

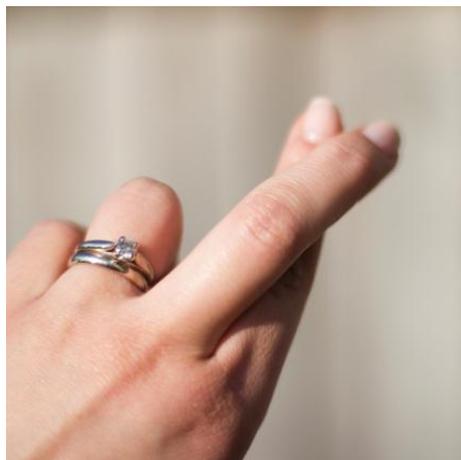


The impossibility of minimizing marriage

A review of *Minimizing Marriage: Marriage, Morality and the Law* by Elizabeth Brake, Oxford University Press, 288 pages, 2012. \$27.50 (Paperback)

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"In the wake of the latest sex scandal to rock the American political scene, some of our cultural elites have felt no shame in professing that extra-marital relationships can be quite fulfilling.

"There's a growing awareness that we have options and that monogamous marriage isn't the only ideal," says Hugo Schwyzer, a Pasadena City College gender studies professor who **cheated on his first two wives but has remained faithful to his third (thus far)**. "It's not an either/or, it's a both/and, and I think we need to start thinking about it that way." [1]

Seemingly infinite options

Heralds of sexual liberation like Schwyzer would have a field day if the numerous options defended in Elizabeth Brake's *Minimizing Marriage* became public policy. Brake, a professor of philosophy at Arizona State University (and formerly at the University of Calgary), is intent on leveling the social playing field by disestablishing legal marriage to a "caring" minimum.

Her argument is that the continued privileging of traditional marriage in civil law will prolong discrimination against singles, non-intimate dependents, cohabitants, bisexuals and polyamorists, unless the institution is revamped to the point where any caring and just relationship qualifies as a legal matrimony, irrespective of its shape, size or duration. In this brave new world, even a provisional, "open marriage" quadruplet would be as respectable as an exclusive, lifelong couple.

Attempts to promise

The first part of the book is focused on the nature of marriage and other relationships. Marital vows are not actually promises, we are told, but only *attempts* to promise. We cannot promise to do what we are incapable of doing, and love, because it is an emotion, is not something we are capable of controlling. Of course, people can *fall* in love or out of love; what they cannot do is start or stop the process itself. As a result, divorce should not be considered promise-breaking, since it is not possible to pledge one's love in the first place.

Brake's premise that love cannot be controlled depends on the more general claim that emotions are not like reasons, which the free will can evaluate, accept or reject. In this picture of human psychology, emotions and reasons lie on different planes.

Many philosophers, including Aristotle, have not taken this view, arguing instead for a tighter connection between our feelings and our rationality. Yet *Minimizing Marriage's* brief treatment of this complex matter does not do justice to the wider argument that matrimonial vows are not really promises.

Marriage is more than a matter of feelings, central as these are; it is a moral unity, a joining together of two people's hearts *plus* their minds and their bodies.

Emotions are the surface of a more fundamental reality, that of two having become "one flesh."

Love is "one of a kind"

In any event, Brake is too hasty in her characterization of love. She alludes to two alternatives, according to which we either love others for their characteristics or we love others for the value we confer on them. This is, of course, a false dilemma.

A third option (which is actually a basis for the other two) is that we love others for *the value they already have*. This is what makes the object of our affection "one of a kind," why another woman with the same qualities as Juliet simply will not do for Romeo. For genuine love is not simply a desire for a quality, such as pleasure. It is a desire for a specific person. [2]

Someone who tells Romeo that Juliet's twin sister Jane will do "just as well" does not understand what Romeo wants.

Minimizing Marriage's account, by contrast, leaves the particularity of love entirely unexplained. Little wonder then that the book should downplay monogamy and permanency as essential features of the spousal bond. According to Brake, our culture's elevation of lifelong, two person romance has the effect of marginalizing other lifestyles, such as "quirkyalones," "urban tribes" and polyamorists. [3]

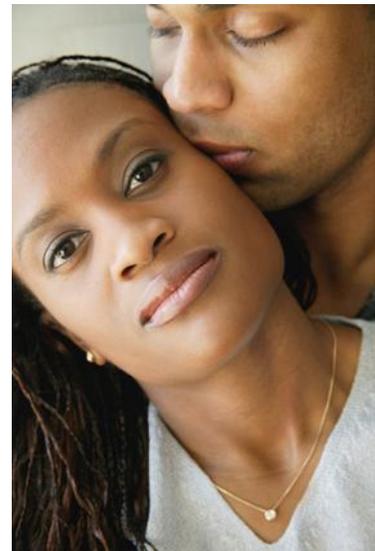
She posits questions like the following: Since alleged marital virtues like loyalty, reciprocity and sacrifice can be cultivated in regular friendships as well, why is marriage considered unique anyway? Given that singles are full-fledged members of society too, why do married

people qualify for preferential treatment in social benefit schemes? If a parent can love more than one child, why can he or she not love more than one spouse?

A relationship of a different type

The apparent force of these rhetorical questions trades on an unwarranted conflation of relationship kinds. In truth, friendship differs from marriage by *type*, not just by *degree*, because sexual intercourse is part of what binds two spouses together. The significance of this does not merely lie in mutual gratification: even if friends do have sex, their reluctance or refusal to marry means that they will not give themselves *completely* to each another, putting themselves “on the line,” as it were.

Unlike casual sex or polyamory, authentic love involves a risking of one’s entire being, by forswearing all other possibilities to unite with one soul. In this sense, it is the traditional married couple who is truly courageous.



It is thus no injury to unmarried people for the civil law to recognize this delicacy of married life, by incentivizing spouses to remain dedicated to one another (and forgo this or that sexual whim). The alternative is just more divorce, custody battles and abandoned single parents.

Opening up the definition of marriage

The second part of the book lays out a proposal for restructuring civil marriage. Brake extends the liberalism of John Rawls, for whom fundamental laws must not be based on any “comprehensive doctrines” about human nature, meaning and destiny. To ensure neutrality, legislation must be publically justified on grounds that all reasonable citizens could accept. For instance, the civil law can treat *care* as a primary good that everyone needs, regardless of whatever else they believe in about moral values.

Applying this logic, Brake contends that the state should “minimalize” marriage by opening it up to all caring and just (i.e. non-oppressive) relationships. Applicants would determine the purpose of the arrangement, the number of parties, the types of rights and duties and the distribution of health and pension claims. Even non-amorous partners could be “married.” Meanwhile, the spousal and parental aspects of family law would be detached and considered separately, to accommodate arrangements of diverse kinds.

This defense of marriage minimalization fails by Brake’s own Rawlsian standard. Even if care is a primary good the state should protect and promote, why should the law regard caring and justice as the *only* criteria a relationship must meet to become a legal marriage? Why not also include the traditional requirements of monogamy and sexual consummation? [4]

If Brake's answers are that "love can encompass more than two people" and "amorous relationships are no more special than non-amorous ones" (the very claims she earlier defends in Part One), then she has flouted Rawls' rules of engagement. Surely these answers are not premises that *all* reasonable citizens could accept. In fact, they are derivative of Brake's own, implicit understanding of the human good.

It is a mistake to think that one could avoid "comprehensive" value judgments by simply treating all caring and just relationships in the same fashion. For this too requires a comprehensive value judgment.

Ignoring biological ties

Moreover, Brake tries to invert the burden of proof in defending her proposed reforms. Since the social science data does not indicate, in her view, that minimalization of marriage would harm children, she assumes that this counts in favour of her case. Yet the lack of evidence that a policy causes harm does not amount to *evidence* that the same policy causes benefits. For Brake's position to have merit, she needs to demonstrate that her proposals would lead to childrearing outcomes better than that of the status quo. [5]

This absence of evidence is explained in large part by the short thrift the book gives to the significance of biological ties. Biological kinship is important because genders (the social & cultural differences between men and women) are not merely "constructed" but have a basis in sexes (the genetic, anatomical & physiological differences between males and females).

Because our bodies are an essential aspect of us, we are inseparable from our sex. It is a feature that permeates our social experience, including that of parenting. The old adage that mothers excel at nurturing and fathers at disciplining is not just our grandparents' friendly advice (or, for that matter, a patriarchal myth) but a conclusion backed by numerous studies. [6] While the link between gender and sex is undoubtedly complex, it is not something that can be simply changed to suit our tastes, as if mothers and fathers were just interchangeable menu items.

"A world too timid for love"

Ultimately, *Minimizing Marriage* suffers from a deflated view of spousal unity. Marriage is not a mere gathering of partners who happen to have similar interests, ones that could otherwise be developed and protected independently. Matrimony is an all-encompassing sharing of lives, begun with dedication, sealed by sexual intercourse and brought to fruition in procreation.

In joining together their hearts, minds and bodies, virtuous spouses act for one another's sake, making the good of one the good of the other. In depicting marriage as a glorified contract instead, Brake's proposal would erode the institution in tides of shifting sentimentalism.

As Roger Scruton puts it "The world of the 'consenting adult', the world remade in accordance with the 'social contract' of the enlightened liberal conscience, is, in the last analysis, a world too timid for love." [7]

Endnotes

[1] Blaze Carlson, K. (2012, November 16). The new adultery: Why stepping out is no longer just a man's game, *National Post*. Retrieved from <http://news.nationalpost.com/2012/11/16/the-new-adultery-why-stepping-out-is-no-longer-just-a-mans-game>

[2] Scruton, R. (2006). *Sexual Desire: A Philosophical Investigation*. London: Continuum Books.

[3] "Quirkyalone" was coined by author Sasha Cagen, who says "Quirkyalones are people who enjoy being single (but are not opposed to being in a relationship) and prefer being single to dating for the sake of being in a relationship. It's a mindset. Quirkyalone is not anti-love. It is pro-love. It is not anti-dating. It is anti-compulsory dating. We tend to be romantics. We prefer to be single rather than settle. In fact, the core of quirkyalone is the inability to settle. We spend a significant chunk of our lives single because we hold relationships to a high standard." Retrieved from <http://quirkyalone.net/index.php/about-2/quirkyalone>

Author Ethan Watters defines "urban tribes" as "the social networks of friends we create in cities. While tribes can include married couples, they're usually composed of those who have delayed marriage into their late twenties, thirties and forties. For a time, these tribes can replace our families as our primary social support system. We have inner-connected relationships with people in our tribes, we create rituals with them. Sometimes these rituals are as simple as eating dinner every week at the same restaurant or taking a Memorial Day hiking trip, but these repeated activities result in a sense of group history. Because of this shared history, urban tribes can lose members over time and gain new ones and still feel like the same group." Retrieved from http://urbantribes.typepad.com/blog/2003/10/qa_with_the_aut.html

[4] Historically, only sexual intercourse was understood to complete marriage, under English law. The earliest recorded mention appears in Statutes 2 & 3 of King Edward VI, c. 23 § 2 (1548), "Sentence for Matrimony, commanding Solemnization, Cohabitation, Consummation and Tractation as becometh Man and Wife to have." This statute carried forward into English several ecclesiastical law principles (mostly transmitted in Latin) that had been observed for centuries.

[5] O'Brien, M.B. (Summer/Fall 2012). Why Liberal Neutrality Prohibits Same-Sex Marriage: Rawls, Political Liberalism, and the Family, *The British Journal of American Legal Studies*, Vol. 1, No. 2, pp. 429-430. Retrieved from <http://ssrn.com/abstract=2136540>

[6] More specifically, mothers and fathers nurture and discipline in different but complementary ways. See, for example, the sociological evidence summarized in David Poponoe's *Families Without Fathers: Father, Marriage and Children in American Society*, (New Brunswick, New Jersey: Transaction Publishers, 2009), Part Three.

[7] *Sexual Desire: A Philosophical Investigation*, p. 358.