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LEGAL MARRIAGE AND POLITICAL LIBERALISM

by

YUNN UENG

Under the Direction of Christie Hartley, Ph.D.

ABSTRACT

Can or must political liberals recognize any form of legal marriage? If so, on what grounds and what type(s) of marriage can they recognize? Elizabeth Brake argues that political liberals can and must support the social bases of adult caring relationships through the public recognition and support of minimal marriage. She thinks that political liberals cannot recognize a more robust form of marriage than her minimal marriage. Clare Chambers argues that the state should abolish legal marriage and replace it with the marriage-free state, which endorses piecemeal practice-based personal relationship laws. In this thesis, I will argue that the marriage-free state is superior to minimal marriage even in an ideal society because the marriage-free state can secure the rights and entitlements that are important for minimal marriage and do so in a way that is more inclusive of vulnerable persons.

INDEX WORDS: Legal Marriage, Political Liberalism

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YUNN UENG

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Masters of Arts

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2018

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1 INTRODUCTION

Can or must political liberals recognize any form(s) of legal marriage? If so, on what grounds and what type(s) of marriage can they recognize? In my thesis, I will discuss and evaluate two views about whether the political liberal state should have legal marriage: minimal marriage and the marriage-free state. My aim in this thesis is to argue that the marriage-free state is superior to a state with minimal marriage.

In Section 2, I will briefly explain political liberalism. Political liberals hold that principles of basic justice, constitutional essentials, and related law and policy must be justified on the basis of shared reasons, not controversial moral, philosophical or religious views.

In Section 3, I will explain Elizabeth Brake's minimal marriage and its justification. Brake argues that political liberals can and must support the social bases of adult caring relationships through the public recognition and support of minimal marriage. She thinks that political liberals cannot recognize a more robust form of marriage than her minimal marriage. She offers a public reason for minimal marriage, which is that the social bases of caring relationships are social primary goods, and minimal marriage rights and entitlements are the social bases of caring relationships. In addition, minimal marriage is not only compatible with political liberalism, but also required by justice since certain entitlements could only be obtained from the state. In this section, I will also provide an alternative view, which is that the state could provide two ways of distributing social bases of caring relationships, one as bundle and reciprocal and the other one as unbundled and nonreciprocal. I will then respond that this view is likely to sustain the social stigma against non-amatonormative relationships and thus would be rejected by Brake. Finally, I will explain the opt-in problem, which is that minimal marriage, by creating a legal status, fails to protect some vulnerable parties in the society.

In Section 4, I will explain Claire Chambers's marriage-free state. She argues that the state should abolish legal marriage and replace it with the marriage-free state. The marriage-free state endorses a piecemeal practice-based regulation of relationships. This approach regulates different relationship activities independently. In addition, the approach applies to those who are in fact engaged in regulated relationship activities without legal registration. By doing so, the marriage-free state can avoid the opt-in problem and protect vulnerable parties on a more inclusive basis than minimal marriage.

In Section 5, I will argue that the marriage-free state is superior to minimal marriage even in an ideal society. I will do this by showing that the marriage-free state can secure the entitlements and rights that are important to minimal marriage. In addition, while the marriage-free state can address some problematic vulnerabilities in an ideal society, a state with minimal marriage fails to do so.

In Section 6, I will bring up a potential objection to the marriage-free state: undermining liberty. I will argue that although the marriage-free state cannot preserve liberty to the same degree as a state with minimal marriage does, protection of vulnerable parties outweighs the worry of liberty restriction.

2 POLITICAL LIBERALISM

Political liberalism, according to John Rawls, requires that constitutional essentials and matters of basic justice be justified by public reasons (1996). To be more specific, the idea of public reason requires that when constitutional essentials and matters of basic justice are at stake, citizens should provide reasons that reasonable and rational people could reasonably accept, not reasons according to their conflicting comprehensive moral, philosophical, or religious doctrines. Constitutional essentials involve “fundamental principles that specify the general structure of government and the political process” and “equal basic rights and liberties of citizenship that legislative majorities are to respect” (227). The idea of public reason applies to judges, legislators, chief executives, other government officials, and candidates for public office when they perform their public acts or pronouncement. It also applies to citizens when they explain to one another how the representatives they vote for can be supported by public reasons.

3 MINIMAL MARRIAGE AND ITS JUSTIFICATION

3.1 Traditional Marriage

Before examining minimal marriage, I want to briefly explain traditional marriage. Three features of traditional marriage are worth emphasizing here. First, traditional marriage only recognizes intimate relationships with a man and a woman. Polygamy, homosexual couples and other types of intimate relationships as well as non-intimate relationships are excluded from legal marriage. Second, traditional marriage involves a legal category and couples need to legally register in order to get married. Third, married couples would receive a bundle of entitlements or rights, such as inheritance rights, property rights, and next-of-kinship rights. These rights can only be mutually exchanged with one partner reciprocally. That is, one cannot distribute marital rights separately, but can only distribute them as a whole package. And once couples get married, marital rights can only be transferred to one's partner, not some other people.

It is important to understand how the traditional marriage differs from the contractual modal in its structure. The contractual view, in contrast to traditional marriage, abolishes marriage as a legal category or status. In addition, while the traditional marriage specifies the content of marriage contract, the contractual view allows persons to decide the content of their contract.

3.2 Minimal Marriage

Minimal marriage, according to Brake (2012, 158-167), only consists of rights or entitlements that recognize (e.g., burial rights or bereavement leave) and support (e.g., immigration rights or care-taking leave) adult caring relationships. A caring relationship involves “physical or emotional caretaking or simply a caring attitude” and requires parties in such relationships “know and are known to one another, have ongoing direct contact, and share a

history” (160). Caring relationships may include friendships, urban tribes, care networks as well as monogamous same-sex and opposite-sex relationships. Minimal marriage, by designating a legal status, requires people to legally register for marriage in order to receive the legal marital rights and obligations. Minimal marriage does not impose restraints on the number or sex of spouses as long as it is a caring relationship. People can minimally marry more than one person, and they can decide the sex and the number of people as well as the types of caring relationships. Furthermore, minimal marriage allows exchanges of rights and obligations to be bundled or non-bundled and reciprocal or non-reciprocal. That is, minimal marriage does not pack all the marriage rights and obligations together as a bundled set, and a person engaged in minimal marriage can transfer different marital rights to different spouses. Also, spouses need not mutually (reciprocally) exchange marital rights to one another. A person can transfer his immigration right to his lover, but his lover can transfer her immigration right to her mother. Although minimal marriage does not require a reciprocal exchange of rights among spouses, it does require consent from all parties of a marriage to transfer marital rights. That is, one person cannot unilaterally transfer marital rights to another without a recipient’s consent.

Since minimal marriage would only consist of rights that recognize and support adult caring relationships, many traditional marriage rights would not be included in minimal marriage (162-163). For example, the state would not provide health insurance or basic income through minimal marriage since those benefits are irrelevant for the recognition or maintenance of adult caring relationships. Entitlements such as direct financial assistance or alimony after divorce or inheritance tax would also be eliminated. This is because the state should not assume financial dependency between spouses. Spouses would arrange their property by private contracts. However, some entitlements, such as in-state tuition eligibility or employment or relocation

assistance, would remain in the minimal marriage since their primary purpose is to allow the maintenance of adult caring relationships.

The specific entitlements associated with minimal marriage would vary and depend to some extent on the various laws and policies of a particular society (161). However, in an ideal society, at least three entitlements would be included: “entitlements to special eligibility for immigration or legal residency,” “entitlements against employers for care taking or bereavement leave and designation as spouse for spousal relocation and hiring policies,” and “hospital and prison visitation rights” (181). Those entitlements are important for the maintenance of adult caring relationships but cannot be acquired by private contract alone; hence, they need to be distributed by the legal recognition of minimal marriage.

It should be noted that the provision of entitlements would be limited on grounds of feasibility. For example, the number of persons to which one can distribute immigration rights may be capped. Also, although there is no restriction on the number of people in a marriage and the number of minimal marriages that one can have in principle, the requirement of caring relationships practically imposes limits on them. Given that caring relationships require parties to share history, have regular contact, and have knowledge of one another, it would be difficult, if not impossible, to either maintain a large number of caring relationships in a single marriage or sustain a large amount of minimal marriages simultaneously.

It is important to notice that minimal marriage is only designed for an ideally liberal egalitarian society. Brake recognizes that implementing minimal marriage in a non-ideal world could cause injustice and serious harms to some vulnerable people, such as people who are financially dependent on their spouse. So, during the transition to a just society, she suggests that

some more-than-minimal restrictions on marriage could be remained in the institution of marriage.

Finally, the parent-child relationships should be independent from minimal marriage (149-151, 161). As Brakes puts it, “parental rights and responsibilities should not automatically be conveyed through marriage but through assumption of a parental role” (161). The reason for this separation is that while adults themselves could voluntarily enter a caring relationship and form their relationship contractually, parent-child relationships should be imposed with certain standard regulations. The state should enforce obligations on parent-child relationships, not adult-adult relationships. The separation of these two relationships could benefit children in marriages ended by divorce or death. It also helps protect children outside of marriages. Many parents do not marry and do not intend to marry. Therefore, the state should attach benefits and obligations directly on parent-child relationships, instead of the marital status of parents. Minimal marriage would be framed only for adult caring relationships.

To illustrate minimal marriage, Brake uses Rose as an example (166). Rose lives and shares household expenses with Octavian. Their cohabitation is long-term. They also share property, a bank account, and insurance and discuss how to divide the property when they cease to cohabit. Marcel and Rose spend a lot of time together to discuss philosophy, and Marcel is the only person that understands Rose’s complex views on end-of-life decision making. At the same time, Rose could also maintain a romantic love relationship with another person or persons. In Rose’s situation, there is no single person to which she wants to distribute all the marital rights. Rose might want to transfer the entitlements to special eligibility for immigration to Octavian since she enjoys his company and she wants to stay close physical distance with him. Rose might also want to transfer the entitlements of emergency decision-making to Marcel since he is the

only person who understands her. Rose might want to maintain her romantic relationships without getting married to any of her lovers. In addition, Rose's partners need not transfer the same entitlement to her. Octavian might also enjoy Rose's company and transfer the same entitlement to Rose, but Marcel might want to transfer the entitlements of emergency decision-making to his daughter. Minimal marriage is flexible enough to accommodate the situation of Rose and her partners and can support more diverse caring relationships networks.

3.3 Justification of Minimal Marriage

Elizabeth Brake (2012) argues that political liberals can and must support the social bases of adult caring relationships through the public recognition and support of minimal marriage. She thinks that political liberals cannot recognize a more robust form of marriage than her minimal marriage. As she puts it, the implication of political liberalism "entails that the state should support what I call 'minimal marriage' and that any additional restrictions on marriage ... are unjust" (156). Brake does this by offering a public reason for minimal marriage, which is that the social bases of caring relationships are social primary goods, and minimal marriage rights are the social bases of caring relationships. In addition, she argues that minimal marriage is not only consistent with political liberalism but also required by justice since certain entitlements are only possible given the availability of the recognition of minimal marriage.

To justify minimal marriage within political liberalism, Brake (174-176) first argues that material caregiving for children and some adult dependents is a social primary good, and this provides indirect support for minimal marriage. Rawls (1999) claims that "primary goods are now characterized as what persons need in their status as free and equal citizens, and as normal and fully cooperating members of society over a complete life" (xiii). Primary goods are also essential goods that citizens need to exercise and develop their moral powers, which are

capacities for a sense of justice and a conception of the good. Brake argues that material caregiving, such as feeding or dressing, is a primary good for children and some persons with disabilities or illnesses because it is necessary for their survival since those dependents are unable to take care themselves. Without material caregiving, children and some persons with disabilities or illnesses will not be able to develop their two moral powers, and they will not be able to pursue their conception of the good. Minimal marriage is a framework for adult caring relationships, and it need not involve material caregiving for dependents. However, parties in a caring relationship might fall ill, and the independent relationships might become dependent relationships. So, supporting minimal marriage can support adult caring relationships involving dependency.

Brake (176-181) then provides a stronger rationale for minimal marriage, which is that caring relationships are primary goods, and this rationale provides a ground for minimal marriage as the social bases of the primary goods. Caring relationships are primary goods because they are essential to develop and exercise the moral powers. Most people form their sense of justice and conception of the good when discussing and interacting with their family, friends or significant others. Moreover, caring relationships are all-purpose means normally needed for pursuing a wide range of specific conceptions of the good life. This is because caring relationships usually involve viewing a particular person as valuable, and this valuing provides psychological and emotional support to pursue one's plans. Although caring relationships are primary goods, they are not social primary goods, goods that society can distribute directly. Caring relationships cannot be distributed by the state, and they are not good bases for comparisons among individuals. Here, Brake considers caring relationships and self-respect to be comparable. Self-respect cannot itself be distributed, nor can it be measured. However, Rawls

thinks that the social bases of self-respect are social primary good that related to self-respect. Similarly, the social bases of caring relationships, the social conditions for the existence and continuation of caring relationships, are social primary goods. These social bases of caring relationships, according to Brake, are the minimal marriage rights- rights that support, protect, and recognize caring relationships.

Any more robust form of marriage than minimal marriage cannot be justified within political liberalism (167-171). Recall that political liberalism holds that any law or policy should not be justified only by appealing to comprehensive doctrines. Brake argues that any more extensive marriage law than minimal marriage would involve amatonormative discrimination and violates political liberalism. By amatonormativity, Brake means “the assumptions that a central, exclusive, amorous relationship is normal for humans, in that it is a universally shared goal, and that such a relationship is normative, in that it should be aimed at in preference to other relationship types” (89). Traditional marriage that includes only monogamy opposite-sex intimate relationships cannot be justified without appealing to the ideal of romantic dyad with opposite sex. The extension of marriage to homosexual couples or polyamory also fails because it arbitrarily excludes caring relationships that are aromantic or asexual, such as friendships. In contrast, minimal marriage does not endorse any contested conception of the good; instead, it is based on Rawls’s theory of primary goods.

Brake considers a public reason for traditional marriage: child welfare (145-151). Advocates of traditional marriage could contend that the traditional marriage is beneficial to children, and hence, it is justifiable within political liberalism. However, Brake argues that child welfare does not provide reasons against non-traditional marriage for three reasons. First, there is no empirical evidence supporting the claim that alternative marriage forms would be more

harmful than current marriage form. Second, the society should not and cannot only recognize a parenting framework that is ideal for the welfare of children. If marriage has to be a framework that best facilitates children's welfare, than single-parent families, socio-economically worse-off families or interracial families should also be excluded; otherwise, this view contains an arbitrary bias. Third, the argument assumes that parent-child relationships should be associated with adult caring relationships, which Brake rejects for reasons I have mentioned above.

Brake further argues that minimal marriage is not only compatible with political liberalism but that justice also requires political liberal state to recognize minimal marriage in order to support adult caring relationships (181-183). This is because minimal marriage would have three entitlements that spouses cannot acquire through private contract alone. I have already mentioned these entitlements above. They are entitlements to special eligibility for immigration or legal residency, entitlements of care taking or bereavement leave, and hospital and prison visitation rights. The existence of these entitlements depends on the state. Also, many impediments to sustaining relationships are created by the state or other institutions, such as immigration restriction or prisons. Since the institutions can create such impediments, caring relationships need support and protection from the state. These entitlements are important in supporting caring relationships since maintaining caring relationships normally requires frequent contact and shared experience, and only the state can provide them.

3.4 An alternative: two ways of distributing social bases of caring relationships

Some might propose that even if minimal marriage were implemented, the state could still provide another legal marriage that allows people to exchange all the minimal marriage rights reciprocally with one another. That is, the state can provide two ways of distributing social bases of caring relationships: one remains bundled and reciprocal and the other one as unbundled and

nonreciprocal. The reason for this proposal is that even if minimal marriage were executed in law, perhaps many people would still want to marry in a way that they could mutually exchange all the marital rights with only one person. In this proposal, the new marriage institution would have all the exact rights as minimal marriage. The only difference is that those rights are bundled and could only be exchanged reciprocally. Providing two ways of distributing social bases of caring relationships could be grounded by a public reason: efficiency. If many people in the society want to have all the marital rights to be packed and attribute them to only one person reciprocally, then it would be efficient for the state to offer this provision.

However, Brake might respond that although this view can be justified within political liberalism, a possible worry is that this proposal would sustain the social stigma against non-amatonormative relationships. By creating a new legal status that packs all the marital rights and allows them to be exchanged reciprocally, the state indirectly encourages and promotes monogamous romantic and sexual relationships. The promotion of this marriage reinforces the beliefs that amatonormative relationships are the ideal, and it marginalizes other kinds of caring relationships such as polyamory, urban tribes, care networks and those who are just friends. The consequence is that adults whose lives do not fit the amatonormative ideal would likely to face discrimination. For example, the society might not value friendships as socially significant in the way that amorous relationships are. Most people might not take their friends into consideration when making important life decisions. They would bring their significant other to important occasions, but not friends. Moreover, persons outside amorous relationships would possibly be associated with pervasive negative stereotypes. Some members of societies might treat homosexual or polyamorous couples as unnatural and need to be cured. Singles might be seen as lacking responsibility and having empty lives even if they are in other kinds of caring

relationships. So, by providing two ways of entitlement distributions to support adult caring relationships, it is likely to follow that non-amatonormative caring relationships that are would be devalued and even discriminated by the society.

3.5 The Opt-In Problem

Clare Chambers (2013, 2017) argues that minimal marriage is problematic because it requires persons to obtain a legal status in order to receive legal protection. By ‘status,’ Chambers means “a category of approbation which one can apply to a person or relationships which sets them above and apart from those who lack that approbation” (2017, 117). People who are engaged in caring relationships but have not minimally married are denied legal rights and entitlements. As Chambers (2013) puts it,

Brake’s account is still vulnerable...[because] people must opt in to receive legal protection. People who have not, or not yet, chosen to acquire the status of minimal marriage... are left unprotected [from the state]– even if they are in relationships that are functionally identical to those who have acquired such status. (11)

The consequence is that some vulnerable people are left unprotected from the state even if they are involved in caring relationships. I call this “the opt-in problem.” Chambers provides a compelling example for this problem from The Law Commission in the context of British marriage law. Consider, two individuals who have lived together in an intimate relationship for a long time and have children. The mother stays at home and looks after the children, and the father works outside the home. The mother hopes to marry so that her financial situation would be secured when the relationship ends. However, the father does not want to marry. In this case, the end of the relationship would lead to a significant financial risk to the mother. A divorced woman in the same situation, however, can receive alimony until she becomes capable of self-

supporting. Minimal marriage fails to protect vulnerable people as such because they lack the legal status, even though they are in a situation similar to married people. So, the existence of minimal marriage means that legal protection is denied to those who are engaged in caring relationships but have not acquired the status.

4 THE MARRIAGE-FREE STATE

4.1 The Marriage-Free State

Alternatively, Chambers (2013, 2017) argues for the abolishment of state-recognized marriage and proposes a marriage-free state in which there is piecemeal regulation of certain relationships instead of holistic regulation, and in which regulations are based on practice and not status. Consider the difference between holistic versus piecemeal regulation. Holistic regulation packs certain legal rights and duties together as a bundled set. Current marriage is an example of the holistic approach. When people register as a married spouse, they receive a bundled set of rights and obligations that regulates many aspects of their lives (e.g., childrearing, property sharing, or inheritance). The marriage-free state, in contrast, rejects holistic regulation and uses piecemeal regulation of relationships in which the state regulates different relationship practices or activities separately (2017, 144-149). By “relationship practice,” Chambers means “an activity or area of life which is carried out in a personal relationship” (147). Relationship practices may include sexual intimacy, property ownership, cohabitation, or parenting. In the marriage-free state, the state does not assume that many important relationship practices are met in one single relationship; hence, different personal relationship activities would be regulated independently in the marriage-free state. There might be a set of regulations that applies to cohabitants who have lived together for a certain period of time, another set of regulation that applies to those who co-parent, and different regulations that apply to those who are financially dependent on each other. People who cohabit without co-parenting or sharing property would only be subject to regulations regarding cohabitation. It is worth noting that minimal marriage also endorses piecemeal regulation since it allows the exchange of the marital rights and obligations to be unbundled and people can transfer different marital rights to different spouses.

It is important to note that Chambers (2017) does not aim to specify the content of regulations (148). In the marriage-free state, each piecemeal regulation would be justified separately. When formulating each regulation, the state needs to ask whether there is a legitimate reason (e.g., protecting vulnerable parties or distributing state benefits) in regulating certain relationship activities. If so, the state then ask how the laws should be framed to achieve the objective. The content of each regulation would be specified by answering those questions.

Consider the difference between status-based versus practice-based regulations. Status-based regulations create a distinct legal category, and an official legal registration is required to obtain legal rights and obligations. Current marriage and minimal marriage are forms of status-based regulation. Cohabitants who live like (minimally) married couples would not be subject to legal regulations unless they officially register for (minimal) marriage. The marriage-free state, in contrast, endorses practiced-based regulation in which default regulations are applied to anyone engaged in regulated relationship activities without a legal registration (2017, 150-161). People who live together for a certain period of time would automatically be subject to regulations of cohabitants without their consent and a legal registration. If the cohabitants were also to co-parent, then they would directly be subject to another set of regulations regarding parenting. Each piecemeal regulation is attained not by having a privileged marital status but by having certain relationship practices with someone. By endorsing practice-based regulation, the marriage-free state allows the legal protection to extend to those who do not register for marriage. It is worth mentioning that even if the state abolishes marriage as a legal status, people can still have private marriages ratified by religious or private institutions.

Importantly, Chambers claims that the marriage-free state preserves liberty by allowing people to opt out, rather than opt in (2017, 161-165). A potential worry about the marriage-free

state is that it undermines people's liberty since it imposes involuntarily default regulations upon people. Some people choose not to get married because they do not want their relationship to be subject to state's regulations. The marriage-free state addresses this worry by permitting people to make a contract that deviates from default regulations. However, the deviation contracts cannot violate justice (e.g., people cannot voluntarily make a vulnerable contract). The state would impose restrictions on when and how deviation is allowed, and only cases that do not violate justice could opt out. To what extent the default regulations could be modified depends on the relationship practice in question. Some relationships, such as parenting, can only be allowed to opt out in very extreme cases so that the children could be rightly protected. Other relationship activities, such as cohabitation, would be allowed to have more deviations from given regulations. By allowing people to opt out, rather than opt in, all people who are engaged in relevant relationship activities could receive the full protection of the law unless they have agreed to a different arrangement.

4.2 The Marriage-Free State and The Opt-In Problem

The marriage-free state can avoid the opt-in problem because it endorses practice-based regulation, not status-based regulation. Recall that the opt-in problem claims that by creating a status to distribute rights and obligations, some vulnerable parties would be left unprotected even if they are involved in caring activities similar to people who have the status. The marriage-free state can remove the vulnerability because it sets up default regulations to all people who are engaged in regulated relationship activities. No status is required to receive the legal protection. If one partner is financially dependent on another, then the regulation automatically applies to them without a legal registration. By enforcing legal rights and duties based on practice rather

than status, the marriage-free state allows the state's regulations to be more inclusive and thus the marriage-free state can protect some vulnerable parties that minimal marriage fails to protect.

5 MINIMAL MARRIAGE ENTITLEMENTS IN THE MARRIAGE-FREE STATE AND PROTECTION OF VULNERABLE PARTIES

In this section, I argue that the marriage-free state is preferable to a state with minimal marriage because the marriage-free state can secure the rights and entitlements that are important for minimal marriage. In addition, the marriage-free state can address some problematic vulnerabilities that minimal marriage fails to deal with in an ideal society.

Consider the three entitlements that Brake claims cannot be secured with marital disestablishment: special eligibility for immigration or legal residency, entitlements of care taking or bereavement leave, and hospital and prison visitation rights. For the entitlements to special eligibility for immigration or legal residency, advocates of open borders will argue that the state should not control immigration at all. However, if there is a legitimate reason for the state to control immigration, several different relationship activities could be recognized as grounds for the distribution of these entitlements. Perhaps relationship activities such as a history of cohabitation or one party acting as primary caretaker for another could be recognized as grounds. These activities are closely connected with caring relationships, and physical proximity can help to sustain the relationships.

Entitlements of caretaking or bereavement leave could be secured by giving all employees a certain amount of time off work to care or grieve for others. Consider entitlements of caretaking leave in particular. The state should recognize that members of the society might fall ill and need care at some point in their lives; hence, all individuals could have a certain amount of time off work to care for sick or ill people regardless of the types of relationships. Some limits would be imposed on the amount of leave an individual could take given a period of time, but the recognition of a marital status between individuals is not required.

The hospital and prison visitation rights can also be upheld by reference to freedom of association. Hospitals and prisons should recognize that patients and prisoners have freedom of association and allow them to meet their parents, children, and friends. Freedom of association could sometimes be restricted by the purposes of institutions. The number of people who can visit at the same time might be capped in the hospitals and prisons. In order to counter crime and secure public safety, some restrictions would be imposed on people who can visit in prisons. However, those restrictions also apply to hospital and prison visitation rights if they exist. So, what hospital and prison visitation rights could provide could all be secured by the freedom of association.

Other entitlements and rights that recognize and support adult caring relationships could also be retained in the marriage-free state. Consider, for example, emergency decision-making rights. Minimal marriage could provide these rights since people who are in a caring relationship usually have more knowledge about another's life plan. In the marriage-free state, the state could have laws in place to designate individuals to make decisions for others in the event that they cannot make decisions for themselves with respect to their property and healthcare. In sum, the state can provide the entitlements and rights that are important for minimal marriage without legal recognition of any form of marriage. The only difference is that, in the marriage-free state, entitlements would be distributed to all people who are in a relevant caring relationship, rather than people who have a marital status.

Brake might respond that, even if the legal recognition of minimal marriage isn't necessary for the provision of minimal marriage rights and entitlements, it makes the provision easier; hence, minimal marriage is still desirable. In the marriage-free state, the state needs to search for evidence when considering whether the regulations apply. If cohabitants are entitled to

spousal relocation rights, the state needs to find cohabitation evidence in order to distribute the rights. Minimal marriage, however, avoids the process of investigation by requiring a formal registration. The state does not need to know people's private lives in order to determine whether they meet the criteria of certain regulations (unless a registration is contested). Instead, a formal registration is sufficient for regulations to apply. Minimal marriage is more efficient in the provision of rights and entitlements than the marriage-free state.

Despite that minimal marriage has the advantage of efficiency, I argue that the marriage-free state is still preferable to minimal marriage because the marriage-free state can address certain problematic vulnerabilities that minimal marriage fails to deal with in an ideal society. Consider, for example, a religious community in which people practice polygyny, a marriage with a husband and multiple wives, and in which people believe that children would be best take care by their mother. In such a community, many wives would choose to stay home and take care their own children instead of working outside. However, in such a marriage, if the husband tends to favor one wife, then disfavored wives could be vulnerable to certain disadvantages. It is likely that the favorite wife can share most of the husband's earning while the other wives get less than equal share or even live in a minimum standard of living. And if wives are competitive with each other in husband's earning, disfavored wives might fail to have a say in important family decisions and experience serious psychological problems and self-worthlessness. If the disfavored wives believe that it would be better for children to grow up and live with both parents, then divorce might not be an option for them. Instead, they would continually stay in the marriage while suffering from a sense of financial scarcity (compared to other wives) as well as certain mental problems. The competition could lead to conflicts within the family which can

indirectly affect children. The problematic and conflicting family issue can be psychologically harmful to young children.

In an ideal society, the state would provide certain social goods that enable individuals to avoid such disadvantages. The state would recognize children as social responsibilities and thus provide free public daycare institutions or daycare allowance that enables parents to send their children to other private daycare centers. All individuals would also be adequately educated and be able to join the job market if they want. However, women might still choose to take care of their own children at home and be financially dependent on her husband that leave them vulnerable to certain disadvantages in a polygyny marriage.

Since the financial arrangement is the significant factor that leads to the vulnerabilities, the problem could be addressed to some extent by distributing family incomes more fairly. While the marriage-free state can enact certain default regulations to achieve this goal, minimal marriage fails to do so. In the marriage-free state, for example, the state could stipulate a default regulation as follows:

A family member can acquire partial family income by providing domestic services.

Family income is distributed to family members according to the hours they contribute to the family.

This default regulation ensures that wife who performs domestic works can receive a certain amount of husband's earning and does not need to just live in a minimal standard of living. This regulation can also partially adjust the unequal power in the domestic sphere by enhancing the bargaining power of disfavored wives. That way, disfavored wives might be able to have some

say in the family decisions. A fair distribution of family income can also lower the conflicts within the domestic sphere, which could benefit both women and children.

In contrast, an ideal society with minimal marriage fails to address this kind of vulnerabilities. Although in a non-ideal society, the state can enact certain default laws to protect vulnerable parties, in an ideal society, there would be no regulation regarding property arrangements among spouses. Hence, a state with minimal marriage fails to adjust the unequal power of domestic kind resulted from unequal distributions of family recourses, and thus fails to protect the disfavored wives from vulnerabilities in the above scenario.

It is important to stress that I do not suggest this kind of vulnerability would definitely arise in an ideal society. I only want to suggest that, even in an ideal society, there is a possibility that certain serious vulnerabilities could arise, and while the marriage-free state can enact default regulations that partially address the problem, a society with only minimal marriage fails to do so. I also do not intend to show that the marriage-free state can fully remove the vulnerability, but can deal with it to some extent.

In sum, I have argued that the marriage-free state can secure all the rights and entitlements that are important for minimal marriage, and minimal marriage is unnecessary for the provision of these rights and entitlements. In addition, since there might be certain kind of vulnerability that could arise in an ideal society, while the marriage-free state can enact certain default regulations based on practice to address it, a state with minimal marriage fails to do so.

6 THE MARRIAGE-FREE STATE AND LIBERTY RESTRICTION

While the marriage-free state can secure all the rights and entitlements that are important for minimal marriage and do so in a way that is more inclusive of vulnerable parties, the marriage-free state cannot preserve individual's liberty to the same degree as a state with minimal marriage does. However, I argue that since the restriction of individual's liberty is limited given the possibilities of contractual deviation in the marriage-free state, protection of vulnerable parties outweighs the worry of liberty restriction.

As mentioned earlier, a potential worry about the marriage-free state is that it undermines people's liberty. To be more specific, setting default regulations based on practice fails to acknowledge adults as responsible agents and violates their freedom of contract. Although people are allowed to opt out in the marriage-free state, this strategy still constrains liberty because the state would impose restrictions on when and how opting out is allowed, and people cannot deviate from default regulations in whatever way they want. Moreover, the default regulation in the marriage-free state could be inappropriate and capture some irrelevant people that ought to be excluded in certain situations. For example, in a marriage-free state in which the emergency decision right is exercised in the caring activity of cohabitation, college students who cohabitate just to share household expenses would automatically be assigned to make medical decisions for the other in the case of emergency if one does not specify how she wants to be treated in such a situation. However, the person might wish her parent who knows more about her to make the medical decision rather than her roommate. The inappropriate application of regulation also counts as a violation of liberty.

Minimal marriage, in contrast, can avoid the worry of liberty restriction since retaining a marital status requires people to opt in to be subject to legal regulations. Hence, people could

determine whether they want to get married and allow the state's interference with their relationship. Friends who cohabit just to share household expenses would not be subject to any regulations if they do not get minimally married. With minimal marriage, the state could also make the provision of marital entitlements easy to obtain and change. People could choose to whom they want to transfer certain marital rights and can easily change the recipient at will. Minimal marriage respects adults as responsible agents and allows them to make decisions by themselves.

It is undeniable that the marriage-free state restricts people's liberty more than minimal marriage does; however, I argue that protection of vulnerable parties outweighs the worry of liberty restriction. Given the possibilities of opting out, people can still make an explicitly consensual contract that deviates the regulation in the marriage-free state as long as it does not violate justice. Friends who cohabit just to share household expense could make a private contract that deviates from default regulations. Individuals could also self-designate to whom they want to transfer the emergency decision rights and avoid an inappropriate designation by the state. Spouses who want to have a different financial arrangement could make an explicit agreement to opt out. Given the opt-out strategy, the deprivation of individuals' liberty is limited. However, even in an ideal society in which certain social goods are available to all individuals, people might still voluntarily make a decision that will lead to problematic vulnerabilities. The marriage-free state can reduce serious vulnerability and do so at a little political cost. In view of this, rather than leaving some people unprotected from severe vulnerabilities, the state should put the burden on those who want to avoid the default regulations, not to those who fail to protect themselves. That way, vulnerable parties could be better protected. Some might argue that if people make a decision voluntarily, then they should hold responsibility for the bad consequence.

I put aside this debate. I only want to show that while the marriage-free state does not really compromise too much liberty compared to a state with minimal marriage, but can protect individuals who suffer from serious vulnerability on a more inclusive basis, the marriage-free state is preferable to a state with minimal marriage.

7 CONCLUSION

I have argued that the marriage-free state is superior to a state with minimal marriage even in an ideal society. I have shown that minimal marriage is not necessary for the provision of certain entitlements and rights, and the marriage-free state can secure all the rights and entitlements that are important for minimal marriage. I have also shown that even in an ideal society, women and children in a polygyny marriage can be vulnerable to certain disadvantages and psychological problems. While minimal marriage contractualizes financial arrangements among spouses and thus fails to deal with this kind of vulnerabilities, the marriage-free state can partially address it by stipulating piecemeal default regulations regarding family income division among spouses. Although the marriage-free state cannot preserve the liberty to the same degree as a state with minimal marriage does, I have argued that the possibilities of contractual deviations can still secure a considerable amount of liberty while removing certain problematic vulnerabilities. Hence, the marriage-free state is thus preferable than a state with minimal marriage.

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