other ethical value. Without a neutral justification, ICGU status for non-dependent, emotional caring relationships appears to conflict with liberty and equality just as state support of any other lifestyle choice would. Metz does address this issue by adducing the risks of intimate caregiving as a reason for state support, but this rationale leads to a second set of questions.

If ICGUs are justified as protecting caregivers, do they do so justly and efficiently? ICGUs assimilate both parenting and adult relationships into one legal framework. But surely different rights and responsibilities, and different amounts of state interference, will be appropriate in parenting and adult relationships, suggesting the need for two separate legal frameworks—one for adults, one for parenting. Once we consider adult relationships separately from parenting, however, a case can be made that greater contractualization of adult ICGUs would be both more efficient and more just. Adult relationships take various forms. For example, someone might want to distribute her ICGU privileges over a network rather than within one relationship. If ICGU rights come in bundles, it’s not clear how they can be distributed over networks, and whether certain rights can be waived (for example, joint property owners might not want to confer next-of-kin rights). A less tractable problem is whether ICGU status will apply independently of voluntary choice. Metz intends ICGU provisions to protect caregivers against risk. If people must voluntarily register ICGUs, like marriages, as Metz suggests (138), then unregistered caregivers will remain unprotected. But if this were corrected by applying ICGU status non-consensually, worries arise regarding liberty, state interference in privacy, and harms to the vulnerable. (To borrow an example from Claudia Card, automatic legal access rights to jointly owned property could facilitate abuse.) One solution would be to separate the rights protecting relationships from those protecting caregivers themselves; the former rights could apply voluntarily, the latter automatically.

Finally, Metz's defense of the liberal prohibition on state intervention aimed at affecting beliefs, as opposed to behavior (the public-private divide), may trouble some feminists and liberals. Consider anti-racist civics education in schools intended to create tolerant future citizens. Surely such education attempts to affect beliefs about race, and does so justly, in part as compensation for past state racism. Where the state has fostered racist beliefs, state withdrawal without compensatory action aimed at correcting racist beliefs is neither efficacious nor just. By parity of reasoning, since the state has fostered discrimination against same-sex couples, group marriages, and intimate friends, the state should compensate for such injustice by (for example) fighting homophobic beliefs and attitudes (as through textbook examples of same-sex couples). Where state policy has violated liberty and equality—as Metz so convincingly argues it has—more may be required of the state by way of compensation than Metz allows. These are just some of the many questions raised by this fine, thoughtful, and challenging book.

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