Book Review

Minimizing Marriage. Marriage, Morality, and the Law

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In contemporary liberal societies, discrimination is seen as a potential source of violation of public justice. As such, the state and the law should avoid committing any unjustified discrimination. There may be justified cases of discrimination, as when we do not allow people with animals entering in hospitals for hygienic reasons, but any case of unjustified discrimination should in principle not to be institutionally sustained. To what extent the state should be involved against a discriminatory aspect of society depends on how unjust such an aspect is, and how pervasive its negative effects are. The central tenet of Elizabeth Brake's recent book is that marriage, as it is conceived in many Western countries at least, is profoundly discriminatory. Indeed, the state should intervene, through a reform of marital law, in order to contrast the unjustified privilege accorded to the model of opposite-sex dyadic romantic relationship – namely the "traditional" marriage (the quotes are due to the fact that «[m]any features of so-called traditional marriage are historically variable or recently constructed», p. 2). The idea of minimizing marriage is that of diminishing the restriction placed on the people entitled to obtain marital status, as to allow not only same-sex relationships and polyamory, but also networks of friendships in which the different rights and obligation connected to the marital status can be divided and distributed. In what follows, I will briefly sum up Brake's arguments against the privilege of "traditional" marriage, and her positive proposal of a reform of the law. I will then conclude with some considerations about the kind of metaphysics of social reality that I take to underlie Brake's rationale.

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In the first part of the book, Brake argues that marriage does not possess the moral privilege it is purported to embody. In particular, "traditional" marriage is neither the only nor the better model to carry about the kind of moral transformations that are indispensable for the well-being of society, such as establishing basic social relations and inspiring the attainment of the public good over the private one. Although institutions do have the power of shaping up behavioral patterns and psychological attitudes in the long run, no institution – let alone marriage – can have the "magic" effect of instilling moral values at the basis of society. In the first place, it is incorrect to think of marriage as based on a promise that the spouses exchange (p. 26). If marriage vows were actually promises to love and care about each other till death do them part, then unilateral divorce would be immoral, since breaches of promises are generally not morally acceptable. In general, obligations that rise from promises can be overridden only by stronger moral reasons, but this does not seem to be the normal case in unilateral divorce. Brake maintains that the solution of the puzzle lies in refusing to see marriage as based on an act of promising. The emotional component of marriage vows cannot be subject to promise, simply because it is impossible to promise to love or to remain in love. The intimate caring relationship which marriage aims at promoting and sustaining should be seen rather as the content of a commitment (p. 43). While *making* a commitment is an action that is not too dissimilar from that of making a promise (the latter being one way of bringing about the former), *having* a commitment is a dispositional state, which differs quite radically from promising as for its consequences. To wit, commitment to the marital roles, as other typical cases of commitments, is an enduring and dispositional psychological state, which entails complex obligations, and which is deliberate but not always completely voluntary.

Besides, a commitment to give behavioral priority to an intimate relationship with the spouse cannot be thought of as indissoluble. Whether we should maintain a commitment or drop it depends on the moral admissibility of what we are committed to, and that can vary over time. Neither are there reasons to think that commitments to relationships must be exclusive – the dyadic form of the marriage commitment is not intrinsically better, nor can better guarantee the existence of stable basic social bounds, than other forms of non-exclusive commitment, such as the ones that we find in friendship. However, marriage does impose costs on the exit options from a commitment to mutual caring relationships, and in that it has been seen by deterrence

theorists as a pre-commitment strategy (or a "Ulysses contract") that serves the purpose of constraining oneself to what is more rational for her or him in the long run[1]. If this view is on the right track, it is crucial to ask whether the marital commitment is indeed rational or not. Answering such a question boils down to apprising whether the goods obtained by marrying outweigh the costs. Brakes notes that if the marital commitment is rational, it is so for those who are happy with long-term exclusive intimate companionship, but certainly not for those who prefer a different life-style – such as "singles" who prefer living in a network of friendships, or the polyamorous. Even for the "marriage kind" of persons, though, the costs imposed on the exit options by marriage should not be too heavy, since that would create harm in cases in which one of the two parties is victim of abuse by the other – which unfortunately is not, statistically speaking, an uncommon situation. As a matter of fact, women are the ones that tend to benefit less from marriage, and so, in order to prevent gender discrimination, the legislation on marriage should see to it that both parties can protect allocation of rights and duties (including exit options). More generally, marriage legislation should avoid the suppression of "individualistic" rights such as privacy and respect, and even more importantly those connected to the risk of economic vulnerability and dependency, because that would be a violation of social justice (in Rawlsian terms) – especially on the face of the very high rates of violence and abuses within marriages.

Also the idea – which dates back to Aristotle and has been picked up by Hegel – that marriage is *in itself* good, regardless of individual preferences, precisely because it "teaches" the virtue of committedness, appears to be ungrounded (p. 43). Marriage is neither necessary nor sufficient for reaching this goal: friendships and polyamory have the same social function for many, and an intimate exclusive relationship may actually nurture behavior that privileges the private good over the common one. Unconditional commitment to a dyadic exclusive intimate relationship cannot always guarantee that social virtues are developed within the individual. Moreover, overestimating the moral power of "traditional" marriage may lead to blindness with respect to the

[1] Cf. «"Ulysses contracts" attempt to circumvent our own imperfect rationality. Aware that we are liable to weakness of will or preference change, we use self-binding or precommitment strategies to restrict our future actions to promote our long-term best interests. ... There are many different kinds of precommitment strategies, and marriage can be seen as employing several. It imposes a delay before spouses can exit the marriage (in some legal jurisdictions), it creates economic costs (the cost of divorce itself and, possibly, alimony) and costs of social disapproval on exit, and it creates incentives to remain (whatever benefits law and third parties provide as well as social approval)» (p. 56).

inertial behavior that sometimes it encourages to the detriment of personal and social realization, or even with respect to the harm it may protect and the vices it may create. The presence in society of a larger varieties of relationships, not necessarily involving romantic affection, can – and does, as a matter of fact in modern societies – better achieve the goal of shaping up social virtues and providing chances for social realization. Thus, the state should promote a legislation that protects all such models, and does not favor the romantic dyad over the other models. The discrimination against other kind of relationships in favor of "traditional" marriage is indeed a serious one. According to Brake, the current marital law inhibits the viability of different forms of relationships in which humans could flourish, thereby hampering, in an unjust way, the chances of self-flourishing of many individuals. Also with respect to the worry that sexual behavior requires a proper institutional environment not to be dangerous or destructive, it is dubious that limiting institutional recognition to dyadic monogamous marriage only is a very effective strategy. Sex education that allows people to make informed choices seems to serve better than marriage and abstinence education, which are «more likely to lead to unhealthy shame, fear, and reluctance to talk to doctors, counselors, or police» (p. 80). And analogous points can be made with respect to the idea that defending "traditional" marriage is a way to solve social problems related to poverty. Implementing a legislation directly devised to prevent poverty is a more rational strategy than investing public money on defending "traditional" marriage education (this aspect carries an analogy also with respect to the issue of the rearing of children, see below).

Brake's conclusion is that "traditional" marriage, just as any other care relationship, is a social good in so far as it complies with the general principles of justice[2]. There is no reason to think that unconditional commitment to an exclusive dyadic different-sex caring relationship will generally be valuable for the individuals involved and for society as a whole. Brake labels the kind of unjust privilege accorded to dyadic intimate relationships involving romantic love "amatonormativity" (pp. 88–89). Such expression is coined after the term, frequent in feminist and "queer" literature, "heteronormativity", which refers to the assumption of heterosexuality and gender differences as

[2] Indeed, the transformations that legal marriage has undergone since the beginning of the modern era have all been towards such direction – e.g. gradual abolition of many of its gender discriminatory aspects, the possibility of non-consensual divorce and pre-negotiation of many of its economic aspects.

prescriptive norms. Indeed, the extensions of the two concepts partially overlap, in that often the heterosexual ideal of a universally shared goal is the dyadic, exclusive, amorous relationship. However, the kind of discrimination that amatonormativity nurtures is not a matter of sexual preference. It is rather a matter of privileging one form of caring relationship over the other. The presence in the society of an amatonormative bias can hardly be denied. Even when not legally married, those who present themselves as "romantic partners" are given privileged social recognition over those who present themselves "merely" as friends or member of adult care networks[3]. Although Brake does not deny that an exclusive, dyadic and amorous relationship can be a well-functioning caring relationship, it is arbitrary and unjust to accord to such a model a social and legal privilege over other forms. If I read her correctly, the discriminatory factor here lies with the family status that is accorded only to marriage or marriage-like relationships, both by society and legislation. Ethical form of non-monogamy, for instance, are judged to be immoral simply because do not fall among the "default" expectations of amatonormativity. And non-amorous caring relationships are not accorded family status although they may serve all the functions of traditional families, such as material support, emotional security and frequent companionship. The kinds of harm to which those forms of relationships are subject is indeed pervasive. They range from social prejudices (the stereotype of the "single" as being an "eternal adolescent", unable to endorse his or her social responsibilities), to work-place discrimination, lesser government benefits, differential treatment in terms of healthcare, and child custody decisions.

Engaging in mutual care-taking and recognizing responsibility to do so are distinctive features of relationships that are on a par with "traditional" marriage with respect to social functions and emotional significance, and yet are subject to pervasive discrimination. The idea that the lack of amorous love in friendships and care networks, or the lack of exclusivity in polyamory or polygamy, makes such forms of care less valuable appears to be totally unjustified. The motivational and emotional work of care can be disjointed from sexual intimacy and life-long commitment, and it can be shared among individuals with different roles. Indeed, the mold of the life-long dyadic amorous relationship is often unfit to bring about stable and functioning social

[3] Namely, group of friends who endorse reciprocal commitments within a network of different roles; Brake sometimes calls them "urban tribes", after the book of Ethan Watters. See: Watters, 2003.

unities. This is not to say that forms of relationship other than "traditional" marriage are intrinsically better: the overgeneralization about the "insular" and "narcissistic" stance of the married is as unjustified as the overgeneralization about the "irresponsible" behavior of the unmarried. Brake's point is rather to argue against the discrimination that all forms of care relationship other than traditional marriage suffer, which is akin to that attached to other social markers such as race, gender and class. Indeed, amatonormativity often intersects with gay and women's oppression and it «is itself systematic in a way characteristic of oppression: Legal penalties and discrimination interlock with social pressure and discrimination, stereotyping in the media, workplace discrimination, consumer pricing, and children's education» (p. 98). The main point of Brake is that the institutional preference toward "traditional" marriage leads to the unjust preclusion of alternative social models. All other forms of caring relationship, although as functional and moral as the amorous dyad are downplayed, and made less salient because of the absence of active social scripts that establish their significance, which in many cases may be more appropriate for promoting social justice and self-respect.

In the second part of the book, Brake addresses more directly the issues of the reform of the marriage law, and puts forward her positive proposal of a "minimal marriage". A first issue is whether marriage should be maintained at all, given its intimate connection with a long history of injustice and discrimination, especially with respect to women's rights (pp.111–120). John Stuart Mill (in *The Subjection of Women*, 1869) compared the situation of the married woman to slavery, and until the seventies of the past century in the United States, Brake reports, the institution of marriage was detrimental to women's life opportunities, mainly because gendered spousal roles facilitated economic dependence and spousal violence. Today, although those differences have no longer legal status, they are still maintained through social pressures and expectations, and even taught in some public schools and educational programs (supported with public money). The earning gap between women and men is a tangible sign of that. However, according to Brake, abolishing marriage would not be the more effective way to address such problems. Conferring legal legitimacy to a wide variety of family models is the only way to ensure equal opportunities to a wide range of rights. Abandoning state regulation of marriage is likely to let the church or other private-sector groups lead decisions about who can enter the marital status. Hence, the state should

reform marriage in order to remove gender differentiations and amatonormative structure from it, thereby ensuring equal access to it. Besides, reforming the institution, rather than abolishing it, will send a clear message of rectification of past injustice (p. 123).

Now, both in the philosophical debate, and in the political and more broadly public debate, there is wide disagreement over the very definition of marriage: what are the core essential elements of it that distinguish it from other possibly similar relationships? (p. 132-4) Whether a radical change of the marital law would count as a reform of marriage or as an abolition of it and substitution with a new institution depends on how marriage is defined. Hence, deciding the borders of the concept of marriage does not involve only abstract philosophical reflection, but it carries a practical social import. The issue arises already with respect to the status of same-sex, but amatonormative, relationships. Brake addresses the arguments for same-sex marriage that have been proposed on the ground of the Rawlsian principle of neutrality. Intervention of the state has costs, which are paid by the whole of society through taxation. In order for public expense to be justified, citizens should expect the policies pursued by the state not to be based merely on contested moral or religious views – at least when such policies touch upon important issues of justice. General policies of the state (when they involve use of public money) should be justified by rationales based merely on public reason, namely arguments that anyone could be justified in expecting to be accepted also by people sharing different moral, philosophical or religious views. In other terms, important political decisions should be based on a theory of justice as a "narrow" political view, which remains neutral between the often mutually conflicting conceptions of the good to be found in "broad" moral or religious views. Since the family is part of the basic structure of society, and marriage gives rise to family status, the state intervention in family matters should be constrained by public reason alone. Thus, the argument goes, any *legal definition* of marriage cannot depend on elements from discussed moral or religious doctrines. The rationale for defining marriage is to be based on considerations of fairness, which should lead the state to acknowledge that denying to same-sex relationships eligibility for health insurance, pensions, and immigration rights, privacy rights, and visiting rights is unjust. Brake accepts such arguments for a legal re-definition of marriage as to include same-sex dyadic relationships in it. She discusses carefully many attempts to provide "heteronormative" rationales for restricting the marital status to same-sex

couples, which are not based on religious or ethic conceptions about sexual behavior (and hence falling outside the boundary of public justice). She concludes that not only all such attempts fail, but also that the same can be said for all restrictions that aim at establishing amatonormativity – for reasons that are strictly connected to her analysis of the status of "traditional" marriage held in the first part of the book (pp. 139–45).

The most serious argument against legal recognition of same-sex couples involves reproduction and parenting. The alleged ground for the state to protect exclusively heterosexual dyadic marriage is that the function of marriage is essentially procreative. However, it is odd to see procreation and parenting as the rationale behind current law for marriage, given that many marriages are childless, marriage do not end when the children leave home, and same-sex couple can have children from previous or parallel heterosexual relationships, but still they are not accorded the marital status (p. 146). However, defenders of heteronormativity can still insist that the institutional norm aims at protecting the optimal environment for child rearing, while the presence of non-optimal cases in society can to a certain extent be tolerated. Thus, given that optimal child welfare requires sexual differentiation in the parents, same-sex marriage should be excluded from institutional protection. The problem with this defense of "traditional" marriage is that the claim that same-sex parenting would harm child welfare has been found empirically ungrounded (p. 147). The kind of "complementariness" that is claimed to exist between all men on the one hand and all women on the other is a caricature: sex differences are statistical generalizations, which moreover vary cross-culturally (pp. 74–75). More to the point, sexual differentiation does not guarantee an optimal environment for rearing children. Statistics on the emotional, cognitive, and behavioral functioning of children show significant connection between worst performances by children and high level of conflict within the family nuclei. However, there is no statistically significant difference between children raised within same-sex relationships and children raised in heterosexual marriages (p. 148). If those statistics show that same-sex parenting is not harmful to the children, they also undermine any rationale for excluding same-sex marriage from the legislation. Furthermore, Brake argues that legislation about parenting and legislation about adult caring relationship should come apart (pp. 149-51). The legislation about child rearing should require a high threshold for nurturing and precluding abuse and neglect, but that can be better done directly rather than through the promotion of

"traditional" marriage. We know that conflictual environments have been found to be detrimental to children welfare, to the point that divorce may be the best option for children in high-conflict marriages (p. 147). Hence, the state should not bundle together regulation of parenting and regulation of adult care relationships. To the contrary, since continuity of care for children can be provided not only by heterosexual couples, but also by single parent, same-sex, and extended families (such as those advances by many "revolutionary" parents, or those of the successful model of the "othermothers" in African-American culture[4]), the state should permit and sustain the most inclusive class of frameworks for parenting.

Thus, arguments against heteronormativity lead to analogous considerations against amatonormativity. In general, it is difficult to single out "traditional" marriage as a privilege form of caring relationship over friendship, care networks, polygamy and polyamory. Once arguments based on the idea that traditional marriage provides an optimal environment for child care are proved unsound, any other functional criteria fail. The law should not endorse an ideal romantic relationship as a model for institutionalizing family, since amatonormativity is defensible only on the ground of a comprehensive moral doctrine, which falls outside of the scope of public reason. However, Brake does not want to defend the view, which certain modern contractualist theorists hold, that marriage should be abolished as an institution, and dissolved into the system of private contract (pp. 154–155). According to her, intimate caring relationships are valuable and fall within the boundary of public justice, hence the state should protect them, and give them institutional status, since institutional entitlements and status designation allow the spouses to act on their mutual care. What is unjust and arbitrary are the present restrictions on entering the marital status to couples engaging in romantic love only. The liberal state should not set any principled restriction on the sex or number of spouses, and the nature and purpose of their relationships. Neither should the state require that the exchange of marital rights cannot be divided and distributed asymmetrically. The result of reforming the institution of marriage along those lines is what Brake calls "minimal marriage". The central aim of

[4] See Collins, 1991, p. 119: «African and African American communities have ... recognized that vesting one person with full responsibility for mothering a child may not be possible or wise. As a result, othermothers – women who assist bloodmothers by sharing mothering responsibilities – traditionally have been central to the institution of Black motherhood» (quoted by Brake at p. 160 of her book).

Brake's book is to provide a philosophical justification for changing the restriction on entering the marital status, along the lines that I have illustrated so far. Yet those limitations are the most extensive compatible with political liberalism, and in that minimal marriage is minimal only comparing to the very strict contemporary legislation on marriage (p. 158). It is useful at this point to present one of the examples that Brake makes to illustrate her proposal:

> So far, the proposal might seem extravagantly removed from real life. But consider the case of Rose. Rose lives with Octavian, sharing household expenses. To facilitate this ménage, Rose and Octavian form a legal entity for certain purposes – jointly owned property, bank account access, homeowner and car insurance, and so on. The arrangement is long-term, but not permanent. Octavian's company will relocate him in five years, and Rose will not move – but they agree to cohabit until then. They even discuss how to divide property when the household dissolves, and agree that if either moves out sooner, the defaulter will pay the other compensation and costs. (This arrangement is not punitive, merely protective.)
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> Rose's only living relative, Aunt Alice, lives nearby. Alice lives in genteel poverty, and Rose feels a filial responsibility toward her. Rose's employer provides excellent health care benefits, for which any spouse of Rose's is eligible (at a small cost), and other spousal perks such as reduced costs for its products. Octavian is a well-off professional and doesn't need these benefits – he has his own – but Alice needs access to good health care and, should Rose die, could use the federal pension that would go to Rose's surviving spouse if she had one. Assuming that such entitlements comport with justice, minimal marriage would allow Rose to transfer the eligibility for these entitlements to Alice.
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> While Rose enjoys Octavian's company, and has affection for Alice, only Marcel truly understands her. Marcel is, like Rose, a bioethicist, and understands her complex views on end-of-life decision making. Rose wants to transfer powers of executorship and emergency decision-making to him. In addition, Marcel and Rose spend a lot of time together, discussing philosophy while enjoying recreational activities, and would like eligibility for "family rates" at tourist attractions, health clubs, and resorts. Their local city gym, for instance, has a special rate for married couples, but they don't qualify.
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> There could be more people in Rose's life who occupy a role usually associated with spouses. Rose might share custody of a child with an ex. Or she might

> cohabit platonically with Octavian, living separately from the long-term love of her life, Stella. She could also cohabit in a small polyamorous family unit of three or four persons, or live separately from the other members of her adult care network.
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> In all of these scenarios, there is no single person with whom Rose wants or needs to exchange the whole package of marital rights and entitlements. In fact, doing so would be inconvenient, requiring her to make additional contracts to override the default terms of marriage. Even worse, marrying any one person would expose her to undesired legal liabilities such as obligatory property division and could interfere with her eligibility for some loans and government programs. But Rose wants and needs to exchange some marital rights with several different people (pp. 166–167).

Although many of the arguments that Brake presents against "traditional" marriage are in the chords of the contractualist tradition, which is the main inspiration of the reforms that marriage has been subject to since the beginning of the modern era, it is important to stress the distinction between her position and the most radical contractualist proposal of abolishing marriage as an institution. One of the main reasons not to abolish marriage but to reform it is that many of the rights and duties involved in the marital status cannot be regulated by private agreements: for instance, immigration privileges, automatic decision-making powers and residency qualifications (p. 162). The only aspect that the proposal of minimizing marriage relegates to private contracting is the choice of how to distribute those rights and entitlements, as the example of Rose illustrates. Besides, caring relationships are among the "primary goods" in Rawls' sense of all-purpose goods that people want whatever their plans. In that, they are on a par with self-respect (p. 174). Caring relationships are essential to developing moral powers, since they are almost universally the context in which those powers are developed and maintained. Of course, moral powers can be developed and exercised also in isolation, but that is not a good reason for the state not to empower a legislation to protect caring relationships, at least insofar as such a legislation is not discriminatory, and allows easy exit options. A last objection concerns the use of the label "marriage" to designate such an institution concerning caring relationships. Brake admits that it is not central to her proposal that the name "marriage" should be kept, and minimal marriage in her sense could be called, for instance, "personal relationship law" (pp. 185–186). To be sure, extending

the name "marriage" to her proposal would amount to contravening past usage of the term. However, it would be also be a way to rectify past discrimination, and promote a new symbolism connected to ideas of equality and justice. In any case, Brake does not aim at a conceptual redefinition of marriage with far-reaching social consequences. She has the political aim of providing a *legal* redefinition of marriage in accordance with the principles of liberalism. Such a project is compatible with the fact that other concepts of marriage – connected to social or religious uses of the term "marriage", for instance – will be maintained too (p. 188). In the last chapter, Brake addresses the issues of implementing her broadly ideal characterization of minimal marriage in non-ideal conditions, such as those to be found in our modern societies (pp. 189–206).

Brake's book is undoubtedly an interesting and stimulating piece of good philosophical work. It has direct appeal for many debates both in ethics, and in political philosophy, but also for many questions concerning the metaphysics of social reality. Although Brake does not touch extensively upon the metaphysical aspects of the themes that she discusses, the tenets in ethics and philosophy of law that she defends have interesting bearings also for more broadly philosophical worries. The difference between *being married* and *being non-married* bears many analogies with other distinctions that possess social relevancy, in particular gender and race. Facts about possession of marital status seem to be even more social in nature than facts about race or gender – since being married is typically a status that requires the intervention of a group of people with distinct social roles within an (at least minimal) institutional frame. However, "naive" forms of realism with respect to gender and race have been proved unjustifiable (besides often being politically and ethically dangerous), and now it is widely accepted that social and cultural elements enter in the constitutions of gender and race too. What is at stake in the current debate is rather how deep such social elements are. Philosophers may have an anti-realist or eliminitivist stance toward those categories, and deny that there is any concept that deserves the label of "gender" and "race" which is not empty. But acknowledging the social character of gender and race is also compatible with realism, although in a more moderate form. Gender and race may connect to biological and morphological features in different ways. There may be more sophisticated definition of them in biological terms (for

instance, P. Kitcher's definition of race in terms of biological populations[5]), which acknowledge the role of social behavior for their constitution. Other philosophers defend an even lighter form of realism, according to which gender and race exist, but as social entities or constructions (for instance, S. Haslanger's definition of "woman" in terms of oppression[6]). Whether some form of realism or rather eliminativism is better suited to catch the socially relevant elements depends on the features of the concept involved. For instance, a theory in which god exists as a social construction would be hardly called a form of theism, and seen rather as a form of atheism in disguise. Although the "social theist" may insist that she does not deny that god exists, since social entities exist and have causal powers, the "standard" theist will argue that what the social theist means by "god" is different from what she means with the same word. As a matter of fact, the "social theist" is denying the existence of what the standard theist calls "god", namely of god *tout court*. But the metaphysical aspect often interacts with the ideological and semantic ones. To continue with the previous example: the reaction of the theist against the "social theist" is not justified if the latter is also advancing a proposal for reforming the ordinary concept of god and the usage or meaning of the word "god". In such a case, the theist and the social theist will be in practical disaccord on whether a social reform of the concept and name is a good to be pursued.

Trying to provide a full-fledged realist account of the distinction between being married and being non-married seems a more farfetched project, than the parallel one advanced for race or gender. Brake discusses certain attempts by defenders of "traditional marriage" in terms of the alleged biological instinct to form intimate stable dyadic relationships, but discards them as plausible grounds of amatonormativity (p. 99). Her arguments against them can be seen also as arguments against any hardline realism toward the married/non-married distinction: attributing biological meaning to the distinction, broadly independent from social factors, is not plausible. Yet it seems also clear that Brake does not embrace an eliminativist stance, such as some of the contract theorists that she discusses do, to the effect that the distinction should not be applied at all because it lacks justification. Indeed, she is at ease with having the distinction in her metaphysically "loaded"

[5] Kitcher, 1999.
[6] Haslanger, 2000.

vocabulary, although the ground of the distinction is exclusively social in nature. As I hinted at above, Brake defends her legal redefinition of marriage against the amatonormative alternatives, but she allows for the pluralistic co-existence of different conceptions of marriage circulating in the society. Such alternative conceptions may have a role in society, in so far as they do not influence the legislation, since that would be going against the principles of political liberalism. Brake's view about the possibility of pacific cohabitation of different "versions" of marriage may be a little overoptimistic. The distinction between being / non-being married, as she also stresses, is very central in our ordinary life. Thus, it seems likely that any reform of the legislation connected to marital status will have consequences on the ordinary uses of the distinction, at least on the long run. If this is true, it is not completely clear to me how a proposal of a radical reform of the legislation will not require also a form of "revolutionary" semantic project aiming at a conceptual redefinition with far reaching social consequences.

Be that as may, Brake's book is a real philosophical pleasure, which contains solidly argued defenses of critical tenets in moral and legal philosophy, and in which the practical bearings are an essential part of her argumentations. Besides, the book raises philosophically interesting points that reach far beyond that of those two disciplines – as I hope I have managed to give an idea of in the last two paragraphs of this commentary. [7]

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