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Untying the Knot

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Tamara Metz, *Untying the Knot: Marriage, the State, and the Case for their Divorce* (Princeton University Press, 2010, 205 pgs.).

As the national debate over same-sex marriage rages across the country, Tamara Metz, assistant professor of political science and humanities at Reed College in Oregon, asks individuals on both sides of the contentious issue to step away from the terms of the debate as they currently stand, and consider a question that everyone seems to be taking for granted: why is the United States government involved in the business of defining and controlling marriage *at all*?

In her book *Untying the Knot: Marriage, the State, and the Case for their Divorce*, Metz argues that the fundamental tenets of liberal political philosophy, when pushed to their logical conclusions, provide no grounds upon which the state can demonstrate a legitimate interest in being involved in the establishment of marriage. Situating herself in the political tradition of Locke, Mill, and Rawls, she asserts that a liberal commitment to the separation of church/state, private/public, and meaning/materiality is threatened by the establishment of marriage, an institution which exists on both sides of all that liberalism must divide in order to be truly itself. Furthermore, she argues that gendered marriage poses a positive threat to liberal commitments to stability, equality, and liberty insofar as it relies on, reinforces, and perpetuates a societal system that rests on power structures. She believes these structures render women vulnerable to dependency, exploitation, and abuse, as well as being positively oppressive of all persons who do not conform to what she terms "societally constructed gender norms." For these reasons, she argues that marriage, like the Church in America, ought to be disestablished.

Metz builds her argument carefully. Beginning with *Maynard v. Hill* in 1888 and ending with *In re Marriage Cases* in 2008, Metz searches for reasons the U.S. courts have found to support the establishment of marriage. Likewise, she traces out the thoughts of several of the liberal political tradition's most prominent voices to understand the fundamental tenets at work in support of our current practice. She concludes that for the sake of meeting public welfare aims, the state has a clear interest in supporting the *intimate care giving* which often takes place in and through the family bonds created by marriage, but this does not generate a state interest in marriage *per se*. In drawing this distinction, she claims that the state has assumed, but not adequately justified the establishment of marriage. Why?

While the state may have a compelling interest to support what Metz terms the "material side" of marriage, it has proven unable to untangle itself from the "meaning side" of marriage to which the material side seems to be inextricably joined. Though not its intention, the state ends up taking on a role which it is expressly forbidden to assume by the liberal canon - that is, acting as a *de facto*

"mediator of meaning," having a hand in shaping the public's ideas and beliefs about ultimate realities, blurring the lines between the personal and the public, and failing to maintain its neutrality.

In addition to the disestablishment of marriage, Metz proposes the creation of an Intimate Care Giving Union (ICGU) status. She admits that an ICGU status might look similar to current civil marriage in that it would afford legal protection, establish lines of rights and responsibilities, and provide material benefits such as tax breaks. It would differ however in that it would be built around the "caretaker-dependent dyad" as opposed to the gendered married couple, and could include same-sex couples or non-sexual care-giving units comprised of any number of people. This would provide *care giving* (as opposed to marriage) with all and only those benefits needed from the state (so the state might benefit in return).

We see that Metz's methodical presentation rests explicitly upon some of the most fundamental assumptions of political liberalism. We cannot address every assumption, but let us deal here with three specifically. First, that there must be a clear separation between the spheres of the private and the public; second, that laws are juridical in nature, serving only to create a space for individuals to define their own concept of "existence, of meaning, of the universe, and of the mystery of human life" (Planned Parenthood v. Casey, 1992); and third, that a person is understood in anthropological terms as first a genderless, autonomous individual who *decides* to enter into community with others. We see that Metz' proposal of the ICGU status is the unfolding of these tenets pushed to their logical conclusions.

Those who would offer a critique of Metz's position might begin by calling into question these paradigmatic assumptions of liberalism, demonstrating the inadequacies of a Cartesian conception of the separation between private and public, suggesting that laws, by their nature, carry within themselves a conception of ultimate meaning whether the liberal state intends this or not. Further, one only has to reflect on his or her own experience to realize that no person *decides* to enter into that most basic human community, the family.

One might not have to work as hard as one might think to convince Metz herself that these challenges to liberalism hold weight. A close reading of her work shows that she herself opens the door wide to a critique of her position running along these lines.

First, as she states early on, "Human beings are not, as often advertised in the liberal canon, fundamentally independent." Rather, our experience reveals that "interdependence is [our] unavoidable state" (p. 13). Our interdependency speaks of an inherent vulnerability in each person, and she argues that it is the intimate care given freely to those most vulnerable in the smallest units of society that the state has an interest in protecting. She proposes her ICGU status as a means of "negotiating" the tensions that arise between androgynous individuals who have chosen to be intimately connected. While applauding Metz for acknowledging the inherent relationality of the human person, one might ask if her ICGU status, as a sort of microcosmic social contract, does not presuppose the same autonomous individual that she herself suggests does not exist in reality. Does she really insist that a presentation of human interdependence in strictly androgynous terms is likewise most true to our experience?

Second, in building her argument for the state to disentangle itself from civil marriage, she admits that our current laws "alter the behavior and belief" of American citizens about the meaning of marriage, inculcating what she sees as an oppressive heteronormity. Nevertheless, in this moment she acknowledges that laws *teach* (p. 97). One might ask if she believes this is only the case in laws regarding marriage, or if this principle extends to *all laws*? If so, what conception of the human person and community are taught by a law establishing an ICGU status, which seeks to separate (and not just

distinguish between) gendered marriage and family?

Third, Metz's most striking self-critique comes in her final chapter where she reconsiders the meaning of the public/private divide. Though her argument for the disestablishment of marriage rests squarely on her proposal that state neutrality is compromised and the line between public and private is threatened by the state's involvement with marriage, she accepts that several liberal theorists argue that *this very same line is an illusion* and "that it *hardly describes anything about real life*" (p. 156, emphasis mine)!

What this last statement reflects is perhaps the most problematic of the foundational liberal assumptions, one which Metz does not address directly; namely, the separation between *law* and what the Aristotelian/Thomistic tradition terms *human nature*. When this separation plays itself out, one sees that the state ends up creating laws that "hardly describe anything about real life," and therefore *undermine* society's advancement toward the very ideals of authentic stability, equality, and liberty that it sets out to uphold in the first place. Though Metz will certainly disagree, it can be argued that the institution of an ICGU status, which presupposes that anthropology is androgynous and law and freedom are at odds with an embrace of human nature, would be no exception.

In summary, Metz's conclusions are nuanced. At the same time, while she attempts to honestly address the contradictions in the liberal tradition as she understands them, she does not go far enough to free her argument of its logical inconsistencies. After hearing her out, we can thank her for making one point particularly clear: the issue of the liberal state's interest in marriage is a clear nexus point which shines a bright light on the inherent problems of the basic tenets of the liberal tradition, particularly its anthropological assumptions. In conclusion, we will agree with Metz that the success or failure of liberalism's ability to address the institution of marriage rests upon its willingness to allow itself to be informed from within by categories which *do* describe "real life," and that a people's understanding of the meaning of their lives and of reality is inextricably bound up with marriage and the family.

