

**Marriage and the Political Liberal State:**

*An Investigation into the Nature of the Marital Relationship and the  
Legitimacy of a Political Institution of Marriage*

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## Abstract

This thesis engages with the debate surrounding the legitimacy of the political institution of marriage. Something lacking from this debate is a systematic discussion of the nature of the marital relationship. I address this omission, by means of a detailed investigation of this relationship in Part One. In Western societies the paradigmatic marital relationship is the romantic relationship. I consider whether we can define this relationship in terms of romantic love. I argue that we cannot do so without appealing to the nature of the relationship the love occurs within. We therefore also need an account of the relationship itself. I argue in favour of a role-based account which defines a relationship in terms of the norms governing that relationship. I then provide an account of the role of a romantic partner and claim that a romantic relationship is a relationship in which the participants play this distinctive role for each other.

In Western liberal democracies the state directly regulates (it creates a distinct corresponding legal category for) the paradigmatic marital relationship through the political institution of marriage (the legal marital status, rights and duties etc.). Part Two considers whether this is appropriate. I consider and reject arguments which object to the state recognition of marriage on political liberal grounds. I argue that the state recognition of marriage is unproblematic, so long as there are independent liberal reasons for the state to directly regulate and recognise the romantic relationship. I then identify a complaint underlying each of these arguments: the claim that there is no reason for the state to directly regulate the romantic relationship. I respond to this complaint by showing that the romantic relationship leads to systematic material, physical and psychological vulnerability. In virtue of this it warrants some form of direct regulation. I conclude by showing just how complex a task it is to determine what form that direct regulation should take.

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## Introduction

### The Importance of the Marital Relationship

*Marriage is a wonderful institution, but who wants to live in an institution?*

Groucho Marx

There are two things we refer to when we talk about marriage – the institution of marriage, and the lived marital relationship between two spouses. There has been a distinctive shift in the way that we think the institution of marriage should relate to the marital relationship. Before the shift, it was generally accepted that the institution of marriage shaped the private marital relationship. After the shift, we now expect this same institution to be shaped by the marital relationship, as it is understood independently of the institution.

Stephanie Coontz (2006) provides an account of the history of the institution which I will utilise in order to demonstrate the reasons for thinking that this shift has occurred. Whether or not we accept this historical shift or the reasons for it however, it is clear that there are these two distinct ways of thinking about the relation that the institution of marriage has to the marital relationship. I will go on to explain why I think it is important to notice that this is the case.

I aim to demonstrate that this shift calls for more focus on the nature of the marital relationship itself. There is a lack of philosophical work on the nature of adult personal relationships in general, and the marital relationship in particular. Part One constitutes my contribution to this area.

I also want to motivate the thought that this focus on the marital relationship is called for when we are considering debates that concern the form and permissibility of the political institution of marriage (the legal status plus a bundle of legal rights and duties) in a Western liberal democracy that broadly follows political liberal principles. These debates are current and prominent, and are affecting changes in the political institutions of marriage

across the globe.<sup>1</sup> This focus on the marital relationship is important to note and acknowledge in the context of these debates because whilst a number of arguments appear to assume that the institution of marriage should be shaped by the marital relationship, they do not pay sufficient attention to the nature of the relationship when attempting to determine what that public institution should look like, or whether it should exist at all.

There are two central questions that this focus brings to the fore. The first concerns which relationships the institution of marriage is meant to be for and asks: ‘What is the paradigmatic marital relationship?’ The second concerns the relation that the state should bear to these relationships and asks: ‘What relation should the state bear to the paradigmatic marital relationship?’ The context for both of these questions is a contemporary Western liberal state. I explore some preliminary ideas surrounding these questions later in this chapter before outlining how they will be more fully addressed in Part One and Part Two of this thesis.

Whilst the focus of this chapter, and thesis, is on the marital relationship and the proper relation that the state should bear to it, there are broader implications to the inquiry. Much of the current debate surrounding the political institution of marriage is based in political liberalism, and framed in terms of the public (political)/private (non-political) divide. In asking what relation the state should bear to the marital relationship, we could be understood as asking what relation a public, political institution should bear to a private, non-political relationship. Any answer to this question could therefore bear on the more general question of what relation the public, political sphere should bear to the private, non-political sphere. For instance, the claim that more focus on the marital relationship is required may suggest that more focus and understanding of what occurs in the private sphere is required when considering what public laws and institutions are appropriate within the public sphere (particularly when they relate to the private sphere in some important way).

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<sup>1</sup> The legalisation of same-sex marriage in a number of countries across the world is just one example.

I highlight how unclear this apparent public/private divide is in Part Two. I show that marriage provides a clear case where a clean divide is not possible. The marital relationship is both public and private. It appears both to require political regulation, and yet to be one of the most private and intimate relationships that two people could have. The assumption that there is a clean public/private divide in place when discussing marriage ignores the complex ways that the relationship and society (including the political institution) influence each other. Highlighting the messiness of the divide for marriage could have further implications for similar areas of life where there seems to be a blurring of the line between public and private. For such areas it seems that we should first ask whether the public/private framework is appropriate. Such areas may include relationships more broadly, education and employment. Whilst the public/private framework has its benefits, highlighting the need to respect liberty and to respect the proper limits of power, if it becomes apparent that it is unsuitable for many areas of life, then the framework as a whole may need to come under further scrutiny.

I do not address these broader implications directly in this thesis, but merely wish to highlight the importance and potential relevance of focusing on the question of marriage.

### **1. The Distinctive Shift**

Stephanie Coontz describes what she terms as a “transformation in the role of marriage” in society, and focuses on the differing reasons that people now have for marrying, in comparison to the past (2006, p. 4). She wishes to highlight how the centrality of love in marriage is a relatively new idea. She describes how the reasons for marrying have changed from aiming towards “political and economic advancement”, to the desire for an enduring loving relationship (p. 7). Where the institution of marriage once provided the opportunity to cement political relationships and consolidate and protect wealth, it now provides an opportunity for living one’s life in a fulfilling, loving relationship. This transformation in the role of the institution of marriage, and the associated reasons that individuals have for entering the

institution, highlight a shift in the way that we think that this institution should relate to the marital relationship.

Whilst there has been a huge variety in the exact nature of the institution across both time and place, Coontz describes its overall purpose for much of history as being concerned with shaping the economic, political and social landscape of society.

For centuries, marriage did much of the work that markets and governments do today. It organised the production and distribution of goods and people. It set up political, economic, and military alliances. It coordinated the division of labour by gender and age. It orchestrated people's personal rights and obligations in everything from sexual relations to the inheritance of property. (2006, p. 9)

In order to do this, the institution required “specific rules about how people should arrange their marriages” (Coontz 2006, p. 9). We can see here that the institution would have directly shaped the nature of the marital relationship. For instance there would have been strict rules about the number of people (two), the duration of the relationship (lifelong) and features such as sexual fidelity. Additionally, these rules, and the institution itself will have “structure[d] people's expectations, hopes, and constraints” about what the marital relationship would look like (p. 9). For instance, it will have influenced views on domestic violence, marital rape and the existence of love within the marital relationship.

Taking love as an example, whilst it may well have been desirable for the marital relationship to be a loving one in the past, it certainly wasn't necessary. Love was not considered a good reason for getting married. Moreover, the existence (or lack of) love in the marital relationship was of little relevance to the structure of the institution. If the institution did not foster or provide the opportunity for a fulfilling, happy and loving relationship, then this was of little concern.

This is not the dominant picture of the institution of marriage that we are familiar with now. We now take love - and the loving relationship - to be central to marriage. The institution of marriage is now concerned with and focused on the “personal and private relationship that should fulfil [our]

emotional and sexual desires” (Coontz 2006, pp. 306-307). As a result love is viewed as a central reason for marriage.

How does this affect the way that the institution relates to the marital relationship? We have shifted to expecting the marital relationship to shape the structure of the institution. If it does not meet the needs of that relationship, then it needs to be re-structured. It is now important that the institution enables a fulfilling, happy and loving relationship. This cannot be ignored in favour of other goals.

We can describe this distinctive shift in how the institution of marriage is viewed in terms of ‘direction of fit’.<sup>2</sup> We have gone from a situation where the marital relationship fits the institution of marriage, to a situation where the institution is meant to fit the relationship. For example, where it would once have been the case that the wife’s property would automatically be transferred to the husband on marriage, we now think that both parties to a marriage should be able to make legal arrangements that best suit the individuals involved (for example, prenuptial agreements and wills).

If we think about this change in the direction of fit within the political liberal framework of the public/private divide, then we have moved from thinking that the private relationship should fit the public institution, to thinking that the public institution should fit the private relationship. This opens up questions of how a public institution can and should do this.

Did this shift actually occur? Coontz provides a clear narrative of how ideas surrounding marriage have shifted and notes how people now “expect to live their lives in a loving relationship” (2006, p. 10). Whilst they still want “socially sanctioned relationships, backed by institutional protections”, they do not want to live under “a rigid institution” and would prioritise the relationship over the institution if it did not fit (p. 10).

Coontz describes the reasons that she thinks contributed to this gradual shift over the past 150-200 years. She identifies the shift as beginning in the

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<sup>2</sup> I am borrowing this terminology from the philosophical literature on beliefs and desires. It is merely illustrative. Nothing that I say stands or falls with this concept or its definition.



eighteenth century prompted by the “spread of the market economy and the advent of the Enlightenment” (2006, p. 145). By the end of this century the norm of arranged marriage had been replaced by the norm of people choosing their own partners in marriage, and “individuals were encouraged to marry for love” (pp. 145-146). Marriage came to be viewed as a private and personal relationship between the spouses and as a place to escape from public life. It was in this era that the distinct yet complementary roles of husband and wife appeared. The husband was seen as the economic provider for the family and the wife as providing moral and emotional support. The success of a marriage was now thought to be determined by “how well a family met the emotional needs of its individual members” (p. 146).

Coontz identifies a key catalyst for the eighteenth century change in attitude as “the weakening of the political model upon which marriage had long been based” (2006, p. 148). Monarchy and political absolutism were being questioned at this time, following on from John Locke’s writings which promoted the political model of a “contract between ruler and ruled” and had appeared in the late seventeenth century (p. 148). This led to a parallel focus on “the mutual obligations required in marriage”, of both husband and wife, rather than an acceptance of the “absolute rights of husbands” (analogous to the divine right of Kings) (pp. 148-149). It was in this period that people like Marquis de Condorcet and Mary Wollstonecraft called for complete equality between husband and wife in marriage (p. 149).

Whilst these ideas emerged in the eighteenth century, it took over one hundred years for them to become fully accepted and realised. The ideas (particularly surrounding free choice and equality) naturally faced criticism, as they called for a radical review of the social, political and moral worldview. This takes time, and goes through stages.

Coontz notes that people recognised that this new way of viewing marriage would lead to tensions early on. It allowed for more people to become satisfied with their marriage, as a valuable personal relationship, but at the same time had the potential to destabilise the institution because it made

marriage “optional and fragile” in a way that it had never previously been (2006, p. 5). The view suggested that if an individual was not satisfied in their marriage that they should be able to leave it: an idea that conflicted in particular with the institution’s rules on divorce. These tensions have been evident from the eighteenth century onwards as “people surged past the barriers that prevented them from achieving marital fulfilment and then pulled back, or were pushed back, when the institution of marriage seemed to be in jeopardy” (p. 5).

A notable, and recent, stage of development (where the tension is also evident) is that of the 1950s model of marriage where the husband is viewed as the breadwinner and the wife as the nurturing housewife. Coontz views this model as one where people “embraced the ideals of love and marital companionship without following them to the dangerous conclusion that loveless marriages ought to end in divorce or that true marital partnerships should be grounded in the equality of men and women” (2006, p. 8).

We can see that this model is based on the eighteenth century idea of complementary roles, and on an idea (which had also emerged earlier) which claimed that men and women had unique characters that were not to be deemed “superior or inferior” but should be “appreciated on their own, completely dissimilar terms” (Coontz 2006, p. 153). Reflecting this view, it was thought that “sustaining married love depended on emphasising and maintaining the mental, emotional, and practical differences between the sexes” – differences that made men and women “dependent upon each other for ‘marital bliss’” (pp. 153-154).

It was not only ideas that had to change in order for the 1950s model to emerge. For example, the idea that husbands should go out to work to provide income and wives should stay at home and nurture, which became accepted in Europe and America in the nineteenth century, only became possible for most people in the mid-twentieth when men’s wages were high enough and the division of labour between women and men in society had altered so that it was the norm for men to go out to work and women to stay at home. (Coontz 2006, pp. 7-8)

The 1950s model itself has since come under scrutiny as the ideals of free choice, equality and love have become more widely accepted, and the implications of these values realised. A loveless marriage is now thought to be grounds for divorce, and gender equality now receives far more attention, even if it is not fully achieved. The political institution now reflects these changes in attitude, highlighting how it has been altered to fit what is viewed as the paradigmatic marital relationship.

It is likely that the exact reasons for the transformation will be up for historical debate. However, Coontz's account provides reasons for us to think that the shift has occurred, that the dominant view of marriage is that it should be centred on love, and that the institution should be built around the central loving relationship. However, even if we disagree with her reasons, or even that there has been such a shift in dominant ideas relating to marriage, the important point to recognise is that there are two distinct ways of viewing how the institution of marriage should relate to the marital relationship, and that this is relevant to debates that consider whether and how the state should be involved in this institution.

Accepting that the shift has occurred does not mean that we cannot recognise that there are still people who hold the view that the institution, and its purposes, should shape the private marital relationship. The recent debates surrounding same-sex marriage in fact provide examples of both (pre and post-shift) viewpoints.

The "conservative" view of marriage, which claims that marriage can only be heterosexual, takes a pre-shift viewpoint.

Marriage should be understood, conservatives argue, not primarily as an avenue for personal fulfilment and individual happiness, but as an institution that exists first and foremost for the creation and well-being of children. (Jordan 2013, p. 49)

The institution's function is not determined by the character of the relationship of those who inhabit institutional roles (husband and wife). Rather, the institution's function is something realised by those who inhabit the roles. The marital relationship needs to fit the institution, and so:

Marriage is a sexual relationship because sex leads to children.

Marriage is between exactly two human beings because every human being is the genetic offspring of exactly two human beings.

Marriage is permanent and exclusive because of (i) the unifying character of heterosexual intercourse and (ii) the importance of parents in their children's lives. (Jordan 2013, p. 49)

As such the conservatives argue for legal marriage to only be for heterosexuals. Firstly, because this is what they think marriage is by definition, and secondly, because they believe it is "best for children" that it remains this way (Jordan 2013, pp. 49-50).

On the other side of the same-sex marriage debate are the liberals who think that marriage is "an institution that exists *for the sake of married persons*" (Jordan 2013, p. 50). This affects how they think the political institution should be structured - they argue for the inclusion of same-sex couples in legal marriage, because they also have loving relationships of the type that 'fit' the institution, and would benefit from being included within it. This is a post-shift (and the dominant) viewpoint.

Why highlight these two distinctive ways of viewing the relation between the institution of marriage and the marital relationship? Primarily because it is important to highlight (as Jordan does) that differing views on marriage can have these very different viewpoints as their starting points. This will affect the debates that surround these views. Different questions about marriage may seem more pertinent or pressing from one starting point than another. Answers to particular questions about marriage (for example, about the meaning of marriage) might depend on what starting point is held. This illustrates the need to be clear about what our starting point is.

There is of course a debate about which of the viewpoints ('conservative' or 'liberal') is correct. This is an interesting debate. Just because one viewpoint (the 'liberal' viewpoint) has become dominant, does not automatically mean it is correct. However I do not want to enter this debate here. For this thesis, I am interested in arguments that assume the dominant position (as identified) – that the institution should fit the relationship. I am approaching the topic of marriage from a political liberal perspective in this thesis and

the questions and issues that I want to address are being raised by people who take this ‘liberal’ viewpoint of marriage as their starting point.

Highlighting the alternative (‘conservative’) viewpoint is still important for (at least) two reasons. First, because it highlights that when we take the proper direction of fit to be that the institution should fit the marital relationship we should pay attention to the nature of that marital relationship. In order for an institution of marriage to ‘fit’ a marital relationship, we need to know what a marital relationship looks like, and how an institution of marriage can foster and support it. It should be noted that determining the nature of the marital relationship will be a complex task. We can no longer look to the institution of marriage in order to define what the marital relationship is. It is precisely this complex task which I undertake in Part One where I ask – ‘What is the paradigmatic marital relationship?’

The second reason is that it emphasises that there are different ways in which an institution of marriage can relate to the marital relationship. We can question the status quo. A relevant question to ask, as the current literature does, is whether the current institution of marriage is fit for purpose. This leads us to two sets of questions. Firstly there are questions about the structure of the institution, such as whether there should be restricted eligibility. Bearing our liberal starting point in mind looks important here: is it the relationship or the institution that demands such eligibility restrictions?

Secondly there are questions about the proper way for the state to relate to the marital relationship. These arise in part because currently we have a *political* institution of marriage in most Western liberal democracies – it is an institution that is regulated by laws, and which conveys a legal status along with legal rights and benefits. As such, the state is currently related to the marital relationship in a direct and regulatory manner. It is this relation that we may want to question: should the institution of marriage be *political* rather than, for example, religious or cultural? These concerns are

considered in Part Two of this thesis, where I focus on the question – ‘What relation should the state bear to the paradigmatic marital relationship?’

It is interesting to notice that whilst the marital relationship looks as though it has changed distinctively over the years, it isn't clear that the institution of marriage has similarly done so. Certainly there have been some dramatic changes in the political aspects of the institution. In marital law we have seen the abolishment of miscegenation and coverture laws, and the legalisation of same-sex marriages. Non-political aspects have also changed. Societal norms that assumed distinct yet complementary male and female roles have been eroded and the acceptance of divorce has become much more widespread. However, the institution of marriage still consists of a legal status conferred onto eligible couples (where eligibility is decided by the state) which is accompanied by a host of legal rights and obligations. There are also still laws of entry and exit, as well as laws that apply specifically to individuals who have acquired the marital status. If we think that the institution should fit the marital relationship, then it seems like a pertinent question to ask whether this traditional, political, structure is suitable, especially as we appear to be shoehorning an institution which was historically structured for one particular purpose, into a role that it was not built, and is not clearly suited for.

These two questions surrounding the paradigmatic marital relationship are particularly important to bring to the fore now, when there are a number of debates surrounding the nature and legitimacy of the current political institution of marriage in Western liberal democracies. Focusing on the nature of the marital relationship and attempting to identify its distinctive features will likely have an impact on a number of different discussions. For instance, it seems to be extremely relevant to the same-sex marriage debate which could be understood as asking whether same-sex adult relationships can be considered to be paradigmatic marital relationships. It will bring a new perspective to these debates that ensures that the private marital relationships between individuals are properly taken into account when considering whether and how they should be supported and regulated.

To clarify, I am not suggesting that the marital relationship is the only important factor to be considered in these debates. There are other things to take into account as well, such as the restrictions a theory of justice might place on the role that the state can play in relation to its citizens' personal relationships. The point I wish to emphasise is that questions concerning the nature of the marital relationship are relevant to these debates. These questions have received some attention, but there is still much more to be said. Focusing on them could shed new light on the debates surrounding marriage. In particular they could potentially aid us in determining whether there should be a political institution of marriage and what that institution should look like.

In the rest of this chapter I will explore in a little more depth some preliminary ideas surrounding the two central questions that have been identified. I will also outline how they will be more fully addressed in the rest of this thesis.

## **2. What is the Paradigmatic Marital Relationship?**

This question will be fully addressed in Part One. It is a question about the nature of the relationship or relationships that the political institution of marriage is meant to be shaped by. Answering it will involve identifying which relationship we, as a Western liberal society, consider to warrant or require a political institution of marriage. It will also involve identifying what distinctive features that marital relationships have. It should be noted that I am interested in the relationship between adults exclusively. Although traditionally child-rearing has been considered central to the marital relationship, it is no longer assumed that all married couples will have children. Additionally, the parental relationship is already regulated directly (if you are the registered parent of a child, you have legal responsibility for that child, unless it has been taken away by the state).<sup>3</sup>

To begin the enquiry in to what the paradigmatic marital relationship is, it seems important to recognise that there are some relationships that can be

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<sup>3</sup> See Brake (2012), pp. 145-151 for an argument in favour of separating the regulative frameworks for marriage and parenting.

easily ruled out. There are relationships that seem to be totally inappropriate candidates for the marital relationship, such as many familial relationships, and in particular the parent-child relationship.

There are also relationships that whilst not totally inappropriate, seem not to warrant the label of 'marital' in virtue of their defining features. For instance, the cousin relationship does not seem to warrant the label of marital, in virtue of being between cousins. The relationships between colleagues or members of associations and institutions also seem unsuitable candidates for the marital relationship in a similar way. When the relationship is defined by these features, they do not look as though they warrant the marital label. However, these relationships do not rule out the possibility of a marital relationship - they are compatible with it. For example, we think it is perfectly plausible that colleagues could also be married to each other. The point is that their relationship as colleagues is not what makes their relationship marital. There are also relationships that we simply consider not to require or warrant a political institution or any regulation at all, such as the relationship you have with an acquaintance you rarely see.

It also seems important to clarify that there are a number of different ways that we can differentiate relationships. For the purposes of analytical clarity we might use the following four (broad) categories. I do not aim to provide a comprehensive list of features under each category here, but merely indicate the kinds of things we would consider for each.

The first category concerns the people involved – their ages, their sex, and possibly other ways of describing them (such as 'member of a particular group'). The second concerns the structure of the relationship – how many people are involved, the duration of the relationship, whether it is a relationship of equality and whether it is voluntary or not.

The third category concerns the purposes or functions of the relationship. A key function of the relationship between an elderly lady and a shopkeeper, for instance, will be for the elderly lady to acquire the goods that the shopkeeper sells. This relationship might also have a more informal function



of keeping the old lady from being lonely by providing someone to talk to regularly. It may be that a relationship does not have a clear overall purpose, but we can usually describe a number of different (formal and informal) functions that it might have. For example most relationships include roles that the people involved typically play for each other. There are also rights and obligations that people do or do not have in virtue of being in that relationship.

The fourth category includes the typical things that happen within a relationship. For instance, in the relationship between the elderly lady and the shopkeeper, the elderly lady typically pays for things the shopkeeper is selling, and they chat, but they tend to only interact in the shop, and to only spend minimal amounts of time together.

We can describe particular relationships by describing their features under these categories. For instance – the relationship of ‘colleague’. The people involved are of working age, can be any sex and can be described as ‘working for company X’. The structure of the relationship has to involve at least one other person, but can involve up to any number of people. The duration varies, as it lasts for as long as all parties to the relationship work for the same company. It can be a relationship of equals, but equally, there can be a hierarchy (your boss is still your colleague). It is an involuntary relationship in the sense that you are colleagues with everyone that works in the same place as you, whether you agree to it or not. However, it is not coercive, in the sense that you have the choice whether or not to work at company X, and therefore work with all of the people at company X. It is not clear that there is a distinct overall ‘purpose’ for the relationship, although it might be thought that a good colleague relationship will enable colleagues to work well together. Additionally it seems that people who relate to each other as colleagues should treat each other in a certain way. The typical things that happen within this relationship are that people work together, that they interact in the workplace, that it is a professional (rather than a social) relationship, and that it is governed by specific workplace rules and general employment laws.

As we can see with this example there are some features that the colleague relationship will share with other relationships – such as being between any sexes. There are also some features that seem to depend on other features. For instance, the duration of the relationship depends on the fact that the relationship is between people that work in the same place. It also seems that some features are more central to defining the nature of the relationship than others. For instance, the number of people involved does not seem definitive. The fact that it is between people who work together, and some of the typical occurrences, such as the fact that it is a professional relationship seem to play much more of a defining role.

It seems likely that it will be the same for the marital relationship. There may be some features that we think are irrelevant to the question of the paradigmatic marital relationship(s). They are irrelevant in the sense that they do not contribute to what makes that relationship distinct from other relationships, or distinctly ‘marital’. For instance it may be the case that it doesn’t matter how many people are involved, or what sex they are, or how long it lasts for. We may also think that some of the features are inter-dependent. Whilst it may seem at first glance that the number of people is irrelevant, we may find that when considering the purpose of the relationship, this bears on the question of how many people can be involved.

This suggests that it will be helpful to identify which features are likely to be the most centrally defining features of the marital relationship, and therefore which are relevant to the question at hand. Where should we start? As it has already been noted, this relationship is no longer defined by the political institution of marriage. We cannot look to the structure of the institution - its laws and the associated rights and duties - and ask what relationship would result. This is the wrong direction of fit. Rather, we need to identify the relationship first.

However, it might be thought that looking to the current relationships that occur within the political institution of marriage will still be able to guide us in identifying the centrally defining features of the marital relationship, even if the institution does not define the relationship itself. At the least, it could

suggest features that are worth considering. Although it is unclear how far and how well the current political institution of marriage has been shaped by the marital relationship, we have already seen that the contemporary institution of marriage is paradigmatically meant for those in a loving, fulfilling relationship. It might be thought that there are other features of typical marriages that should be considered as well. For example, that it is a sexual relationship, monogamous, committed, and long-term if not forever. However, as noted above, some features seem to depend on others, and it seems that this list of features include the type that may well depend on more central, defining features. For instance, the duration of the relationship seems to depend on the purpose or function of the relationship. The fact that it is a loving relationship does, however, seem central.

Which loving, fulfilling relationship? Whilst there are many different types of loving relationship - we can have loving, fulfilling relationships with our siblings, our parents, and our friends - it is clear that these are not candidates for the paradigmatic marital relationship. The loving relationship that is assumed to be marital within our Western society is the stable romantic relationship that is expected to be long-standing. There is a whole industry based upon this idea, let alone the many novels, films and plays that revolve around this ideal. These narratives tell us that once people have found romantic love, the natural consequence is for them to get married. Consider *Romeo and Juliet* (the supposed paradigm example of romantic love). They meet and fall in love. They (mistakenly) see the obvious consequence of their love as marriage. One of the tragedies of their story is the fact that within their society, in their era, the relationship was still meant to fit the marital institution, and not the other way around.

Part One explores the idea that the romantic relationship is the paradigmatic marital relationship. In order for it to be able to play this role we will need to be able to clearly distinguish what a romantic relationship is. The most obvious place to start seems to be the love that occurs within a romantic relationship. Chapters One and Two consider whether there is a unique type of love that occurs in romantic relationships compared to other relationships

that also involve love (but are not ‘romantic’) – for instance, long-standing close friendships.

I explore four different accounts of love: love as union with the beloved (*Union Accounts*); love as robust concern for the beloved (*Robust Concern Accounts*); love as valuing the beloved (*Valuation Accounts*) and; love as an emotion (*Emotion Accounts*). I focus on Union and Robust Concern Accounts in Chapter One, and on Valuation and Emotion Accounts in Chapter Two.

I conclude that there is no way to clearly distinguish the love that occurs in romantic relationships from the love that occurs in other relationships such as close friendships without appealing to the relationship - the patterns of behaviour and interaction (as well as the norms that influence them) - that the love occurs in. This means that simply focusing on the love alone cannot fully illuminate the nature of the romantic relationship. We cannot therefore identify paradigmatic marital relationships by picking out those relationships that involve a certain type of love. We need to know more.

The discussion of Chapters One and Two does however point to a way to distinguish romantic relationships from close friendships – by focusing on the relationship itself. For this, we need an account of the romantic relationship. In Chapter Three I argue that we need a role-based account of this relationship. In Chapter Four I construct a role-based account and propose that the romantic relationship (the paradigmatic marital relationship) is one in which the participants play the (distinctive) role of a romantic partner for each other.

### **3. What Relation Should the State Bear to the Paradigmatic Marital Relationship?**

Once we have an idea of what the paradigmatic marital relationship looks like, we then need to ask whether the current institution of marriage fits this relationship. A key feature of the current institution of marriage is that it is political. The state is involved in the institution which conveys a legal status as well as legal rights, duties and benefits. This is a direct, regulatory relation that the state specifically bears to the paradigmatic marital

relationship (i.e. the romantic relationship). In Part Two I consider whether this is an appropriate way for the state to relate to the paradigmatic marital relationship. Here I put forward some preliminary thoughts and introduce the key arguments, authors and ideas that relate to this question.

My starting point for approaching this question is a number of recent arguments from within the political liberal debate surrounding marriage. These arguments can be seen as interrogating the state's relation to the marital relationship via the political institution of marriage. They object to the state recognition of marriage. They are drawn from the work of Elizabeth Brake, Tamara Metz and Clare Chambers.

Elizabeth Brake (2012) worries that the current political institution of marriage is incompatible with political liberal ideals. In particular she is concerned that it violates the political liberal principle of public reason and that it involves the state in unjustified discrimination. However, she thinks that the political institution of marriage can be reformed so that it conforms to political liberal principles and ideals. She proposes a system of “minimal marriage” which would enable people to pick and choose from the set of “rights and responsibilities” that usually attach to marriage, and decide who they would like to exchange each right and responsibility with (p. 156).<sup>4</sup> This system would enable individuals to be minimally married to more than one person, and to decide for themselves which marital rights and responsibilities they will exchange with each person. This could be done either “reciprocally or asymmetrically” for each marital right (p. 157).

Tamara Metz (2010) calls for the abolition of marriage, but proposes an alternative political institution for the recognition of certain relationships – an Intimate Caregiving Union Status for relationships that involve intimate caregiving.<sup>5</sup> She thinks that intimate caregiving relationships may or may not be marital, but it is not the fact that they are marital that warrants recognition. What matters is that they involve intimate caregiving which

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<sup>4</sup> See Brake (2012), Chapters 7 and 8, for a full discussion of minimal marriage.

<sup>5</sup> See Metz (2010), Chapter 5, for an account of her ICGU status.

requires state regulation and warrants state recognition. She can be understood as thinking that the state should only recognise the marital relationship if it is an intimate caregiving relationship, but that it should also recognise all other intimate caregiving relationships as well. There is nothing special about the marital relationship that warrants the state bearing a different relation to it.

Clare Chambers (2013; 2017) is also a marriage abolitionist. She aims to show that any political institution used to regulate personal relationships (whether it is a political institution of marriage, of civil union, of intimate caregiving unions, or any other status that provides state recognition of adult personal relationships) is problematic, and should be abolished. She argues that any political institution which provides state recognition of adult personal relationships violates key political liberal principles, such as the principle of neutrality.<sup>6</sup> She can be understood as thinking that the state should not bear any special relation to the romantic relationship, let alone through a political institution of marriage.

Chambers argues for a “marriage-free state” (2017) where marriage is still permitted but no longer a legal institution.<sup>7</sup> She of course recognises that there are still vulnerable parties to protect, potential disputes to regulate and legal rights and duties to distribute appropriately (p. 115). She proposes that the state should directly regulate certain aspects - relationship practices - of adult personal relationships through a regulatory framework that is both piecemeal and default (so each relationship practice is directly regulated separately and on an opt-out basis). As a result, the state may regulate certain aspects of relationships that also happen to be marital, but it will not be due to the fact that they are marital that warrants state involvement.

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<sup>6</sup> Chambers is not herself a political liberal (she is a comprehensive liberal) but she provides political liberal arguments within her work. She also has arguments that focus on issues of equality, but these focus more on the claims that marriage is, for example, sexist and heterosexist, than on the idea that state involvement with the institution is problematic in itself, which is what I am interested in.

<sup>7</sup> See Chambers (2017), Part Two, for her positive argument for a marriage-free state.

Brake, Metz and Chambers all challenge the current relation that the political liberal state bears to the marital relationship through the political institution of marriage. These arguments are presented from within political liberalism. They claim that the political institution of marriage violates certain political liberal principles. They raise three levels of concern: first, that the *current* institution is problematic for political liberalism; second, that any political institution *of marriage* is problematic for political liberalism; and third that *any* political institution that recognises a particular form of adult personal relationship is problematic for political liberalism. I go through each of their arguments in detail in Chapters Five and Six, and aim to show that each level of concern can be dismissed. There are no violations of political liberal principles evident, and so the political institution of marriage does not look problematic for political liberalism.

The arguments considered, however, involve numerous different claims and concepts which makes it unclear as to whether there is a general underlying complaint against the political institution of marriage that needs to be addressed. In addition they each object to the state *recognition* of marriage, but it is unclear whether they all agree on what state recognition consists in.

In Chapter Seven I identify three central ideas that can be understood to be running through these arguments: personal relationships; the romantic relationship; and the distinction between *direct* and *indirect* regulation. I go on to reframe the anti-marriage side of the debate around these ideas.

Direct regulation occurs when the state creates a distinct legal category corresponding to the thing being regulated. Indirect regulation occurs when something is regulated, but there is no distinct corresponding legal category. I show that whilst the anti-marriage theorists think some personal relationships warrant direct regulation, they do not think that the romantic relationship does. Each of their proposals for alternative regulatory frameworks would only indirectly regulate the romantic relationship. I identify the underlying complaint against the political institution of marriage implied by the anti-marriage position as: the political institution of marriage

directly regulates the romantic relationship, when it is unwarranted in doing so.

I move on in Chapter Eight to explore how the debate can move forward in light of identifying this underlying complaint. It is here that the importance of understanding the nature of the romantic relationship becomes apparent. I draw on the work of Part One and highlight how the romantic relationship does warrant direct regulation because it can uniquely cause systematic material, physical, and psychological vulnerability – something which gives the state a compelling reason for direct regulation.

Showing that the romantic relationship warrants direct regulation does not address the further question of exactly *how* the state should directly regulate it. There is still the question of whether the current, or any, political institution of marriage is the best way of directly regulating the relationship. There are also still questions about what the structure of such an institution should look like. I do not aim to conclusively answer these questions in this thesis, as there is not space to do them justice.

Instead, in the conclusion, I aim to highlight just how complex a task it is to provide answers to these questions, and to present some key considerations that need to be kept in mind when embarking on such a project. I do this by drawing out insights from the work of Iris Marion Young (1990; 2006) which seem particularly relevant to the question of how the state should directly regulate the romantic relationship. These insights recommend that we pay attention to the political and social structures and norms that are in place within the society we are working with. This will include the norms surrounding personal relationships (such as those surrounding the role of a romantic partner) because these affect what personal relationships look like (for example, whether they involve gender roles). It will also include other societal structures and norms that influence what issues of justice arise in personal relationships. For example, workplace norms influence how caregiving is viewed and valued within society.

It may be the case that the current political institution of marriage is the best tool for the job. Or it may need to be altered slightly, dramatically reformed,



or even abolished altogether. All I claim, contrary to Brake, Metz, and Chambers, is that the state should directly regulate the paradigmatic marital relationship (the romantic relationship). The reason for this will be (at least in part) because the nature of the romantic relationship warrants it.

#### **4. One Final Note**

Earlier I noted that this project could have broader implications, particularly surrounding the concept of the public/private divide, often utilised within political liberalism. I want to just point to what some of these broader implications could be here.

I think the question of how personal relationships, including the romantic relationship, should be regulated provides a particularly good example of how the public/private divide is complex and messy. It also highlights the need for paying more attention to this complex messiness. The public and the private interact in interesting and important ways, and we can see this when we focus on the regulation of personal relationships.<sup>8</sup>

Citizens and their lives (including their relationships) influence what is required by the state. If no-one drove cars then there would be no need for car licensing and road tax. What the state is concerned with, and how it structures society, will also influence citizens, and their lives. By putting higher taxes on certain cars, citizens' car-buying choices are influenced by the state. By recognising that there is no clean line between the public and private spheres, we can begin to understand these complex interactions more clearly. Marriage then becomes not an awkward, complicated case to deal with, but simply an instance of all other interactions between citizens and the state.

Theories of justice, such as political liberalism, aim to be action guiding – but they also need to be fit for purpose. If there are aspects of human life that seem to require regulation of some kind, then this is something that a

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<sup>8</sup> Others have of course noticed and highlighted this: Metz for instance notes that “[m]arriage/state relations serve as a direct road into the heart of liberal political theory, to that area where public and private meet, overlap, and collide” (2010, pp. 153-154). See Metz (2010), Chapter 6, for further discussion.

theory of justice needs to take into account. If the regulation of this thing seems to be incompatible with that theory of justice, then this suggests we need to reconsider our theory of justice (or at least the frameworks that it utilises).

Discussions of the appropriate regulation of marriage may therefore suggest the reformation of both the political institution of marriage, and of political liberalism as a theory of justice.

## Part One

### *What is the Paradigmatic Marital Relationship?*

In the Introduction I identified the central question of Part One as: What is the paradigmatic marital relationship? I am asking this question in order to identify what relationship the institution of marriage is meant to fit, and to determine the nature of this relationship.

Looking within our society - at the literature, media and culture - one relationship stands out as the paradigmatic instance of the marital relationship: the romantic relationship that has persisted over some time. After all, the movies and fairy tales tell us that it is the couple who are in a romantic relationship that get married and (supposedly) live happily ever after.<sup>9</sup>

So, the institution of marriage is meant to be for the romantic relationship: but what is a romantic relationship? Why do we want (or need) an institution for it? What justifies a distinctive political institution for it? To answer these questions we need to further explore the nature of the romantic relationship, and ask what makes it distinctive.

In order to address these questions I utilise the comparison between romantic relationships and close friendships. I use this comparison because despite being thought to be distinct relationship types, they are on many descriptions, remarkably similar. Identifying the difference between these two relationships will therefore (hopefully) enable us to find what is distinctive about the romantic relationship, in a way that a comparison with relationships that are clearly and markedly different will not.

We clearly have two different concepts when we come to think about these two relationship types, and we can point to different paradigm examples for each. In the Harry Potter books (and films) Harry and Hermione are clearly

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<sup>9</sup> Romantic flings or brief affairs have usually ended before marriage is considered: I am not including these other short-term relationships under the term *romantic relationship*.

close friends, but Ron's and Hermione's close friendship develops into a romantic relationship. In the sitcom *Friends*, Joey and Chandler are always close friends, whereas Chandler and Monica come to have a romantic relationship. Shakespeare's Romeo and Juliet clearly desire, and are in the process of developing a romantic relationship; Romeo and Mercutio are close friends.

Yet, the similarities between these two relationships are numerous. Insofar as we choose our close friends we also choose our romantic partners. We share things with both our friends and our romantic partners – our thoughts, desires and ambitions for instance, as well as our experiences. Other characteristics also look similar – the relationships are important to their members, close, supportive and long-standing. They also both involve love, care, and shared activities. What then makes them different?

The first thing to note about romantic relationships and close friendships is that they are both loving relationships. There are two key aspects to loving relationships, which whilst often intimately connected and interlinked, can be separated. The first is the love that occurs within these relationships (the thing that makes them *loving* relationships). The second is the relationship (the thing that makes them a loving *relationship*). These two aspects can come apart – you can have love without a relationship, and a relationship without love. When they come together, you get a loving relationship – a relationship where love is also present.

To see that this is the case, consider the following example. Two people meet, and start to date. After a few dates they begin to fall in love.

Unfortunately one of them is due to move abroad for an exciting new job in two weeks' time. This means that the relationship cannot develop due to practical matters.<sup>10</sup> The two people love each other, but they are not (yet) in

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<sup>10</sup> It might be pointed out here that long-distance loving relationships are possible. In this example however there is no loving relationship already in place to maintain (as is the case with the majority of long-distance loving relationships), and so the individuals would have to work very hard at staying in contact and developing the relationship whilst they were separated in order for them to form one. This might be possible, but the

a loving relationship. Relationships take time to develop, to enable the participants to get to know one another, to develop attitudes of concern for each other, and to begin to generate and fulfil expectations for each other. If the one person returns, and the love is still there, they could then continue to develop their relationship. If they don't return, then the relationship will never develop, whether or not the love lasts.

Clearly the two aspects of a loving relationship are interlinked and will influence each other. It might be thought that a particular type of love will lead to (or only occur within) a particular type of relationship. This would suggest that we could identify a relationship type by looking at the type of love that the participants in that relationship have for each other. In order to do this we would need to show that there are distinct types of love. For the particular comparison at hand, we would need to show that romantic love is distinct from close-friend love. Chapters One and Two explore whether this is possible. These chapters consider a number of different accounts of love and ask whether we can use them to demarcate romantic love and close-friend love as distinct types of love. I argue that this is a difficult task, and that accounts that do enable us to find a difference between romantic love and close-friend love can only do so by appealing to the relationship that the love is found in. As such, the proposed method of first identifying the love, in order to identify the relationship, fails.

We therefore cannot look to the love alone to distinguish romantic relationships from close friendships. There is more to the difference between these two relationships. This leaves the relationship itself – the pattern of behaviour and interactions over time between the people that participate in the relationship. In what ways could a romantic relationship and a close friend relationship be different? In order to answer this question we need an account of the romantic relationship itself. In Chapter Three I argue that we need a role-based (as opposed to a behaviour-based account).

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point still stands that the love and the relationship can come apart, and we can think about them separately (at least to an extent).

In Chapter Four I construct a role-based account of the romantic relationship. This shows that the difference lies in the constitutive norms of the romantic partner role. This role involves distinct relationship obligations and patterns of required behaviour. I therefore claim that it is in virtue of this role that the romantic relationship is distinct and that the paradigmatic marital relationship, as a romantic relationship, is one in which the distinct role of a romantic partner is being played.

## Chapter One

### Romantic Love: A Unique Union or Robust Concern?

Over the next two chapters I consider whether it is the love that occurs within the paradigmatic marital relationship (understood to be the romantic relationship) that makes the relationship distinctive. Is there a unique form of love - *romantic love* - that is present only within romantic relationships, influencing the pattern of behaviour and interaction that occurs? Can we use this feature to identify and define what a romantic relationship is?

Love has always (at least since the time of the ancient Greeks) been thought to have different forms. The ancient philosophers distinguished between *eros*, *agape* and *philia*, and these were thought to be associated with different forms of relationship. *Eros* is characterised as a passionate (often sexual) desire for the loved object. *Agape* is the sort of love that bestows value on to the beloved object, and has become associated with Christian, God-like love. *Philia* is often associated with friendship, and is characterised as an “affectionate regard or friendly feeling” (Helm 2013, Section 1) towards those who are loved in this way.<sup>11</sup>

The idea that romantic relationships could involve a distinctive type of love seems fairly intuitive. Love is thought to occur in a number of different personal relationships – those between family members, and friends as well as those between romantic partners. It is often thought that the love that occurs in different relationships is different in some way – that there are distinct types of love associated with different relationships. We make this distinction when we say things like ‘I love him, but like a friend, or a brother’.

That romantic love is one of these distinct forms of love is a fairly common view. In particular, it seems right to say that I love my romantic partner in a

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<sup>11</sup> For a concise explanation of each type of love see Helm (2013), Section 1. The distinctions between these types of love are debated, and most contemporary accounts blur the lines, incorporating aspects of two or three of them into their accounts.

different way from my family members (children, siblings, grandparents, aunts etc.). Romantic love seems to be distinct from familial love. What exactly this difference consists in I will not attempt to articulate here as this is not the comparison I am utilising, because these familial relationships are quite clearly distinct from the paradigmatic marital relationship.

As explained in the introduction to Part One, the comparison I will utilise is between romantic relationships and long-standing close friendships. Whilst similar in many respects, it is widely assumed that romantic relationships and close friendships are distinct relationships, and that they involve distinct forms of love. Intuitively it seems that there is something different about the love that we have for our close friend, and the love that we have for our romantic partner. We think that Hermione has different relationships with Ron and with Harry, and that she loves them in different ways. It is this intuition that I will interrogate.

Where to start? Love is a complex, and a widely (both historically and currently) debated concept, even when narrowed down to the love that occurs in non-familial personal relationships. Rather than attempting to enter into this rich and varied debate directly, I will take as my starting point four different accounts (broadly categorised) of love. I will take each account in turn, explaining what it takes love to consist in, and then considering whether such an account can be used to show that there is a distinctive type of romantic love.

The four accounts that I consider are: accounts that take love to be union with the beloved (*Union Accounts*); accounts that view love as robust concern for the beloved (*Robust Concern Accounts*); accounts that view love as a form of valuation, either as an appraisal or bestowal of value (*Valuation Accounts*); and accounts that take love to be either a single emotion, or a complex emotional interdependence with the beloved (*Emotion Accounts*).<sup>12</sup> I focus on Union Accounts and Robust Concern

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<sup>12</sup> I utilise the four broad categories found in both Helm (2013) and Heaton and Roige Mas (2014). Different accounts may cross these categories or include features found in other categories as well, but they are a helpful way to demarcate general differences of focus.



Accounts in this chapter, and on Valuation Accounts and Emotion Accounts in Chapter Two.

I do not attempt to argue for the primacy of any of these accounts. Nor do I aim to provide comprehensive critiques of them. This is in part because I think each identifies an important feature that is commonly thought to at least be a part of (if not constitutive of) love, and so warrants discussion. It is mainly however because my aim in presenting and discussing these accounts is to address the question at hand: can it be shown that there is a distinctive type of romantic love? I am using these accounts to my own end.

As such, each of the following sections can be taken to be asking the following guiding question: if we accept one (or more) of these accounts, can we use that account to demonstrate that there is a unique form of romantic love? I argue that the simple answer to this question, for each account, is ‘no’. The more complex answer is that these accounts, taken in isolation, cannot demonstrate that there is a unique form of romantic love. They either fail to identify a distinctive type of romantic love; or they can only identify a distinctive type of romantic love by appealing to some further aspect of the relationship that the love is found within.<sup>13</sup> This implies that we need to look further than the love that occurs within the romantic relationship in order to find out what makes it distinct. We also need to take a closer look at the *relationship* itself, and as will be shown, the social norms surrounding it. Chapters Three and Four undertake this further task.

### **1.1 Union Accounts of Love**

The key idea of Union Accounts is that love is constituted by either the desire to form, or the actual formation of a significant union with the beloved. This significant union is sometimes termed a ‘we’ – when we love someone we either desire to, or actually form, a ‘we’ with the person(s) we

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<sup>13</sup> I leave it as an open question whether we think there actually are (in general) distinct types of love, and whether accounts of love should be able to demonstrate that there are distinct types of love in close friendships and romantic relationships.

love. This ‘we’ can either be taken to be literal or metaphorical, and there is a fair amount of variation in what this ‘we’ is taken to consist in.

The idea that love involves a significant union can be traced back (at least) as far as Plato. In the *Symposium* we see, in Aristophanes speech on love, the idea of humans searching for their ‘other halves’ to become (re)united into one (whole) being in love (2008, pp. 24-30). Aristophanes begins by telling his audience that human bodies used to be radically different. They used to be “round, with their backs and sides forming a circle” (p. 25).

These circular beings had “four hands and the same number of legs, and two absolutely identical faces on a cylindrical neck” (p. 25). In other words, they were ‘double’ what humans are now. These circular humans were powerful and ambitious, and challenged the Gods. To punish them, Zeus decided to split them in half. Each half missed the other dreadfully, and they searched for each other, in order to re-unite. Love, according to Aristophanes, “draws our original nature back together; he tries to reintegrate us and heal the split in our nature” (p. 27). It is simply the “desire for and pursuit of wholeness” (p. 29). When two halves meet “it’s hardly an exaggeration to say that they don’t want to spend even a moment apart” (p. 28). They want to unite, and become one again. This story has had an impact on numerous accounts of love ever since.

Contemporary Union Accounts come from Robert Nozick (1990) and Neil Delaney (1996) who have proposed Union Accounts of love that involve a desire for a ‘we’, as well as Roger Scruton (1986) and Robert Solomon (1990) who offer accounts that take love to involve the actual formation of a ‘we’.

If we accept a Union Account of love, and understand love to consist in a desire for, or an actual formation of, a ‘we’, how could such an account show that there is a distinctive type of romantic love? There appear to be two (broad) options. The first is that romantic love is the only type of love to involve the desire for, or formation of, a ‘we’. The second option would grant that other types of love involve a desire for, or formation of, a ‘we’, but demonstrate that a unique form of union (a unique ‘we’) is desired or

formed in romantic love (with other types of union desired or formed in other types of love). I will consider each option in turn.

## 1.2 Is Union Unique to Romantic Love?

This might at first seem like an odd question. If love is taken to be constituted by union, then surely all love involves union? This would mean that the love that occurs in both close friendships and romantic relationships involves (some sort of) union. Asking whether union is unique to romantic love would therefore appear to get us no closer to working out whether romantic love is distinctive.

However, within the literature, there is no clear consensus on whether or not union is a constitutive feature of *all* love, or only *romantic* love. This lack of clarity is not only a feature of the contemporary debate. Aristophanes refers to the sexual aspect of union (Plato 2008, p. 27) and so it might be assumed that he talking about *eros*, which is often thought to be a part of romantic love. Aristotle on the other hand appears to take union to be (a valuable) part of friendship (McCabe 2012, p. 65).<sup>14</sup> This difference is reflected in the accounts of Nozick and Solomon. Nozick (1990) takes the desire for union to be a distinctive feature of romantic love (absent from close-friend love) whereas Solomon (1990) thinks that close friendship can also involve union. The position of others (e.g. Scruton 1986) is less clear. In light of this lack of clarity, and Nozick's claim that romantic love is distinctive in this way, it seems that we cannot blindly accept the assumption that all love involves union. I shall therefore consider whether Nozick's account can in fact show union to be unique to romantic love.

We find Nozick's account of love in his book *The Examined Life*. He clearly begins with the assumption that romantic love is a distinct form of love and aims to capture what makes it so. His claim is that the desire to form a 'we' (a desire for union) is unique to romantic love: "romantic love, is *wanting* to form a *we* with [a] particular person, feeling or perhaps wanting, that

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<sup>14</sup> McCabe (2012) claims that Aristotle refers to Aristophanes' speech in *Eudemian Ethics* VII.12 where it is suggested that we need our friend - our other self - in order to be whole (pp. 65-67).

particular person to be the right one for you to form a *we* with, and also wanting the other to feel the same way about you” (1990, p. 70). He contrasts romantic love with friendships, where the latter involve a desire to share things - “food, happy occasions, football games, a concern with problems, events to celebrate” - but no desire for union (p. 82). I challenge the claim that union is unique to romantic love by looking more closely at what is desired on his account.

Nozick characterises the ‘we’ that is desired as a “new web of relationships between [two people] which makes them no longer so separate” (1990, p. 70). There are three apparent features of this ‘we’: first, it involves the pooling of the lovers’ well-being; second it involves pooled autonomy between the two individuals; and third, it involves a new, additional, *shared identity* with the other person (pp. 70-71). I challenge the idea that the desire for this ‘we’ is unique to romantic love. I argue that each of these features (pooled well-being, pooled autonomy and a shared identity) are also plausibly desired (and occur) in close-friend love. This leads me to claim that *Union Accounts* (at least in so far as they agree with Nozick) cannot show that union is unique to romantic love.

The first feature of the ‘we’ that is desired on Nozick’s account - pooled well-being - involves having your own well-being affected by the beloved’s well-being: “As the other fares, so (to some extent) do you ... their well-being is your own” (1990, p. 69). If someone or something you love is harmed (or benefitted), then to some extent so are you. This is not merely being emotionally affected by the state of someone else’s well-being, as we might be when we see a stranger suffering. In such cases our emotions might be temporarily affected, but our well-being is not – we won’t be any “worse off” (p. 68).

The idea that love (of all kinds) involves this type of pooled well-being is common (and not restricted to Union Accounts). Kolodny’s Valuation Account for instance, views all love as involving “emotional vulnerability” towards the beloved, which he describes as involving more than a temporary effect on one’s emotions: “A may feel content when B is well, elated when

B meets with unexpected good luck, anxious when it seems that B may come to harm, grief-stricken when B does” (2003, p. 152). Velleman’s (1999) Valuation Account and Baier’s (1991) Emotion Account also include something similar.

Even on Nozick’s own account, *all* love (including love of friends, objects, nations, etc.) is characterised as having “[y]our own well-being... tied up with that of someone (or something) you love” (1990, p. 68). This aspect of the ‘we’ is therefore clearly not unique to romantic love (and Nozick acknowledges this). It would also seem odd to claim that whilst this is a feature of all types of love, it is only *desired* in romantic love.<sup>15</sup> It is part and parcel of what it means to love someone.

The second feature of Nozick’s desired ‘we’ - pooled autonomy - occurs between two individuals when “each transfers some previous rights to make certain decisions unilaterally into a joint pool” (1990, p. 71). This isn’t a complete giving up of autonomy, claims Nozick, as it is only for a certain subset of decisions. This subset will differ in different romantic relationships, but Nozick suggests that it might include “where to live, how to live, who friends are ... whether to have children... [and] where to travel” (p. 71). He appears to treat these as plausible pooled-decisions because they are decisions that are about “how to be together” and because they affect the participants’ well-being (p. 71). He remarks that if your well-being is pooled, then “it is not surprising that decisions that importantly affect well-being ... will no longer be made alone” (p. 71). The idea that love involves pooled autonomy is not unique to Nozick, but it is characteristically only a feature of Union Accounts.<sup>16</sup>

It is the link with pooled well-being that calls into question the claim that pooled autonomy (and the desire for it) is unique to romantic love. If pooled autonomy is (at least in part) explained by pooled well-being, then surely

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<sup>15</sup> At least in contrast to other non-familial loves.

<sup>16</sup> Helm (2013), Section 2, notes that pooled autonomy also features in Union Accounts from M. Fisher (1990) and R. Solomon (1988), and that the diminishment of individual autonomy is often an area of criticism for Union Accounts.

wherever there is pooled well-being, it is reasonable to suggest (in the absence of other defeating reasons) that there is some pooled autonomy. If, as Nozick claims, all love involves pooled well-being, then why do decisions that importantly affect well-being not become joint decisions in other forms of love?

I think it is reasonable to suggest that there is some form of pooled autonomy in other forms of love, and that it is desired, precisely because of the pooled well-being that occurs. In close friendships the participants love each other, they have pooled well-being, and there are certain decisions which might be thought to be about being close friends, and which will importantly affect each other's well-being. In light of this, the close friends will desire that these particular decisions are jointly made. For example, if the close friends decide to live together, then decisions about where to live, and having guests to stay might become pooled. Or, if the close friends participate in leisure activities together, what new activities to try and who to share them with might become joint decisions.

Perhaps there are certain decisions that are only pooled within romantic love. If this is the case then it is the particular union that is desired that is unique to romantic love (as considered in the next section) and not union in general. However, as Nozick notes, the subset of decisions that are pooled will differ from romantic couple to romantic couple, suggesting that it is subjective and variable. Additionally, the subset he lists includes decisions about living arrangements, friends, children and travelling which could all plausibly be decisions that close friends put into the pool, if their close friendship involves these things, and their pooled well-being is affected by them.<sup>17</sup>

My claim is that pooled autonomy, as Nozick describes it, is plausibly both present and desired in other types of love. However, there may be further ways in which the pooled autonomy could be thought to be distinct. Perhaps

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<sup>17</sup> It might be objected that close friends don't typically desire this and may experience pooled autonomy as a burden. However, if it is a result of (and contributing to) pooled well-being then this seems unlikely.

it is accompanied by a unique commitment to uphold it in romantic love, which is not present in other forms of love. Whilst this might be the case, the location of the difference between romantic love and other forms of love does not appear to be a part of the pooled autonomy itself. A commitment to uphold pooled autonomy is not an internal feature of that pooled autonomy – it is a response to the existence of pooled autonomy. It is not clear that this commitment is necessarily a part of the love, rather than a feature of the relationship that love is found in, either. To claim that it is a part of the love would at least require further argument. I will therefore set this suggestion aside.

Moving on, the third feature of Nozick's 'we' is an additional shared identity that those within the 'we' come to have (in addition to their individual identities). His account of this shared identity isn't particularly clear, but then it is not the type of thing that is easily explained. He writes that to "have this new identity is to enter a certain psychological stance; and each party in the *we* has this stance toward the other" (1990, pp. 71-72). It is a stance such that "each becomes psychologically part of the other's identity" (p. 72).

When explaining what it means for someone to become a part of another's identity within a shared identity Nozick suggests that there are two ways that we can understand this claim. An individual self will either see the "*we* as a very important aspect of itself" or it will see "itself as a part of the *we*, as contained within it" (p. 73). Whichever way it relates to the 'we', there is a desire to "possess the other as completely as you do your own identity" (p. 74), but in a way that does not strip that identity of its independence or autonomy (or so Nozick claims).

Perhaps the most illuminating part of his account is the contrast that he makes with friendship. Friends share things - experiences, activities, problems, etc. - and want to share these things. They do not however, claims Nozick, share an *identity*. In explaining how we share such things Nozick presents the self as "an appropriative mechanism, one that moves from reflexive awareness of things to sole possession of them" (1990, p. 83). We

can delineate the boundaries between selves by looking at what things are solely possessed by a particular self. When things are shared between friends, there is not one self that solely possesses that thing: “the very same things – experiences, activities, conversations, problems, objects of focus or of amusement” are part of each of them (p. 83). Friends jointly possess these things, and this makes the boundaries between them “less sharp” because they are each “related closely to many things that another person also has an equally close relationship to” (p. 83).

So whilst both romantic love and friendship can alter the “contours and boundaries of the self” (Nozick 1990, p. 85), it is only romantic love (on Nozick’s account) that involves the desire to form this shared *identity* with another, whereby the whole identity of another person is shared (rather than simply certain activities, conversations etc.).

It is hard to grasp exactly what Nozick means by this. How can we come to possess another’s identity in the same way as we possess our own? I possess my own identity by participating in all the things that make that identity up (the experiences, activities etc.). I would therefore need to know everything that makes up the beloved’s identity (a challenge in itself), and somehow come to acquire them in a similar way. It is not clear what we should make of this sort of idea.

Margaret Gilbert provides a way of thinking about shared identity, which we could use to supplement Nozick’s account. She claims that her account of “plural subject formation” can provide a model for the “fusion” (union) that is thought to occur in love and loving relationships (1996, p. 220).

A ‘plural subject’ is formed when two or more people *jointly* accept a goal, value, opinion, or the like. This involves more than two individuals sharing the same goal (individually), and is compatible with the individual wills not being in alignment with the will of the plural subject (this will be made clearer in the example below). This process of jointly accepting something achieves a “binding together of a set of individual wills so as to constitute a single, ‘plural will’ dedicated to a particular goal” (Gilbert 1990, p. 7).

There is a sharing of an identity that has this goal.



For example, take two parents who say to their son: “We think you should be home by midnight” (Gilbert 1996, p. 219). Neither parent individually holds this view (one thinks he should come home earlier, the other that he doesn’t need a curfew), but they have come to this compromise jointly, and it is a view they can appropriately characterise as ‘theirs’. Holding this joint view makes it “incumbent upon each one to express ‘their’ view (that is, the compromise view) in front of” their son (p. 219). Gilbert emphasises that the change that occurs in each individual when they come to hold a joint view is not “superficial” (p. 219). They are not merely “*pretending personally to believe something*” but rather now “conceive of themselves as the members of a single body (or person) that does believe that thing, a status requiring specific behaviour on each individual’s part” - behaviour consistent with the view jointly held (p. 219). There is an additional shared identity that holds this view, which is formed up of both individuals in the ‘we’.

However, if we understand the shared identity in this way - as a plural subject - then it does not look unique to romantic love. Consider a football team - each individual member is a part of the ‘we’ of the team, they have a shared identity with each other member of that team - this team identity is additional to each individual identity the participating members have, and is shared between each individual member. This shared team identity can have joint goals, views and aims. A football team is not an example of a loving relationship, and yet it makes sense to talk about it having a shared identity. Gilbert in fact thinks that shared identity is something that is “central to human social relationships in general” (1996, p. 216) and not exclusive to any type of love or relationship.<sup>18</sup>

This suggests that the desire for (and formation of) a shared identity can occur in many different types of relationship, and that the contrast Nozick makes between friends and romantic partners is too strong. Friends do more than jointly possess certain things, such as experiences, activities,

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<sup>18</sup> Her central example of forming a plural subject in Gilbert (1990) is when (any) two people walk together.

conversations, problems, objects of focus or amusement. They can also share an identity - in the sense that each of them partly constitutes a joint identity with someone else - an identity that is additional to their individual identity. This further identity can have shared goals, values and opinions.

Returning to the question at hand, the discussion of plural subjects suggests that union is not unique to romantic love (it is not even unique to loving relationships in general). We can share an identity, and we can form a 'we', with close friends, acquaintances, and even complete strangers. However, the possibility that there is a unique type of union in romantic love is still open. On Gilbert's account people can be 'fused' to different degrees, depending on the different joint goals, opinions, etc., how long the fusion lasts for, and how stable it is. Two people walking together are 'fused' by their joint goal of walking together for as long as that walk continues. People in romantic relationships might be fused by a larger range of joint goals, values, and beliefs etc. for a longer period of time.

Gilbert acknowledges that marriage (or marriage-like relationships) might involve a "special kind of fusion" which is both "intensive" and "long-term" (1996, p. 222). Perhaps Nozick (who is clearly attempting to articulate what it is about romantic love and relationships that we intuitively take to be distinct) could appeal to this idea. He could claim that the 'we' desired and formed in romantic love is distinct in virtue of the fact that it is the only type of union that involves *complete* fusion – so that the shared identity aligns completely with the two individual identities. I shall consider this possibility, and whether there is a unique union that is desired in romantic love in the next section.

### **1.3 Does Romantic Love involve a Unique Union?**

If union (actual or desired) is found in various different types of relationship that involve different types of love (or no love at all) then it is not something that is unique to romantic love. In order for us to be able to use Union Accounts to demonstrate that there is a unique type of love called romantic love, they will have to be able to show that the particular 'we' desired or formed in romantic love is distinct.

As stated above, a number of accounts do claim this. They also attempt to articulate what this unique ‘we’ consists in. The problem that arises for my project is that this romantic ‘we’ appears to be very hard to satisfactorily characterise. There is not only disagreement in how it should be characterised, but also the concern that in trying to articulate the unique nature of the romantic ‘we’ the accounts become implausible. This immediately suggests that Union Accounts will not be particularly helpful in enabling us to understand the distinctive nature of romantic love and romantic relationships as they will only be able to get us so far (claiming that a unique union is desired or formed, but unable to satisfactorily articulate what that unique union looks like).

The romantic ‘we’ is characterised in a variety of ways. Nozick (1990), as we have seen, sees the union of romantic love as involving a *shared identity*. Solomon (1990) similarly appeals to the notion of a shared identity, but views this more as a process of allowing each other to influence and redefine the individual identities involved. Whilst clearly linked to the idea of sharing an identity, other authors, such as Delaney (1996) and Scruton (1986), focus instead on the idea of *shared interests*. This is linked with the idea of being concerned for the other in a way that is analogous to the concern I have for myself and my own interests. In this section I aim to show that both shared identity and shared interests accounts (a) struggle to successfully articulate what a romantic ‘we’ would uniquely look like, and (b) begin to look less unique when we try to better articulate what the romantic ‘we’ would look like. I then consider, and reject, the idea that romantic union exclusively involves physical and sexual union.

### ***1.3.1 Shared Identity Accounts***

Taking Nozick as an example of a shared identity account, we saw above (in section 1.2) that he could be understood to be claiming that romantic love uniquely involves the desire to possess the other’s identity completely, as one possesses one’s own identity, through an additional, shared identity. As I have already suggested, it is difficult to make sense of what this amounts to.

Nozick describes how individual selves can be demarcated by the things that they solely possess. The types of things that a self can possess are “experiences, activities, conversations, problems, objects of focus or of amusement” (1990, p. 83). We can identify a particular self by the particular set of these things that it possesses. The experiences, activities, conversations etc. that I have participated in therefore make up my self (my identity) as I now solely possess that set of things.

How might I come to possess another’s identity as I possess my own? If we treat the form of possession that Nozick posits as a kind of epistemic condition - knowing all there is to know about a person - then it faces a unique set of problems.

I possess my own identity by participating in all the things that make that identity up (the experiences, activities etc.). In order to possess another person’s identity in a similar way, it appears that I would need to possess all of the things that make up that identity as well, and I would need to come to possess them by participating in them. This is impossible. Firstly there is an epistemic problem – coming to know all of the experiences, activities, etc. that makes up the other person’s identity looks very difficult. It is unclear whether we even know all of the things that make up our own identity, as presumably it involves a vast list of things from birth onwards. Requiring that we come to know our beloved’s identity to this extent seems to go far beyond any usual concept of ‘fully knowing’ another person (often seen to be an element of love).

Secondly there is a problem of acquisition. Even if we could acquire this type of knowledge of ourselves and of others, it is not clear to me how we could come to possess these things, as we possess the things that make up our own identity. We have not had all of the same experiences, not participated in all of the same activities and not had all of the same conversations as the other. It might be easier to picture coming to have the same problems or objects of focus, but we cannot come to have these in the same way as we have our own problems and objects of focus if they do not come about via the same experiences, activities etc.

Additionally, the idea that we desire both to possess the other person's identity wholly in the same way that we possess ours, doesn't neatly fit with the idea that this occurs via an additional, shared identity with our beloved. We do not possess our own identity in this way.

These worries highlight that Nozick's account of the 'we' desired in romantic love is not fully worked out. This makes it difficult to use his account to show that there is a distinct form of romantic love, as we cannot articulate satisfactorily what this love entails.

There are however alternative ways to understand how we possess our identities. Gilbert's view, for instance, is more sophisticated and sensitive to the practical features of shared identities. Her account of plural subject formation might help us to formulate a more satisfactory account of the romantic 'we'.

Gilbert suggests that marriage-type relationships might involve a special kind of plural-subject formation where 'fusion' between the participants is particularly intensive, long-term, stable and untrammelled. She also suggests that this type of fusion quite plausibly "involve[s] something worthy of the name 'love'" (1996, p. 225). Could this type of fusion be unique to romantic love?

Intensive, long-term fusion occurs when the plural subject has a variety of joint goals, values, opinions etc. over a substantial period of time. Gilbert notes that married couples often

...have one or more major long-term joint projects, such as...creating and maintaining a comfortable home, raising a family, and so on. Such projects generate a plethora of smaller joint projects, both long- and short-term, such as maintaining a joint bank account...and taking the kids to the zoo. (1996, p. 222)

In addition to this

...over time negotiations take place and agreements are reached on a multitude of issues, major and minor, such as whether [they] can afford to buy a house, who is the best babysitter, and how often [they] should eat fish. (p. 222)

This suggests married couples have a huge number and variety of joint goals, values and opinions. This fusion becomes stable when the plural subject “continuously sustain[s] certain particular long-term projects, and certain particular views, values, and principles” (Gilbert 1996, pp. 222-223). Stable fusion becomes untrammelled when personal goals, values, etc. become aligned with those of the plural subject, re-enforcing the stability of the fusion. This, posits Gilbert, can occur because the “couple’s practices may, as a psychological matter, so predominate that the individual has no countervailing tendencies any longer” (p. 223).

It seems reasonable to say that a substantial portion of each individual’s identity is now possessed by the other in such a situation as the individual identities now align with the joint identity (that each shares). This at least looks like one way of spelling out what it means to possess another person’s identity, as one possesses one’s own. However, it no longer looks so unique to romantic love.

This type of fusion is different from that which occurs between two acquaintances taking a walk together. It does not look as though it would be out of place in a long-term close friendship though. Intensive, long-term, stable and untrammelled fusion could occur through a variety of long-term goals and surrounding a variety of views, values and principles. Close friends could be fused in this way.

A Nozickian might counter that Gilbert’s account doesn’t quite capture what Nozick has in mind. Perhaps the ‘we’ that is desired in romantic love is one in which *all* the goals, values, principles and opinions that make up each individual’s identity become fused in a way that is paradigmatically intensive, long-term, stable and untrammelled. The two people would in this way become ‘one’ person in all important respects.

The problem with this picture is that it looks fairly implausible and undesirable. The concerns put forward by those who object to Union Accounts, that it diminishes (if not destroys) personal autonomy, here look well founded. If two people become a plural subject in such a complete way it seems as though their individual identities have become lost, and this

doesn't look like a good thing. I don't think Nozick would be happy with this picture either. He stresses the fact that the shared identity that is desired in romantic love is additional to the individuals' identities, and that personal autonomy remains in place. But then this just leads us back to the question of how to properly characterise this romantic 'we'.

Gilbert's account might still be able to assist. She suggests that it is the nature of the relationship - the pattern of behaviour and interaction - that influences, and makes possible, the type of fusion that occurs. This would suggest that it is only in certain relationships - with certain features - that complete stable and untrammelled fusion could occur. This suggests however that in order to understand romantic fusion more fully, we need to look at the relationship that it is occurring within as well, as this will influence the type of fusion that occurs. This therefore means that we cannot use Union Accounts that characterise union as a shared identity on their own to show that romantic love is distinct. We need to supplement them with an account of a romantic relationship.

### ***1.3.2 Shared Interest Accounts***

Can shared interest accounts provide a more satisfactory account of the romantic 'we'? Delaney characterises the romantic union as "wanting to identify with another, to take another's needs and interests to be your own and to wish that she will do the same" (1996, p. 340). Scruton, who proposes an account of love that involves an actual formation of a 'we', states that love occurs when "reciprocity becomes community: that is, just so soon as all distinction between my interests and yours is overcome" (1986, p. 229). There are two initial problems with this type of account, which revolve around the difficulty of explaining exactly what we mean by taking another's interests to be our own.

The first problem is noted by Gilbert, who highlights the difficulty of characterising union as the taking on of another person's ideas. If Jack is meant to take on Jill's ideas as his own, whilst also retaining his own, then a problem arises. Imagine that Jack is a Democrat whilst Jill is a Republican:

Without difficulty Jack himself can hardly be both a Democrat and a Republican. If, to avoid generating a whole set of inconsistencies in belief, we insist that Jack take on Jill's ideas *while discarding his own*, and vice versa, there seems to be no more reason to call Jack and Jill 'merged' than when they had their original ideas. They've just switched sides. (1996, p. 217)

A similar problem will surely arise for interests: taking the other's interests on, whilst retaining your own could lead to a conflict of interest; if we discard our own interests, and take on the other's in a reciprocal fashion, then we just seem to be swapping interests.

The swapping of interests certainly doesn't seem to be what these accounts have in mind. The "community of interests" (Scruton 1986, p. 231) that occurs in Scruton's romantic 'we' involves each person taking on the other's desires as reasons for himself (in the same way that his desires are reasons for him). As such the lover aims at the beloved's good "in just the way that he aims at his own" (p. 230). This doesn't look like a swapping of interests.

Getting to grips with exactly what sharing interests does entail is difficult. This leads us to the second problem, which Delaney highlights. Whilst the romantic 'we' might involve the desire for the other to "substantially incorporate your interests into [their] motivational set" (1996, p. 341), there are clearly ways of doing this that are not desirable. The beloved does not want their interests to be incorporated in a way that either appropriates them (for example, through the lover coming to have exactly the same career ambitions as the beloved), or only to the extent that the lover takes their "personal well-being to be associated with them" (p. 341) so that the lover's concern is not properly about the beloved.

In order to provide a more satisfactory and understandable account of sharing interests Delaney proposes the following: when someone takes on another person's interests as their own these interests should be appreciated and "perceived to be *directly connected* to the lover's well-being, in the sense that [the] advancement of [the beloved's] interest in itself constitutes a



good” for the lover (p. 341).<sup>19</sup> We want this to be a reciprocal process. As well as the other person identifying with us, and taking on our needs and interests, we also want to identify with them – to take on their needs and interests as well. I think it is something like this idea that Scruton is gesturing towards as well.

The problem with this is that in attempting to better spell out what taking on another’s interests amounts to, Delaney’s account no longer looks as though it is unique to romantic love. It seems that the desire to take on each other’s needs and interests to this extent could also plausibly be a part of close-friend love. Whilst we might not think that casual friends or acquaintances want to take on each other’s needs and interests as their own, it would seem strange to claim that close friends do not want to have their needs and interests considered in this way. A close friend will be directly affected by the other’s well-being, in the sense that the promotion of one close friend’s well-being will constitute a good for the other as well (akin to the way that Nozick views the well-being of those who love each other to be intertwined).

It seems therefore that Union Accounts struggle to articulate what the unique romantic ‘we’ consists in, whether it is construed in terms of a shared identity or shared interests. Whilst I have not conclusively demonstrated that Union Accounts cannot show that there is a difference between the union that occurs in romantic and close-friend love, I have shown that demonstrating this difference is extremely difficult, suggesting that it will not be fruitful to use these accounts for our project.

### ***1.3.3 What about Physical and Sexual Union?***

It might seem that I have so far failed to consider crucial aspects of a romantic ‘we’ (whether desired or actual): namely that it involves physical and sexual union. If the unions (desired or formed) in romantic love and close-friend love look similar in the respects already considered (as I have

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<sup>19</sup> This is similar to Nozick’s idea of pooled well-being.

argued) then perhaps the difference lies here. Does romantic love uniquely involve a particular form of physical and sexual union?

The physical and sexual features of union, although acknowledged in Union Accounts, tend to be less focused on (and this is true of the other accounts of love as well).<sup>20</sup> Delaney, for instance, includes a mutual desire for “sexual intimacy” as well as a “more sweeping delight in each other’s physicality” in his characterisation of the romantic ‘we’, but views this as secondary to the desire to identify with the beloved (1996, p. 347).

In what follows I will consider whether focusing on these features can enable us to use Union Accounts to show that romantic love is distinct. I will take each feature in turn and aim to show that neither can help us to demonstrate that romantic love is unique. This is primarily because both physicality and sexuality are not exclusively part of a romantic ‘we’.

Delaney makes two claims about the non-sexual element of the romantic ‘we’. First, that when you romantically love someone, “you enjoy distinctively pleasurable feelings on seeing or touching your beloved” (1996, p. 347). Second, that these feelings “come to transform more intimate acts into highly personalised modes of communication” (p. 347). He is referring to the way that romantic couples seem to “both react reflexively to each other’s physicality and come to communicate with each other through seemingly insignificant visual, verbal, and tactile cues” (p. 347).

Delaney explicitly claims that there are distinct pleasurable feelings elicited by seeing the person you romantically love – and that these are different from those “induced by the sight or touch of a good friend” (1996, p. 347). He doesn’t explain how they are distinct though. An explanation is needed, because the feelings induced by the sight or touch of a good friend look similar in two respects. Firstly, the feelings generated by seeing or touching a close friend are still pleasurable. We smile when we see a close friend

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<sup>20</sup> Scruton (1986) is one exception to the rule, although he focuses more on arguing that sexual desire is compatible as opposed to antithetical to love.

across the room, we are happy and excited when we see them again after a long time apart.

It might be objected that the feelings elicited by the sight or touch of a romantic partner are pleasurable in a different way – that they are more charged perhaps, or sexual in nature. As an immediate response I do not think that we can rule out the possibility that close friends can arouse charged, sexual feelings in each other. I will defer a more detailed response to the discussion of sexual union below.

The second reason for thinking that the feelings elicited by the sight and touch of a close friend are similar to those elicited by a romantic partner is that they also appear to enable personalised communication. I think Delaney's focus is on non-sexual intimate acts when he is talking about the communicative nature of visual, verbal and tactile acts. Communicative visual, verbal and tactile acts that respond to the physicality of the other person however occur both between those who love each other romantically and those who love each other as close friends.

It is not only romantic partners who are sensitive to a slight inflection in the voice, indicating disdain; a twitch of the eyebrow that communicates amusement; or a gentle nudge on the shoulder to ask you to move away. Close friends also pay attention to the physicality of each other, and use these type of verbal, visual and tactile cues to communicate with each other. The examples just given communicate fairly simple things, but close friends can convey much more complex information through these acts as well. Consider a case in which a close friend squeezes your hand in a difficult situation. There are a multitude of things that can be conveyed by such an action; that your friend is there for you, that they empathise with how you are feeling, that they know any more physical contact (such as a hug) would be unwelcome. You can communicate back, a quick squeeze could say 'thank you', a strong grip could indicate you need their support. Exactly what is and can be communicated will depend on the close friends, the situation, and other visual, verbal and tactile cues between them. There are also spontaneous physical expressions of emotions between close friends:

the welcoming hug after time apart; jumping up and down as one (or both) receives good news; the high five as a joint endeavour is achieved. Each act communicates that the other feels the same as you (at least).

It might be objected that there are different, perhaps distinct, communicative acts that occur between those who romantically love each other. There are things that we typically take to be appropriate within certain relationships, that aren't in others. In contemporary Western societies female friends tend to be a lot more tactile than male friends for instance.<sup>21</sup> Perhaps there are things that we would only do with those we romantically love: stroking their hair perhaps, walking hand in hand, or removing a stray eyelash. What we take to be appropriate here seems to be a matter of convention, rather than a matter of love. There is not much difference in linking arms with a close friend, and holding hands with a romantic partner, other than the significance we attach to these acts as a matter of social norms and practice. The fact that these norms and practices can change over time lends weight to this idea.

Delaney's account of the physicality of the romantic union appears to be struggling to identify it as unique. Both romantic partners and close friends feel pleasure at the sight and touch of the other and use physical acts to communicate with each other. The unions that both close friends and romantic partners desire are therefore likely to both include these features. If there is a difference in this respect (regarding what physical actions are thought appropriate) then this difference looks like it is located in the relationship, and the social norms influencing that relationship (and not in the love/union itself).

What about sex? Delaney includes a desire for sexual intimacy as a feature of the romantic 'we'. There also seems to be a temptation to explain differences in the physicality of romantic love and other loves in terms of

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<sup>21</sup> Thomas (1989) notes that friends bond through physical contact and that in the West there is a difference between men and women in relation to this: men do "touch ... [and] show affection" but not with the "spontaneity ... of female friendships" (p. 188) as there are more social rules about what is acceptable.

sex. Perhaps only romantic partners elicit sexually charged pleasurable feelings and use sex as a means of communication. If sex and sexual desire can be shown to be unique to the union of romantic love, then we might still be able to use Union Accounts to show that romantic love is unique.

Delaney does not elaborate on what this desire for sexual intimacy entails, however he is not alone in appealing or referring to the powerful assumption that sex, sexual desire and romantic love go together inextricably, nor in his failure to provide a fully worked out argument. Nozick for instance mentions in passing that sex “mirror[s] and aid[s] the formation of the *we*” (1990, p. 73) and that monogamous sexual desire is “inevitable” (p. 82) when the ‘we’ is desired, without providing further argument.

It is not only Union Accounts that make this assumption. Other accounts of love, and of loving relationships also appeal to this connection. James Conlon for example states, without argument, that “one cannot love romantically without sexual desire” (1995, p. 297). That there is an intimate connection between sexual desire and romantic love is however an assumption, and one which needs interrogating. Here I focus on the question of whether sex and sexual desire can show that the romantic union is unique. I consider the more general question of whether the presence of sex and sexual desire can show romantic relationships to be distinct in Chapter Three (section 3.1.1).

Whilst we can of course acknowledge that sexual desire is common between those who love each other romantically, it is not clear that it is unique to romantic love, or as intimately connected as is often assumed. In fact, I want to claim that the presence of sexual desire is neither a necessary nor a sufficient condition for the romantic ‘we’. This claim is consistent with acknowledging that there is a strong social norm that sexual desire goes along with romantic love and that sex occurs within a romantic relationship.

Let’s take the sufficiency claim first. We can clearly see that the simple presence of sexual desire is not a sufficient condition for a romantic union. There can be sexual desire without romantic love. If *x* sexually desires *y*, this does not mean that *x* desires a romantic union with *y* (or that *x* loves *y*).

As Conlon states: “one can certainly desire sexually those one does not love” (1995, p. 297). There are clear examples of sexual desire that are undoubtedly outside of a romantic union: innocent one night stands and rape are two examples on two ends of a spectrum, yet neither is thought to be part of (or provide evidence for) a romantic ‘we’.

It might be objected that this doesn’t quite get to the point. If all love involves union of some kind, and we are asking whether there is a distinct type of romantic union, there is still the question of whether the presence of sexual desire within a loving union is sufficient to make that union a romantic one. The examples appealed to previously do not involve any form of loving union at all.

However, very similar examples - one off sexual encounters - still provide reasons for thinking that sexual desire cannot be a sufficient condition for a romantic union. Consider the case of two close friends, who (I stipulate) have (or desire) a loving union with each other. One night the two close friends feel sexual desire for each other, and have a ‘one night stand’. Intuitively I do not think that we would want to say that this automatically makes their love/union romantic. If this is all it takes for close-friend love to turn into romantic love then the difference between these two loves is pretty thin. It suggests that romantic love can blossom and fade as sexual desire comes and goes. This isn’t how we typically think of romantic love: we think it is more stable than bouts of sexual lust.

It might be argued that if these friends then continued to sexually desire each other, and to have sex, that their love/union would be transformed into a romantic one. I do not agree. Why does the addition of regular sexual desire and sex transform the union into a romantic one? Sexual desire is not the same as romantic desire and so the mere addition of (reoccurring) sexual desire to close-friend love would simply result in a close-friend love plus sex (‘friends with benefits’ perhaps). More would need to be said as to why

this change - and only this change - is sufficient to transform a close-friend union into a romantic one.<sup>22</sup>

It is enough to show that sexual desire is not a sufficient condition for a romantic 'we' in order to claim that the romantic 'we' is not unique in *involving* sex or sexual desire. It might still be claimed however that the romantic 'we' is unique in virtue of requiring the presence of sex or sexual desire. In other words, it might be claimed that sex or sexual desire is a necessary element of the romantic 'we'. Again, I do not think that this is the case. There can be romantic love without sexual desire.

Consider the example of an old married couple who no longer have the desire for sexual intimacy. It seems that the removal of sexual desire is not powerful enough to enable us to say that the couple no longer romantically loves each other, especially if all other elements of their union are the same. They might still desire physical intimacy (hugs, holding hands etc.), but then this type of physical intimacy (and the desire for it) would not look out of place in a close friendship.

It might be objected that their union can only be considered romantic because it had a sexual element *at some point*. The case of asexual couples provides a counterexample to this objection. Asexual people are not sexually attracted to other people – they do not experience sexual desire. They can fall in love and have a romantic relationship.<sup>23</sup> If they love each other, desire and form a loving union with each other, can the absence of sexual desire really allow us to say that their union is not a romantic one? Is that really the only difference between romantic unions and other loving unions? Intuitively I do not think that it can rest on this distinction alone.<sup>24</sup>

Nevertheless if physical and sexual union can be a part of both close-friend love and romantic love (because sex and sexual desire are not sufficient for romantic love), then it seems that we cannot easily use this feature to show

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<sup>22</sup> The worry close friends sometimes have, that having sex will alter their relationship (in other ways), seems to support this point.

<sup>23</sup> See <http://www.whatisasexuality.com/intro/>

<sup>24</sup> See Chapter Three, section 3.1.1, for a fuller discussion of why I think this is the case.

that there is a difference in close-friend union and romantic union. I acknowledge that there is a strong social norm to link particular types of physicality and sex with romantic love, but then this difference lies in these social norms, and it is the norms that we need to look at in more detail (as I do in Chapters Three and Four).

#### **1.4 Summary: Union Accounts**

To conclude the discussion of Union Accounts, I have aimed to show that we cannot use Union Accounts of love to demonstrate that there is a unique form of romantic love. Union occurs in all forms of love, and it is very difficult to demonstrate that the union desired or formed in romantic love is unique, whether we characterise it in terms of a shared identity, shared interests, or physical and sexual union.

#### **1.5 Robust Concern Accounts of Love**

The central idea of Robust Concern Accounts is that love is constituted by the particular concern we have for the beloved which can be characterised as “caring about your beloved for her sake” (Helm 2013, Section 3). It is not simply that we are concerned about our beloved’s welfare, but that we are concerned about it in a particular, self-less way. Soble defines robust concern as follows: “x desires for y that which is good for y, x desires this for y’s own sake, and x pursues y’s good for y’s benefit and not for x’s” (1997, p. 68). This is sometimes characterised as caring about the beloved’s welfare as an end in itself, rather than as a means to another end (for instance, to feel good about yourself).

As Stump (2006) highlights, the idea of robust concern can be found within Aquinas’ view of love.<sup>25</sup> Aquinas takes love to involve two interrelated desires: “(1) the desire for the good of the beloved, and (2) the desire for union with the beloved” (Stump 2006, p. 27). The term ‘union’ here however is not being used in the same way as it is used in Union Accounts, but rather refers to some form of *relationship* with the beloved.<sup>26</sup> In fact it is

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<sup>25</sup> *Caritas* in particular, see Stump (2006), p. 27.

<sup>26</sup> See Stump (2006), pp. 30-33.



a common criticism of Union Accounts that they cannot accommodate this type of concern for the beloved. By emphasising the union between the beloved and the lover, it appears that Union Accounts can only explain “x’s benevolent concern for y ... as a species of x’s natural self-interest, [as] x’s concern for himself” (Soble 1997, p. 69).<sup>27</sup>

This idea - that love involves robust concern and a desire to be with the beloved - is something which modern Robust Concern Accounts also adopt. It can be seen in Stump’s (2006) own account for instance, as well as Gabriele Taylor’s view which describes love in the following way:

If x loves y then x wants to benefit and be with y etc., and he has these wants (or at least some of them) because he believes y has some determinate characteristics  $\Psi$  in virtue of which he thinks it worthwhile to benefit and be with y. He regards satisfaction of these wants as an end and not as a means toward some other end. (1976, p. 157)

Taylor’s account is an example of a Robust Concern Account because it involves the desire to benefit the beloved (which constitutes a concern for her welfare), and the satisfaction of that desire is viewed as an end in itself.

Can we use Robust Concern Accounts to show that there is a distinct form of romantic love? One suggestion might be that this type of robust concern only occurs in romantic love. This however goes against our strong intuition that close friendships involve love. If love is constituted by robust concern, then robust concern occurs in both close friendships and romantic relationships. The intuition remains when we consider the characterisation of robust concern as caring about the other person’s welfare as an end in itself. We care about our close friend’s welfare as an end in itself, and not as a means to some other end. We want things to go well for our friends, simply for their sakes, and not for any other reason.

Is there any other way that we can use Robust Concern Accounts to show that there is a distinction between close-friend love and romantic love? In

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<sup>27</sup> Some Union Accounts attempt to accommodate robust concern within their accounts (for example, Nozick’s). However, it is not my aim to comment on the success of the objection or response here.

what follows I consider whether the desires to both ‘benefit’ and ‘be with’ the beloved can be shown to differ in romantic and close-friend love.

### **1.6 Benefitting the Beloved**

Whilst both romantic love and close-friend love will involve a desire to benefit the beloved (on Robust Concern Accounts) there are three ways in which this desire might differ. Firstly there might be a difference in the intensity of the desire, in how strongly it is felt. Secondly there might be a difference in the importance of the desire, in how important it is that the desire is satisfied. Thirdly, there might be a difference in what is taken to satisfy this desire.

Taking the first two possibilities - that the desire could differ in (felt) intensity and importance - together, neither of these look like promising ways of distinguishing romantic love from close-friend love. It might be tempting to say that romantic love will involve more intense desires, and view benefitting the beloved as more important. However, we may worry about appealing to the degree of intensity and importance as a way to distinguish these two types of love. This is because it will be hard to measure.

In order to measure the degree of intensity or importance we would need to construct separate scales and establish thresholds (with close-friend levels of intensity/importance on one side, and romantic levels of intensity/importance on the other). As with any type of scalar account, this generates two problems.

First, we have to pinpoint exactly what the scale is measuring. This is particularly difficult when we are dealing with subjective and imprecise concepts such as the intensity and importance of desires. Second, we also have to establish where on the scale the thresholds lie. It is extremely hard to do this without being accused of making ad-hoc divisions. It could always be asked why the threshold was not placed a few notches to either side.

In addition to this, both the intensity of desires, and the degree of importance that we attach to desires, are context sensitive. This exacerbates

the two problems mentioned above. The intensity and importance of the desire to benefit the beloved may well depend on, and alter with external factors. For example, the degree of importance someone attaches to promoting another's welfare may well depend on what other loving relationships that person also has. If they have a romantic relationship and a close friendship, then they may prioritise the romantic relationship, but if they don't, then the degree of importance attached to promoting the close friend's welfare may well be as high as in a romantic relationship. Similarly with how intensely the desire to benefit is felt, the existence (or absence) of other loving relationships may affect how intensely the desire is felt. This suggests that we cannot use the degree of importance or intensity attached to this desire, on its own, to demarcate the love involved or (by extension) the relationships it occurs in.

Does the third possibility - that there may be a difference in what is taken to satisfy the desire to benefit - look any more promising? Initially it may seem so. If there was this sort of difference, then there would be a difference in the actions resulting from this desire when we looked at close friendships and romantic relationships. However, in order to see this difference we would need to look to the relationships themselves, as this is where the resulting behaviour would arise.

Additionally we might think that a difference in what is taken to satisfy this desire refers to a difference in the extent to which a close friend will attempt to promote the other's welfare, compared to a romantic partner. If there is a difference here however, I think it will again depend on the relationship that the love occurs in, and the norms that surround it. What is considered as appropriate for satisfying this desire will (at least in part) depend on whether the desire occurs in a close friendship or a romantic relationship. For example it might be thought to be appropriate for a romantic partner to devote a substantial amount of time to benefitting the beloved, whereas we wouldn't expect a friend to do this.

Focusing on the desire to benefit does therefore appear to provide us with a way of using Robust Concern Accounts to show that romantic love is

unique. There could be distinct actions, and a distinct level of effort that is required to satisfy the desire in romantic love. The only way that we will be able to locate these differences and explain what they consist in, however, will be by looking at the relationship itself, and the norms influencing it. This again suggests that when asking what makes the romantic relationship distinct it would be more fruitful to look at the relationship itself, and the actions occurring within it, rather than trying to first identify the love that is present.

### **1.7 The Desire to Be With the Beloved**

Whilst the desire to be with the beloved isn't strictly a part of robust concern, it is commonly a part of Robust Concern Accounts. This isn't particularly surprising, as being with the beloved enables us to come to know how to benefit the beloved and provides opportunities to do so. There is also the hope that spending time with the beloved will in itself be a good for the beloved (and vice versa). Can the inclusion of this desire enable us to use Robust Concern Accounts of love to show that there is a distinct type of romantic love? It seems unlikely.

As with the desire to benefit, if love is (partly) constituted by the desire to be with the beloved, and both romantic partners and close friends are thought to love each other, then both romantic love and close-friend love will involve this desire. We can see that this is the case because both close friends and romantic partners want to spend time with each other, miss each other when they are not around, and arrange their lives so that they can see each other. We may make more of an effort to spend time with a romantic partner, and we might even think that the ability to spend time with a romantic partner - the satisfaction of this desire - is more important in keeping romantic love and the romantic relationship alive,<sup>28</sup> but nevertheless, the same desire is present in love that occurs in both types of relationships. As with the desire to benefit, a difference in the degree of centrality and importance that the desire to be with typically has in the two

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<sup>28</sup> The existence of long-distance romantic relationships provides a counterexample to this thought.

types of love is not going to be easily shown (because it requires constructing a scale, identifying thresholds, and will be affected by numerous factors), and so it will not enable us to easily differentiate them.

It might be pointed out here that wanting to be with the other person amounts to more than simply spending time with them – it involves wanting to have a relationship with them. This also involves wanting to do certain activities together, to relate to each other in certain ways, to play certain roles for each other, and so on. The desire to have a relationship with the other person will be present in both romantic love and close-friend love – but the nature of the desired relationship could be different.

Simon Keller for instance claims that what differentiates romantic love from all other types of love is that it “necessarily involves a strong desire to share with the beloved a romantic relationship” which is a “loving relationship that is intimate, mutual, exclusive, and possibly sexual” and which involves spending time with the beloved, “caring whether he loves anyone else” and wanting reciprocated love (2000, p. 164).<sup>29</sup> The assumption here is that this is a unique type of relationship that is desired. When romantic love is present, a romantic relationship is desired. When close-friend love is present, close friendship is desired.

If this is the case, then it suggests that we should be primarily looking to the relationship, and its features, in order to distinguish romantic relationships and close friendships. Looking to the love that occurs in these relationships first, and in isolation from the relationship itself, is not going to help us define the difference between them. Here, however, I want to note that Keller’s characterisation of the romantic relationship doesn’t look particularly different from a close friendship (suggesting that it is not these types of features that we should be concentrating on).<sup>30</sup>

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<sup>29</sup> Keller defends a Properties View of love (that certain properties can justify love for a person) but explicitly demarcates romantic love from other forms of love in this way. See Chapter Two, sections 2.2 and 2.3, for further discussion of the Properties View.

<sup>30</sup> In Chapter Three I argue against behaviour-based accounts of the romantic relationship, and in Chapter Four I argue that it is the distinct role

Both close friendships and romantic relationships could be described as intimate and mutual. They also both involve wanting to spend time together, and we can assume that close friends also want their love to be reciprocated. I also think it is reasonable to say that close friends care about whether the other feels close-friend love for someone else, especially if it was judged that the love received or the quality of the relationship shared was diminished because others were also loved in the same way. These features of a relationship are clearly going to be desired by both close friends and romantic partners, and so cannot show the romantic relationship to be unique.

It is Keller's claim that the romantic relationship is sexual and exclusive that might be thought to capture what is distinctive about the romantic relationship. However, whilst we don't usually expect close friends to be exclusive, we don't typically have many close friends, and the reasons for this seem to be similar to (at least some of) the reasons for expecting exclusivity in romantic relationships – that it just isn't possible to have a romantic relationship or a close friendship with lots of people (it's too demanding). Additionally, there are a number of people who challenge the idea that romantic love is exclusive, and defend polyamory as a non-defective form of romantic love.<sup>31</sup>

I don't think sex can provide the defining element either. As Keller himself notes - the romantic relationship is *possibly* sexual - but it isn't necessarily so. The same can be said for close friendships. There are examples of romantic relationships with no sex, and sex outside of romantic relationships, so sex is neither necessary nor sufficient for a romantic relationship.<sup>32</sup>

There may of course be better, more differentiating descriptions of the type of relationships desired by both romantic partners and close friends, relating to specific activities, feelings, structures and roles. I move on in Chapters

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that the participants play for each other that marks these relationships out as different.

<sup>31</sup> For example, see Jenkins (2015).

<sup>32</sup> I provide an argument for this position in Chapter Three, section 3.1.1.

Three and Four to consider what such a description could be. If there is a difference in the type of love that occurs, in virtue of desiring a different type of relationship, then we need to look to an account of the relationship to find out what that difference amounts to.

### **1.8 Summary: Robust Concern Accounts**

To conclude this discussion of Robust Concern Accounts, I have shown that we cannot use these accounts to show that there is a distinct type of romantic love without appealing to the relationship that it occurs in, and the norms that influence that relationship. If there is a difference in what the desire to benefit the beloved consists in between romantic love and close-friend love, then this will depend (and be illuminated by) the relationship that the desire occurs in. If there is a difference in the desire to be with the beloved (understood as a desire for a particular relationship with the beloved) then we need to know what this particular relationship is, before we can determine what type of love is present.

### **1.9 Conclusion**

This chapter has been guided by the question: what is the paradigmatic marital relationship? It has begun to consider what is unique about the prime candidate for this role – the romantic relationship. In considering whether it is the nature of the love that makes this relationship distinct, this chapter has explored whether we could use Union or Robust Concern Accounts of love to demonstrate that romantic love is distinct from close-friend love.

I have argued that we cannot use Union Accounts of love to show that romantic love is a unique form of love. Union occurs in all forms of love, and it is very difficult to determine whether the union desired or formed in romantic love is unique, whether we focus on the idea that it involves shared identity, shared interests, or physical and sexual union.

I have also argued that whilst Robust Concern Accounts can show there to be a distinction, they can only do so by appealing to the nature of the relationship that the desires to benefit and be with occur in. It is the relationship that will determine what the desire to benefit the beloved will

amount to, and how this desire can be satisfied. If a particular relationship is desired in romantic love, then we need to understand what that relationship is before we can identify the love that is associated with it. In order to learn what this relationship is however, we will need to look at the relationship itself. I turn to this in Chapters Three and Four. Before doing so however I will consider whether we can use Valuation and Emotion Accounts of love to show romantic love to be distinct, in Chapter Two.



## Chapter Two

### Romantic Love: A Unique Valuation or Emotion?

This chapter continues to consider whether it is the love that occurs within the romantic relationship that makes that relationship unique. It focuses on Valuation and Emotion Accounts of love, which view love as a form of valuation and a type of emotion respectively. It asks whether we can use these accounts to demonstrate that romantic love is a distinct form of love, different from the love that is found between close friends. I argue (as was the case with Union and Robust Concern Accounts) that neither type of account can independently show romantic love to be unique. They either fail to enable us to show a distinction, or they can only enable us to demonstrate a distinction by appealing to some further aspect of the relationship that the love is found within, or the norms that relate to and shape that relationship. Whilst this conclusion does not necessarily count against these accounts, it does highlight that the single-minded focus on love itself will not reveal the distinctive character of romantic relationships. Rather, we should also inquire into the other aspects of the romantic relationship. Romantic relationships are not distinct simply in virtue of involving a distinct type of love. There is more to it than that.

#### 2.1 Valuation Accounts of Love

Valuation is commonly taken to be an integral part of love. The people we love are particularly valuable to us, and this is linked in some way to our loving them. As John Brentlinger notes “all writers on love have argued that loving something necessarily implies valuing it” (1989, p. 137). Valuation Accounts go one step further. They take love to be constituted by the valuation that occurs, and view love as a “distinctive mode of valuing a person” (Helm 2013, Section 4). David Velleman for instance views love as an arresting “awareness of a value inhering in its object” (1999, p. 360); Brentlinger defines it as “intrinsic valuation” (1989, p. 146); and Irving Singer states that in “a manner quite special to itself, love affirms the goodness of [the beloved object]” (1984, p. 3).

There are generally thought to be two different types of Valuation Accounts which stand in opposition to each other. The first account states that love responds to value already possessed by the beloved. These are *Appraised Value Accounts*. The second claims that love is something that creates or bestows value in the beloved. Loving in itself is valuable in these accounts, and it is this that creates the additional value in the beloved. These are *Bestowed Value Accounts*. These two different types of Valuation Accounts appear to correspond to two traditions of love – Platonic *eros* and Christian *agape*. *Eros* is typically characterised as responding to the value found within its object and *agape* is characterised as independently creating and bestowing value onto its object in virtue of loving it and regardless of whether or not there is any prior value in the object.<sup>33</sup>

I will take Appraised Value and Bestowed Value Accounts in turn, and consider whether we can use them to show romantic love to be distinct. I argue that we cannot, unless we appeal to further details about the relationship that the love occurs within.

## 2.2 Appraised Value Accounts

Appraised Value Accounts view love as responding to the value that the beloved already possesses. Different accounts see love as responding to different valuable things. Velleman (1999) for instance thinks that love responds to the value the beloved possesses in virtue of being a (rational) human being (the same value that demands Kantian respect). Kolodny (2003) claims that love responds to the valuable relationship that the lover has with the beloved. A simpler view takes love to be responding to the beloved's valuable qualities, i.e. certain properties that they possess. These include things such as physical attractiveness, intelligence and a sense of humour to name but a few. Brentlinger expresses this view when he says that love (as intrinsic valuation) can arise when “the beloved is thought to be

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<sup>33</sup> See Soble (1989), xxiii-xxiv.

valuable because certain value-making conditions are thought to be fulfilled, for example, it is intelligent or beautiful” (1989, p. 145).<sup>34</sup>

This idea is exemplified by the ‘Properties View’ of love.<sup>35</sup> As presented (although not endorsed) by Niko Kolodny, this view states that “the features that constitute reasons for loving a person are that person’s lovable qualities” (2003, p. 138).<sup>36</sup> How might we use this type of account to show that romantic love is distinct? I think there are two possibilities. The first concerns *what* is valued in the beloved and the second concerns *how* the beloved is valued.

Using the Properties View as an example, I first consider whether romantic love and close-friend love can be distinguished by the properties that are valued in each case. I argue that it is very hard to show there is any distinction between the two types of love in this way. I then move on to identify what is seen as the characteristic form of valuation in love and argue that on such a characteristic view, no distinction between romantic love and close-friend love can be found. When we consider the type of valuation that occurs in addition to the (characteristic) valuation of love, however, a distinction can be found, although this involves an appeal to the features of the particular relationship being considered.

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<sup>34</sup> Brentlinger (1989) claims that love can be either the appraisal or the bestowal of value and tries to get clearer on what this distinction really means, and how important it really is.

<sup>35</sup> The idea that there are reasons for love, and that a person’s properties constitute those reasons, are not exclusive to Appraised Value Accounts (they could provide reasons for robust concern for instance). However, the Properties View can be understood as an Appraised Value account, or as explaining what is valued in Appraised Value accounts, and enables us to consider how appraisal might show romantic love to be distinct. There is a brief discussion of Velleman’s and Kolodny’s alternative Appraised Value Accounts under the subheading ‘Kolodny’s Relationship Theory’ in section 2.4.3.

<sup>36</sup> There are a number of well-rehearsed objections to the Properties View, for example, worries about trading up to a partner with ‘better’ or more valuable properties, and worries about the constancy of love in the face of changing properties, which I am not concerned with here. See Kolodny (2003) for a discussion of these types of objections and Keller (2000) for an endorsement of the Properties View and responses to these types of objections.

### 2.3 What is Valued in the Beloved?

On the Properties View love responds to properties in the beloved that are taken to be valuable by the lover. Properties such as being beautiful or being the person that makes you laugh. Keller characterises the view as follows:

The properties view says that the question, ‘What justifies your choosing to make *her* the object of your romantic love?’ is a sensible question to ask, and that ideal romantic lovers can, in principle, answer it by appealing to a set of the beloved’s properties. (2000, p. 164)

Keller’s focus is on romantic love, but the same story could be told for close-friend love. A close friend could appeal to a set of the other’s properties in order to justify their close-friend love, indicating that the love is a valuation of and a response to these properties. Can we use this view to show that romantic love and close-friend love are distinct, by showing that they each respond to different valuable properties (or sets of properties) in the beloved?

The suggestion here is that the valuation (the love) that occurs could be different because different things are being valued - certain properties are valued in romantic love, and certain other properties are valued in close-friend love. Consider an example. Hermione is close friends with Harry, and in a romantic relationship with Ron. Hermione has her own unique range of distinct properties. To make things simple, we shall focus on two – her physical attractiveness and her loyalty. The suggestion is that Harry’s close-friend love might respond to Hermione’s loyalty whereas Ron’s romantic love might respond to Hermione’s physical attractiveness. Is this a plausible picture, and would it show that the love that occurs in response is different?

Firstly, the picture does not look all that plausible. It seems reasonable to think that the properties which romantic partners and close friends value, and which their love responds to, are going to be very similar. For example, both romantic partners and close friends are likely to value attractiveness and loyalty (as well as things like intelligence and humour). If they value the same sorts of things, then this avenue of enquiry is unlikely to identify a distinction in the love that is occurring in the two relationships.

Secondly, if there are distinctive properties (or sets of properties), it is likely that these will be subjective, and will differ among individuals. What one person takes to be as a valuable close friend property, or a valuable romantic partner property may depend on that individual, and in particular on their preferences, their circumstances, the society they live in, their idiosyncratic world-view, and so on. It seems likely to be futile to look for one objective list of properties corresponding to romantic love and another objective list of properties that does not overlap with the first list and that corresponds to close-friend love. This suggests that we are unlikely to profit from using the Properties View to show that romantic love (as a form of appraisal) is distinct from close-friend love.

#### **2.4 How is the Beloved Valued?**

How do we value someone when we love them? There is a fair amount of debate, and confusion over terms, but the common thought is that we should value the person for themselves, and not merely for any further valuable object or outcome that they might be associated with or bring about. Additionally it is generally thought that the reasons for this valuation should be things that are integral to that person.

I utilise Kolodny's terms to describe how we value someone that we love in this chapter. I recognise that his terms and definitions may not fully match the customary usage, but his discussion on these topics provides a useful structure for what follows, and he covers these two essential aspects of valuation with them. The terms he uses are *instrumental* and *non-instrumental* valuation; and *final* and *non-final* valuation. We can see how he defines three of these terms in the following passage:

One can value something in different ways. For example, one can value X instrumentally - that is, value X as a way of bringing about or realizing some distinct Y or some state of affairs involving Y (by causing Y, partly constituting Y, or being partly constituted by Y). In this case, one values X "nonfinally": one values X, but one sees some distinct Y as the source of one's reasons for valuing X ... To value X "finally," by contrast, is both to value X and to see X as the source of one's reasons for valuing X. (2003, p. 150)

The fourth term - non-instrumental valuation - can be defined as the lack of instrumental valuation, when the beloved is valued *for themselves* and for no further thing that they might bring about.

Kolodny's explanation suggests that non-final valuation is always instrumental, but he clarifies that this is not the case:

[N]onfinal valuation need not be instrumental. To take a familiar, if morbid, example, consider how we value human remains. We believe that we have reasons to treat them with dignity and respect, and we are apt to feel anguish or rage when they are mistreated. Our valuation is nonfinal insofar as we take the source of our reasons for valuing the remains to be not the remains themselves, but rather the person whose remains they are. Nevertheless, this valuation is not instrumental. We do not view the remains as a way of bringing about the person or some state of affairs involving the person. (2003, p. 150)

Using these terms the valuation that occurs in love is typically seen as being non-instrumental and final: we value our beloved them for themselves (and not for some further thing or state of affairs involving that thing) and the person in question provides the source of the reason for this valuation (rather than the reason being provided by, for example, the relationship).

We can of course value people in other ways, but these valuations aren't thought to be a part of love. We can value a person both instrumentally and non-finally: when we value them for something extra that they bring about (such as access to large sums of money), and our reasons for valuing them are also explained by some other distinct thing. We can value a person both non-instrumentally and non-finally; when we value them for themselves, but that person does not provide the reason for doing so. A novel feature of Kolodny's Relationship Theory of love is that it claims this last form of valuation is what occurs in love (rather than non-instrumental and final valuation), where the relationship (not the person) provides the reason for loving someone non-instrumentally.<sup>37</sup>

In what follows I will demonstrate that we cannot use Appraised Value Accounts, when they take love to involve non-instrumental and final

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<sup>37</sup> I will consider Kolodny's account in more detail in section 2.4.3.

valuation, to show that romantic love is distinct from close-friend love. I will then highlight that when we consider how people are valued instrumentally and non-finally within relationships, this can highlight a difference in how they are valued in romantic relationships and close friendships. This suggests that we should look to other features of these relationships, including what we expect of people in these relationships (rather than the love in isolation) when trying to determine what makes them distinct. However, as noted above, Kolodny's Relationship Theory of love includes non-final valuation as a part of love. I therefore go on to consider whether we can use Appraised Value Accounts that include non-final valuation to show that romantic love is distinct. I argue that we can still only do so by appealing to the nature of the relationship that the love occurs in.

#### ***2.4.1 Love's Valuation (Non-Instrumental and Final)***

There are many examples of love being taken to involve non-instrumental and final valuation. Brentlinger characterises love as intrinsic (and so non-instrumental) valuation, where the object of love is valued "in and of itself" (1989, p. 137). On Keller's (2000) account it is the person that is loved, and therefore valued, for themselves, non-instrumentally, with (particular) properties of the person providing the reasons for love. The idea is clearly that the beloved should be valued (loved) for themselves, not only because of what they bring about or enable, and the beloved is seen as the source of the reasons for this valuation (love).

If the valuation of love is non-instrumental and final, then the beloved will be valued in this way in both close-friend love and romantic love. In both types of love they will be valued for themselves, and not for some further thing that they bring about or enable. In both types of love, the beloved is the source of one's reasons for valuing (and therefore loving) them.

Exploring the notions of non-instrumental and final valuation will therefore not enable us to show that there is a difference between romantic love and close-friend love.

This demonstrates that we cannot use Appraised Value Accounts (which view the appraisal as involving non-instrumental and final valuation of the beloved) in this way, to show that romantic love is distinct.

#### ***2.4.2 Other Forms of Valuation (Instrumental and Non-Final)***

Whilst love is typically taken to involve non-instrumental and final valuation, it is not generally thought that instrumental and non-final valuation is incompatible with love. It can occur in addition to (or alongside) love's non-instrumental and final valuation. Looking more closely at these other forms of valuation highlights ways in which close friendships and romantic relationships might be distinct.

Taking instrumental valuation first, clearly we can value the beloved as themselves whilst at the same time valuing them because of other valuable things that they bring about. For example, the beloved could also be valued for their sunny disposition that brightens up our day, or for their culinary skills that we get to appreciate regularly. In addition the beloved could also meet particular desires or needs that we have, and be valued instrumentally in this way. For example, the desire to have a partner who is tall, dark and handsome, or the need for someone who understands our way of thinking.

Thinking about how the beloved is valued instrumentally highlights that there will be a key difference in how the beloved is valued in romantic relationships and close friendships. The beloved will be identified as a romantic partner or a close friend, because they are participants in relationships that are understood to be romantic relationships or close friendships. They will be valued *as a romantic partner* in romantic relationships and *as a close friend* within close friendships. In other words, they will be instrumentally valued for their ability to either be a romantic partner or a close friend. There is a difference in how they are instrumentally valued here, because they are being measured against different criteria (i.e. what it is to be a (good) romantic partner or close friend).

This highlights that before we can understand what is distinct about the instrumental valuation that occurs in romantic relationships, we first need to



know what it is to be a romantic partner. We learn what is expected of romantic partners and close friends through the society we live in, and the examples that we are provided with. We then relate this information to the person that we love, and consider their properties in light of these roles, determining whether or not we value them in this way. In order to better understand what this difference amounts to - what it means to be valued as a close friend or a romantic partner - we need to further investigate what the nature of these relationships is taken to be and what is expected of people in such roles. The question about the relationship is more basic than the question about the valuation.

Moving on to non-final valuation, we can also clearly value the beloved non-finally alongside valuing them finally. We can have reasons for valuing the beloved that are external to the beloved at the same time as seeing the beloved themselves as providing reasons for valuing them. For example, in addition to seeing the beloved as a source of the reasons for valuing her, I might also take the relationship that I have with the beloved to be a further source of reasons for valuing her (because I also value the relationship).

Here again, we can see that there might be a difference in the valuation that occurs in close friendships and romantic relationships. The different relationships (romantic relationships and close friendships) provide different sources of reasons for valuing a person. A romantic partner can be valued non-finally, where the source of the reason for this valuation is a romantic relationship. A close friend can be valued non-finally, where the source of the reason for this valuation is a close friendship.

As with instrumental valuation, in order to determine whether a particular instance of this type of non-final valuation is romantic we will first require an account of the romantic relationship, and how this relationship differs from close friendship.

This discussion has shown that we might be able to use the valuation that is not typically taken to be a part of love - instrumental and non-final valuation - to show that there is a difference in the way that romantic partners and close friends are valued. This is therefore one potential way in which

romantic relationships and close friendships are distinct. This difference does not lie in the love that occurs, but in the valuation that occurs alongside that love. This difference in valuation depends on a difference in the relationship in which it occurs. This highlights that we need to further explore the distinct nature of these two relationships.

### ***2.4.3 Kolodny's Relationship Theory***

As noted above Kolodny's Relationship Theory of love is unusual in that it treats non-final valuation as a part of love.<sup>38</sup>

Love is both a final valuation of a relationship, from the perspective of a participant in that relationship, and a nonfinal, noninstrumental valuation of one's "relative"... In other words, love consists (a) in seeing a relationship in which one is involved as a reason for valuing both one's relationship and the person with whom one has that relationship, and (b) in valuing that relationship and person accordingly. (2003, p. 150)

When we love someone, Kolodny thinks that we value them non-instrumentally and non-finally. They are valued for themselves, and not for any further object or state of affairs that they bring about. However, the source of the reason for this valuation is not the beloved, it is something distinct: the relationship that the beloved has with the lover. It might therefore be suggested that we could use Kolodny's account to show that romantic love is a distinct type of love.<sup>39</sup>

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<sup>38</sup> Kolodny is responding to Velleman's account of love – another Appraised Value Account. Velleman views love as responding to the value someone has in virtue of being a human being. This value, that everyone possesses, is what warrants both Kantian respect for persons, as well as love. Velleman regards "respect and love as the required minimum and optimal maximum responses to one and the same value" (1999, p. 366). Opponents to this view, including Kolodny, are concerned with making sense of the following three claims: (a) everyone is valuable; (b) there are reasons for love; (c) not everyone is loved by everyone else. Kolodny's proposal for making these claims consistent with each other is to suggest that the source of the reasons for love lies in the relationship, rather than the person.

<sup>39</sup> Whether Kolodny can maintain that the beloved is still valued non-instrumentally (that they are valued for themselves, and not for the relationship they bring about) is open to debate. What I say here is meant to highlight the worry, rather than conclusively argue against Kolodny's claim: Non-final valuation looks suspiciously like instrumental valuation because it posits a separate, distinct ground as the reason for valuation. This seems

On his view it is the relationship with the other person that provides the reason for loving that person. When comparing romantic love and close-friend love we can see that there are therefore two distinct reasons for loving the other person that occur in the two relationships. One type of love involves non-final valuation of the other person where the reason for this valuation is a close friendship. The other type of love involves non-final valuation of the other person where the reason for this valuation is a romantic relationship.

Kolodny's account can therefore demonstrate that romantic love is distinct. In fact he thinks that it is a particular advantage of his theory that it can adequately account for and explain the different modes of love that he assumes do occur in different relationships. However, the only way he can do this is by appealing to the relationships that the love occurs in. The location of this difference is still in the relationships themselves. The difference is a result of the love arising out of different types of relationship. To understand what this difference consists in, we still need to further explore these relationships themselves. We cannot simply say that a romantic relationship is distinct because it involves a distinct type of love. We need to say more.

## **2.5 Summary: Appraised Value Accounts**

The discussion of Appraised Value Accounts which take love to respond to the value of the beloved has shown that we cannot (in general) use such accounts to demonstrate that romantic love is distinct by considering what,

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unnecessary if we value something non-instrumentally, for itself, and for no other thing that it can bring about. The valued object already provides a reason for this valuation. Additionally, when we value  $x$  because of some distinct  $y$  (as is the case in non-final valuation) then it looks plausible that we value  $x$  because of the relationship it has to  $y$ . This could also be construed as a 'state of affairs involving  $y$ ' (which looks like instrumental valuation). Consider Kolodny's human remains example. Human remains provide a link to the person who died, and are only important to us because of this fact. It seems plausible to claim that 'providing a link to a deceased person' is a 'state of affairs involving that deceased person' - and so the human remains look as though they are valued instrumentally - in order to bring this state of affairs about.

and how, the beloved is valued. For atypical accounts that do enable us to show that romantic love is distinct, it was shown that we are only able to do this by appealing to the nature of the relationship that the love occurs within. This suggests that we cannot use accounts of love alone to show that the romantic relationship is distinct. We need to supplement them with an account of the different relationships.

This conclusion is supported by the discussion of the valuation that occurs alongside love. This instrumental and non-final valuation is distinct in romantic relationships and close friendships, but again, this difference depends on the distinct relationship that the valuation occurs in. We therefore need separate accounts of these distinct relationships as well.

## **2.6 Bestowed Value Accounts**

Bestowed Value Accounts take love to consist in the bestowal of value on to the beloved. This bestowal of value is ‘autonomous’, creating value that is completely independent of the value that the beloved may or may not already possess. This means that an apparently valueless object can be loved, and gain value through love.<sup>40</sup> An example from Frankfurt highlights this idea of bestowal: he claims that our love for our children is not in response to the value that they already possess (they might not even have come to possess any valuable traits yet) rather, our children “are so valuable and important to [us] just because [we] do in fact love them” (1999, p. 173).<sup>41</sup>

Singer’s account of love can be understood as a Bestowed Value Account. Whilst he claims that love in some sense involves both appraisal and bestowal, it is clearly bestowed value which he takes love to primarily consist in: “in being primarily bestowal and only secondarily appraisal, love is never elicited by the object ... [love is] a new creation of value and

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<sup>40</sup> This suggests that love may not be ‘for reasons’ or ‘justifiable’ (contrary to what the Properties View claims, as seen in sections 2.2 and 2.3) which is a concern for some.

<sup>41</sup> Frankfurt’s account isn’t a Bestowed Value Account as he views love as a form of caring about someone, but it does involve the idea of bestowed value, and this example highlights the idea well.

exceeds all attributes of the object that might be thought to elicit it” (1984, p. 13). Singer describes love as *creating* value in the beloved. The value that is bestowed on the beloved is “created by the affirmative relationship itself, by the very act of responding favourably, giving an object emotional and pervasive importance regardless of its capacity to satisfy interests...it is the valuing alone that *makes* the value” (p. 5).

Can we use Bestowed Value Accounts to show that romantic love is distinct? If love consists in the bestowal of value, then wherever love occurs, there will be a bestowal of value, whether that is in close-friend love, romantic love, or any other kind of love. It would therefore seem that we need to focus in on the value that is bestowed and ask if there is any difference between the value bestowed in close-friend love and romantic love. However, if this question is understood to be about the *nature* of the value bestowed, then it doesn't really make sense. Bestowing value, at least on Singer's account, is simply to accord someone positive value. As Singer notes, bestowal is a type of valuation, but not a type of “*evaluation*” (p. 9). We cannot ask what the beloved is valued *for*, or *how* they are valued. They simply are valued.

### ***2.6.1 How much is the Beloved Valued?***

We can however ask whether there is a difference in the *amount* of value bestowed in close-friend love and romantic love – whether we positively value close friends more or less than romantic partners. How might we determine whether we bestow more or less value on someone? We could perhaps look to the things that indicate that value is being bestowed: i.e. particular types of behaviour that suggest we value and love them in this way.

The bestowal of value shows itself in many different ways, not all of which need ever occur at the same time or in equal strength: by caring about the needs and interests of the beloved, by wishing to benefit or protect her, by delighting in her achievements, by encouraging her independence while also accepting and sustaining her dependency, by respecting her individuality, by giving her pleasure, by taking pleasures with her, by feeling glad when she is present and sad when she is not, by sharing ideas and emotions...by sympathising with her weaknesses and depending upon her strength,

by developing common pursuits, by allowing her to become second nature...by having a need to increase their society with other human beings upon whom they can jointly bestow value, by wanting children who may perpetuate their love. (Singer 1984, p. 7)

Perhaps it would be possible to identify a difference in how much close friends and romantic partners care about, delight in, encourage, sympathise etc. with each other. Perhaps romantic love tends to elicit more instances of this type of behaviour, demonstrating that romantic love bestows more value on the beloved. Alternatively, it might be the case that certain indications of bestowal only occur in romantic love. Perhaps only romantic love involves the desire to have children who can perpetuate love. In order to find out whether one or both of these options is plausible, and to understand what this difference consists in however, we again need to look to further features of the relationship, and not simply the love (bestowed value) that occurs. We would need to look at what behaviours typically occur in these different relationships, in order to see whether they indicate close-friend love or romantic love. As such we would only be able to use Bestowed Value Accounts to demonstrate that romantic love is distinct if we also appealed to other features of the relationship that the love occurs in.

## **2.7 Emotion Accounts of Love**

Most accounts of love will include emotion in at least some part of their analysis.<sup>42</sup> We typically characterise the experience of falling in love as involving intense emotions, delight at being with the beloved, despair at being separated from the beloved, and all the physiological occurrences such as shaky knees and shortness of breath that go along with this. Emotion Accounts however take emotions to play a primary, definitive, role in explaining what love is.

There are two kinds of Emotion Accounts: *Emotion Proper Accounts* and *Emotion Complex Accounts*. Emotion Proper Accounts take love to just be another emotion, akin to other emotions (like fear and joy etc.). Emotion

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<sup>42</sup> Frankfurt (1999) provides the exception to this rule. He views love as a “mode of caring” which is “neither equivalent to nor entailed by any type of feeling or cognition” (p. 165).

Complex Accounts on the other hand view love as “a complex emotional attitude towards another person” (Helm 2013, Section 5.2) and focus more on the complex emotional interconnectedness that occurs between people who love each other. I will take each account in turn and consider whether we can use them to show that romantic love is distinct. I argue, again, that they will only be able to do so if we supplement them with an account of the relationship that the love occurs within and the norms that influence them.

## 2.8 Emotion Proper Accounts

In order to understand what Emotion Proper Accounts mean by saying that love *is* an emotion, we need to understand first what an emotion is. On the (generalised) standard view emotions are “responses to objects that combine evaluation, motivation, and a kind of phenomenology” (Helm 2013, Section 5.1). They have identifiable targets - what the emotion is aimed at - as well as formal objects - the particular evaluation of the target. Take jealousy, for example. Jealousy is usually directed at some person or group of persons (its target). The target of jealousy is usually evaluated as possessing something that the subject (the jealous person) lacks and wants. Emotion Proper Accounts view love as a “particular kind of evaluative-cum-motivational response to an object” (Section 5.1). The target is usually a person – the beloved. What constitutes love’s formal object (how the beloved is evaluated) is up for debate. One suggestion, is that the beloved is evaluated as “being worthwhile” (Section 5.1).<sup>43</sup>

Hamlyn (1989) provides an Emotion Proper Account. He asks whether we can identify love’s formal object in the same way as we can identify the formal objects of other emotions. The formal object - the way that the object of an emotion is evaluated - restricts the set of possible objects for that particular emotion. For some accounts of emotion “to have a given emotional attitude to an object ... one has either to have a certain sort of belief about that object or to see it in the corresponding way, whether or not that belief or way of seeing it is in fact justified” (p. 223). Hamlyn uses the example of pride. It isn’t possible to “take pride in anything” because the set

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<sup>43</sup> See Brown (1987).

of things we can take pride in is restricted in some way (p. 222). For pride, we have to believe, or see the object, as in some way connected to us.

Hamlyn asks whether we can say something similar for love (and hate, which he sees as a parallel emotion). He asks “if one does love x, what beliefs must one have about x, and how must one see or regard x if it is really to be love” (1989, p. 225)? If love is an emotion, then it seems that we need to be able to answer this question. The problem is that “it is very difficult to think of any particular belief that the lover must have about the beloved, or any way in which the lover must see the beloved” (p. 227). This is because a whole variety of attitudes (both positive and negative) about the beloved are compatible with loving the beloved. The only thing that seems to be necessary is for the lover to “see the beloved object as an object for love” (p. 227). This however is “merely a formal condition of the possibility of love” – it doesn’t tell us what the love is for, and cannot provide a way of restricting the set of objects that can be loved (p. 227).

As such, whilst Hamlyn takes love to be an emotion, he thinks that it is different from the other emotions. For other emotions, only objects that are evaluated in a way that is “appropriate to the emotion” (1989, p. 228) can be objects of that emotion. This isn’t the case for love: “With love the difficulty is to find anything of this kind which is uniquely appropriate to love. My thesis is that there is nothing of this kind that *must* be so” (p. 228).

It should however be noted that Hamlyn is talking about love of both objects and people in general. When we consider the love (and hate) of persons within personal relationships, things usually work differently. For personal love, claims Hamlyn, we can identify objects that are taken to be appropriate objects of love.

...we should have no clear understanding of what hatred [and love] was in a normal human being if we did not know something of what sort of thing is normally an object of hatred [and love] for such a being. In consequence, if we think some range of objects as appropriate kinds of object for hatred [and love] it is because this fits in with our conception of the place that hatred [and love] has in human life. (1989, pp. 228-229)



On Hamlyn's account personal love does typically (although not necessarily) have a formal object – a typical way that the beloved is evaluated. Looking to the types of objects we take to be appropriate for love will tell us what this formal object is.

Can we use this type of account to show that romantic love is distinct? If Emotion Proper Accounts show that there is one emotion that occurs in both close friendships and romantic relationships then it is clear that this emotion will not provide a distinguishing factor between the two relationships. It is possible that the same emotion may motivate different responses in the different relationships, but this would be a difference located in the relationship, and not in the love. We would therefore need to look to the different behaviours etc. that were motivated by the emotion in order to spell out what makes the romantic relationship distinct.

If, on the other hand, Emotion Proper Accounts show that there are two related but distinct emotions - close-friend love and romantic love - then the emotions could be used to distinguish the two relationships, even if the relationships appear to be similar in other ways.

The question we need to ask then is whether an Emotion Proper Account can demonstrate that there are distinct emotions of romantic love and close-friend love. In discussing Hamlyn's account of love I aim to show that whilst we could use his account to show that romantic love and close-friend love are distinct emotions, the only way that we can do this is by appealing to the different relationships (and associated norms) that the love occurs within.

### ***2.8.1 Is Romantic Love a Distinct Emotion?***

How could we use Hamlyn's Emotion Proper Account to show that the emotion of romantic love is distinct? As was highlighted above, emotions are thought to involve particular evaluations of their objects (their formal object). Only certain evaluations are thought to be appropriate to particular emotions. One way to show that romantic love and close-friend love are distinct emotions would therefore be to show that they have different formal objects.

As illustrated, on Hamlyn's account any object can be evaluated in any way, and still be loved. Yet, Hamlyn makes it clear that he thinks there are many different forms of love and suggests that "the nature of the object may affect the possibility of given forms of love in relation to it" (p. 225). This seems very plausible when we consider the difference between things and persons and the difference between the types of love that we have for them. What he says about personal love in particular also suggests that there is a way to distinguish romantic love and close-friend love as it provides a possible way of limiting the set of objects that are appropriate to each form of love.

We can take the idea that the appropriate objects of personal love are the things that are normally an object of love for humans a little further than Hamlyn does, for our purposes. It seems possible that we can distinguish the set of objects appropriate to close-friend love and romantic love by appealing to the objects that are normally taken to be appropriate for each type of love. The set of appropriate objects for close-friend love includes those objects that we normally take to be appropriate for close-friend love and which fit with our conception of the place that close-friend love has in a human life. The set of appropriate objects for romantic love includes those that we normally take to be appropriate for romantic love and which fit with our conception of the place that romantic love has in a human life.

When we look to our (Western) society, we can see that close-friend love and romantic love play an important role in our lives. They are the emotions that are part of important (and apparently conceptually distinct) personal relationships that shape and enrich our lives. There are norms associated with such relationships, and which govern who we think make appropriate candidates for those relationships, and relatedly, the love that such relationships entail.

It seems plausible to suggest therefore that an appropriate object for romantic love is someone whom the lover sees as desirable as a romantic partner, in virtue of certain character traits. An appropriate object for close-friend love would then be someone whom the lover sees as desirable as a close friend, in virtue of certain character traits.

This means that Hamlyn's account can be used to distinguish close-friend love and romantic love, because we can distinguish between what it is to be taken as an object of close-friend love and romantic love. For example, Hermione's love of Harry is close-friend love because Hermione takes Harry to be an object of close-friend love.

However, on pain of circularity, we cannot define what an appropriate object of close-friend love is in terms of close-friend love. As such, we need a separate account of the nature of the close friend relationship (and *mutatis mutandis* for romantic love). It is this separate account that would explain why Hermione takes Harry to be an object of close-friend love. We can only use Hamlyn's account to show that there is a distinction between romantic love and close-friend love if we have these separate accounts in addition.

The preceding discussion has aimed to demonstrate that we could use Emotion Proper Accounts to show that romantic love is distinct, in virtue of being a distinct emotion with a distinct formal object. The only way that we can do this however (on Hamlyn's account at least) is to appeal to a separate account detailing the nature of this relationship.

## **2.9 Emotion Complex Accounts**

Emotion Complex Accounts, rather than viewing love as another independent emotion that should be included on the list of human emotions, instead take love to be constituted by a complex emotional interdependence between people. This can involve a variety of different emotions proper as well as other emotional attitudes (which might not be thought of as emotions proper in themselves). On this type of account love is a form of emotional vulnerability to another person.

Emotional vulnerability is often taken to be a feature of love. We saw in Chapter One that Nozick's (1990) Union Account appealed to the idea of pooled well-being, which will include being aware of and responsive to the emotions of the beloved. Velleman's Appraised Value Account which describes love as an "arresting awareness of value in a person" (1999, p. 362), views love as arresting "our tendencies toward emotional self-protection from another person . . . . [making] us vulnerable to the other"

emotionally (p. 361). Kolodny's (2003) Appraised Value Account also takes love to involve being emotionally vulnerable to the beloved, and their well-being.

Annette Baier (1991) on the other hand provides us with an Emotion Complex Account of Love which takes love to be constituted by this emotional vulnerability. She notes that whilst love has often been identified as a single emotion, she views it as more like (Humean) sympathy which communicates and spreads emotions from one person to another.<sup>44</sup> It activates certain emotions and responses to emotions in people. She describes love as

... a *coordination* or mutual involvement of two (or more) person's emotions, and it is more than [Humean] sympathy, more than just the duplication of the emotion of each in a sympathetic echo in the other. (p. 442)

The mutual emotional interconnectedness and interdependence is complex.

It is not just that one takes on an extra set of joys and sorrows to one's own – one does that if one has sympathy for a person over a period of time whether or not one loves her. When one loves, one's occasions for joy, sorrow, and other emotions will become 'geared' in a more complex way... to those of the loved person, and this may indeed affect the balance of joy over sorrow in one's life. The loved person's indifference will hurt, her boredom will disappoint, her premature withdrawal will grieve one. (p. 443)

This highlights that love involves both the recognition of emotion in the beloved, and an emotional response to what is recognised. This emotional response will include sharing the beloved's emotion, as one does in sympathy, but in addition to this ...

... it is also appropriate *follow-up* responses to what one knows by sympathy that the other is feeling – mischievous delight at the other's temporary bafflement, a frisson of fear at their feigned aggression, glory in the other's surrender. (p. 443)

Viewing love in this way - as a "special form of emotional interdependence" (p. 444) - allows Baier to recognise that it involves both an emotional and a

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<sup>44</sup> Baier (1991) notes that sympathy in Hume's sense is more like our notion of empathy (p. 442).

relational aspect, where the ‘emotion’ of love acknowledges, endorses and sustains the relationship had with the beloved.<sup>45</sup>

How might Baier’s account enable us to show that romantic love is distinct? There are two central features of the account: the emotional interdependency between people who love each other in general; and the emotional responses that form part of this interdependency in particular. In what follows I will take each of these features in turn. Firstly, I will consider whether we can show that there is a difference in the extent to which the lover is affected by the other’s emotions in romantic love. Secondly, I will consider whether there are different emotions (or ranges of emotions) that can be considered as appropriate responses in close-friend love and romantic love.

### ***2.9.1 Emotional Interdependence***

If love involves emotional interdependence, and both close friendships and romantic relationships involve love, then the existence of emotional interdependence between two (or more) people is not going to help us distinguish romantic love from close-friend love. The only way that we could use this feature to highlight a distinction between the two forms of love is if it could be shown that there is a difference in the nature of the emotional interdependence that occurs in romantic love and close-friend love.

Emotional interdependence involves mutual emotional dependence between two (or more) parties: X’s emotions respond to Y’s emotions, and vice versa. It seems unlikely that there will be a difference in the emotions that will cause a response. If there is an emotional interdependence it seems likely that all of the emotions of the beloved will affect the lover in some way. Or, at least, all of the emotions that the lover can recognise in the beloved. This suggests a possible distinction. Perhaps it is the case that there

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<sup>45</sup> Baier is keen to highlight the risks (as well as the benefits) that such emotional interdependence can lead to (for example, heartbreak and domination) and this is something that I will discuss further in Chapter Eight.

can be degrees of emotional interdependence, which relates to the degree to which the lover can recognise the beloved's emotions (or is shown them).

Being able to recognise emotions in another person can be difficult, and requires knowledge about the other person. Whilst some emotions may seem to be obviously displayed (a smile indicates happiness, tears indicate sadness), others will be harder to interpret (or deliberately concealed). This is because some emotions are complex, and closely related, and how we express them will be personal to each individual.

Just how much emotional knowledge and interdependence is present in either close-friend love or romantic love is going to be extremely hard to pinpoint, and no doubt dependent on the individuals involved. The relationship that they have with each other - whether it is a close friendship or a romantic relationship - looks as though it will be key, however. As Baier notes, the relation between the two people is a key part of the emotional interdependence, and so surely the nature of this relation will affect the nature of the emotional interdependence. For example, the nature of the relationship will affect how intimate it is, and how much knowledge is shared.

This again suggests that we should be looking to the nature of these relationships, and not simply the love in isolation, if we want to find a distinction. We need to know whether close friendships and romantic relationships differ in their level of intimacy, and whether there are certain emotions that we think should be shared (or concealed) in these relationships. This will likely be affected by social norms and practices relating to these relationships within our society which tell us what to expect of (and what is expected of us) as romantic partners and friends. This suggests that we should also be looking to these norms (as well as the relationships they shape) in order to understand what is distinct about romantic relationships.

There is another (related) way that emotional interdependence might be able to demarcate close-friend love and romantic love. This concerns the importance of this emotional interdependence for the lover's overall

emotional state. Whilst all love may be thought to involve emotional interdependence, the extent to which the beloved's emotions affect the lover's overall emotional state might be thought to be able to differ.

Baier provides some examples of the beloved's emotions and the lover's appropriate responses above. For instance, indifference will hurt, and boredom will disappoint. We can think of other, more positive examples too – interest will delight, and engagement will inspire perhaps. How much it hurts, disappoints, delights or inspires will depend on who the beloved is. We can imagine that a romantic partner's indifference will hurt a great deal – that the lover's overall emotional state will be greatly affected by the beloved's emotions. On the other end of the spectrum, we can imagine that some people's indifference, whilst hurtful, can be easily shrugged off and ignored – the lover's overall emotional state is, whilst affected, not greatly so.

Whilst it seems plausible that there is such a spectrum, it might be questioned whether the emotional interdependence that occurs at the latter end really amounts to love. It also doesn't appear to provide a clear way to distinguish close-friend love and romantic love, as intuitively it seems that they would both be close to the former end of the spectrum.<sup>46</sup>

### ***2.9.2 Appropriate Emotional Responses***

Can the second central feature of Baier's account - the appropriate follow up responses to the beloved's emotions - help us to show that romantic love is distinct? Can we identify a distinct set of appropriate follow up responses for romantic love, and a different set for close-friend love?

Initially it doesn't look as though this feature will be particularly helpful for our project. It isn't clear from Baier's account what makes a response to the beloved's emotion appropriate. Why, for instance, is it appropriate for the lover to feel some glory in response to the beloved's surrender? There are

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<sup>46</sup> My claim is not that the interdependency of close-friend love and romantic love do not lie at different points on the scale. Rather, my claim is that if we are looking for a way to distinguish romantic love and close-friend love then this is not going to be a particularly clear way of doing it.

two main reasons why providing an account of appropriate emotional responses in love would be very difficult.

The first reason is that it will involve considering a vast number of infinitely variable situations. This is because all possible emotions are compatible with love, even the negative ones. As Singer states: “every emotion or desire contributes to love once it serves as a positive response to an independent being” (1984, p. 8). There are therefore a lot of different emotions to consider. Additionally, there will be as many (if not more) possible responses to these emotions which will be influenced by the specific situations, and the relationship that they occur in.

The second reason is that determining whether or not a particular emotional response is appropriate looks as though it will be largely relative. It will depend on a huge variety of conditions, such as the history of the relationship, the nature of the relationship, the particular circumstances that the emotion arises in, and the individuals involved.

If there is a difference to be found between close-friend love and romantic love that relates to the appropriate emotional responses that occur in love, then we will not be able to locate it without a comprehensive investigation into the nature of romantic relationships and close friendships. Whether a particular emotional response is appropriate will depend on the nature of the relationship and the social norms governing that relationship. It will depend (at least in part) on how we expect close friends and romantic partners to respond to us.

Even after such an investigation, it may still be too difficult to provide a generalised account of what counts as an appropriate emotional response for close-friend love and romantic love due to the infinite number of possible situations and individual character traits that are involved. Nevertheless, considering this feature of love highlights yet again that in order to determine what makes the romantic relationship distinct, we need to look at the relationship itself and the norms that influence it, not simply the love that occurs.



### **2.9.3 Summary: *Emotion Complex Accounts***

I have shown in this section that Emotion Complex Accounts can only help us to show that romantic love is distinct if they are supplemented by an account of the distinct romantic relationship and the norms that influence it. Baier's Emotion Complex Account has two central features: emotional interdependence and the appropriate emotional responses that this interdependence involves. The discussion of both these features highlights how the nature of the relationship (and the associated norms) directly and significantly affect the love that is present.

### **2.10 Conclusion**

This chapter continued to consider whether it is the nature of the love that occurs within the romantic relationship (as the paradigmatic marital relationship) that makes it distinct. It explored whether Valuation and Emotion Accounts of love could be used to show that romantic love is unique.

I argued that we cannot use typical Appraised Value Accounts to show that romantic love is distinct. When considering what is valued in the beloved I argued that it is very difficult to show that romantic love responds to a distinct set of valuable properties because both close friends and romantic partners value similar traits, and what is seen as a reason for love (of any kind) will be very personal and subjective. When considering how the beloved is valued, I identified that love is typically taken to involve non-instrumental and final valuation. Neither of these types of valuation provided a way to show that the beloved was valued differently in romantic love.

Instrumental and non-final valuation are usually taken to be separate from the valuation of love. These forms of valuation did enable us to show that romantic partners are valued differently from close friends (but not that romantic *love* is distinct): they are valued as romantic partners, and in virtue of the romantic relationship they participate in. Kolodny's Relationship Theory, an atypical Appraised Value Account, could be used to show that romantic love is distinct because it incorporated non-final valuation into

love. The only way it could do this however was to appeal to the nature of the relationship that the love is found in, and to assume that it is a distinct relationship.

I also argued that we could potentially use Bestowed Value Accounts to show that romantic love is distinct because they might be able to show that romantic love involves a bestowal of more value than close-friend love. The only way that we would be able to know that this is the case however is by looking to the behaviour that occurs within the relationship and which indicates that love is being bestowed.

Moving onto Emotion Accounts. I argued that Emotion Proper Accounts could be used to show that romantic love is a distinct emotion, with a distinct formal object, but it could only do this by appealing to the social norms surrounding romantic relationships as it is these that will determine what are generally taken to be the appropriate objects of romantic love.

Finally I argued that Emotion Complex Accounts can also be used to show that romantic love is distinct. There plausibly is a unique form of emotional interdependence in romantic love that involves uniquely appropriate emotional responses. Again however we can only show that this is the case when the account is supplemented by an account of the romantic relationship and the norms that influence it. It is the relationship, and associated norms that will affect what emotions are recognised in the beloved, and how affected the lover will be by this emotional interdependence. It is the relationship and norms that will also affect what the appropriate emotional responses are for romantic partners.

Both this chapter and the preceding one have highlighted that in order to answer the question of what makes the romantic relationship distinct, we need to take a closer look at the relationship itself. It is not simply the love that occurs that makes the relationship unique. This chapter has also highlighted that we need to pay closer attention to the social norms surrounding the romantic relationship. I undertake both of these tasks in the next two chapters. First I will show why I think we should favour a role-

based account of the romantic relationship in Chapter Three. Then in Chapter Four I aim to provide an account of the role of a romantic partner.

## Chapter Three

### **Romantic Relationships: Arguing for a Role-Based Account**

The central question of Part One was this: What is the paradigmatic marital relationship? We are attempting to uncover the nature of the relationship that the institution of marriage is meant to 'fit'. In our Western society it is the romantic relationship that is taken to be the paradigmatic marital relationship. So far we have been unable to deduce what is unique or distinctive about this relationship. Chapters One and Two have shown that we cannot simply look to the love that is present within the relationship; we cannot identify the romantic relationship simply as one in which romantic love is present. We need to say more.

In order to understand what a romantic relationship is, and what makes it distinct from other very similar relationships (such as close friendships), we need a fuller picture. Love is still of course an important element of this picture: it is a part of the relationship, and will influence other aspects of the relationship in important ways. The previous two chapters have however highlighted that we need (in addition to an account of romantic love) an account of the relationship itself - the pattern of behaviour and interaction over time - before we can understand what makes romantic love unique (if it is unique at all). The preceding discussion has also hinted that we need to look at the norms and expectations that surround these relationships as well as the behaviour that is influenced by them, in order to build up this fuller picture.

As such, the guiding question for this chapter (and the next) is: What is distinct about the pattern of behaviour and interaction that occurs in romantic relationships (as opposed to other loving relationships)? In this chapter I will argue that in order to address this question we need a role-based account, as opposed to a behaviour-based account of the romantic relationship. A role-based account of a relationship will provide an explanation of the relationship-role that participants play in that relationship for one another. I look at accounts of social roles and suggest ways in which

a relationship-role might be analogous. In particular I suggest that an account of a relationship-role will have three tiers: an overarching social institution or category; relationship roles that relate to this institution or category; and patterns of behaviour that are required to fulfil those roles.

In Chapter Four I begin to build up a role-based account of the romantic relationship and argue that it is in virtue of this relationship-role that the relationship is distinct.

### **3.1 Problems with Behaviour-Based Accounts**

Chapters One and Two have demonstrated that we require an account of the romantic relationship, independent of an account of romantic love, if we want to understand the nature of this relationship, and what makes it distinct. What should such an account look like?

One option is to provide a purely descriptive account: a behaviour-based account. This would involve looking at romantic relationships and identifying what typically happens - what kinds of behaviours and interactions commonly occur - in that kind of relationship. A behaviour-based account would claim that a romantic relationship is a relationship in which the participants typically behave or interact in a certain way. It would then also provide a list of the typical day-to-day behaviours and interactions that commonly occur in romantic relationships. This list might include things like living together, going on holiday together, being physically and emotionally intimate with each other, etc.

The problem with this type of account relates to the need for this list of typical behaviour and interaction. Such a list will be hard to provide because romantic relationships are both too unique, and not unique enough.

They are too unique because each individual romantic relationship will likely be very different, due to a number of different factors, including the unique characters of the participants and the context in which the relationship is formed and maintained. Attempting to identify certain behaviours and interactions, or patterns of behaviour and interaction that apply to all romantic relationships will therefore be very difficult. For

example: some romantic partners may live together, but others may not even be in the same country; some romantic partners might do all of their leisure activities together, but others may not; and the list would go on.

Despite this wide variation, it might be thought that we can identify some activities that are typically present in most romantic relationships. They typically involve sharing some leisure activities, typically involve living together at some point etc. Looking at this list we can now see that romantic relationships are not unique enough for us to be able to provide a distinct and definitive list of romantic behaviour. Other loving relationships, such as close friendships, can also involve the sharing of leisure activities and living together.

These problems with constructing a list of typical romantic behaviour and interactions suggest that attempting to construct a behaviour-based account of the romantic relationship will be futile. It might however be objected that we can identify some activities that only occur in romantic relationships. Sex seems like the obvious suggestion here – at least in as much as it is commonly thought to play this kind of definitive role within the literature. As Thomas (1989) notes it is now commonly thought that the (only) conceptual difference between close friendships and romantic relationships is the following: “romantic partners are involved as sexual partners; friends are not” (p. 183). Is sex really the thing that determines whether a relationship is romantic or not?

### ***3.1.1 Romantic Relationships are not Close Friendships plus Sex***

I want to challenge this common idea and argue that the difference between close friendships and romantic relationships cannot rest merely on the presence or absence of sex. Showing that this is the case then enables me to maintain the claim that we should not attempt to construct a behaviour-based account of the romantic relationship for the reasons stated above.

Firstly, the mere presence of sex clearly does not produce a romantic relationship. Sex does not only occur in romantic relationships, nor only between people who like, let alone romantically love each other. There are

clear examples of this: sexual abuse, sex that is paid for, and one-night-stands are just three.

So, if the presence of sex is to make a difference, it needs to be viewed as adding something to an existing relationship. The idea that romantic relationships are simply close friendships plus sex takes this view. It seems to rely on a particular model of relationships and intimacy. On this model

...each human self is a discrete substance combining essential and unique qualities. All attraction between selves is a desire for union, for sharing these qualities, possessing them, taking part in them in some way. One can hierarchically order the various types of attraction between selves by the essential importance (reality) of the qualities shared.<sup>47</sup> (Conlon 1995, p. 295)

For example, the relationships of colleague and friend can be viewed as being at different points on the scale. When colleagues become friends they move higher up the relationship scale because their relationship now involves more intimacy. They go from only meeting at work and talking about work-related things, to spending more time with each other outside of work and talking about a wider range of things. Carrying on up the scale, “if these friends subsequently became lovers, this change would be interpreted in the same manner: as an increase in their degree of intimacy” (Conlon 1995, p. 295).

This model is cumulative, which means that nothing of importance is thought to be lost as we go up the scale. We simply add more intimacy to the relationship (and share in more behaviour that reflects/enables intimacy). Sex is a very intimate act. If we add sex to a close friendship, so the thought goes, we have added a (or even the final) level of intimacy. This transforms the close friendship into a romantic relationship.

One way to challenge the claim that romantic relationships are simply close friendships plus sex (and to demonstrate that we cannot use the presence of sexual behaviour to identify a romantic relationship) is to challenge the model on which this idea is based. Conlon does just this.<sup>48</sup> He claims that

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<sup>47</sup> Conlon highlights that this is a Platonic model.

<sup>48</sup> Conlon (1995) argues that love and friendship are two distinct forms of intimacy that don't fit on this Platonic model in order to object to the

this model misrepresents what happens when relationships change form: it misses the fact that something is lost.

Consider again the example of a colleague turning into a friend on the cumulative model. Where they once (as colleagues) talked only about professional matters, they now (as friends) discuss personal and emotional matters as well. Conlon claims that the cumulative picture ignores the fact that “the intimacy that pure professionals have between each other” (p. 296) has been lost. Whereas colleagues can discuss professional matters as “‘unconcerned’ professionals” (p. 296), friends can no longer do this, because the nature of the intimacy between them has changed:

Friends would be continuously conscious of, and concerned about, personal factors extending far beyond the topic at hand. They could not put these on hold while they discussed professional matters. Thus the joys and powers of purely professional conversation would be lost to them. (Conlon 1995, p. 296)

Conlon thinks the fact that we lose something when relationships change form suggests that those relationships (and the intimacy involved) are different in kind.

[T]he reality of loss suggests that relationships actually differ not in degree, but in kind. They are not steps on the way toward anything fuller; they are just what they are, modes of relation, each possessing distinct and - sometimes - incompatible strengths and weaknesses. (1995, p. 297)

He proposes an alternative model of intimacy. On this model “each type of intimacy is a perspective on, creates an interpretation of, the sharing of selves” (1995, p. 297). He uses an analogy of literary genres to better explain this idea:

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common claim that “that one’s spouse is also one’s closest friend” (p. 295). He doesn’t use this argument to show that sex is not a definitive feature of the romantic relationship, and in fact claims (but does not argue) that romantic love has an “inextricable sexual component” (p. 297). What I say here is meant to show that we cannot use a behaviour based model that takes the romantic relationship to be close friendship plus sex to identify what makes the romantic relationship unique. There is a further question as to whether romantic relationships are inextricably sexual which I don’t address here. I think the example of asexual couples does however provide a counterexample to this thought.



Each type of relationship (colleague, friend, lover, and so on) is like a literary genre (poem, novel, play). Obviously, differences between genres do not represent steps toward a perfect and complete artistic expression... Rather, they are just different ways of doing it. (1995, p. 297)

On Conlon's model, friends and lovers have different forms of intimacy with each other – forms which are incompatible. This means that the intimacy of friendship cannot be understood to cumulatively lead onto the intimacy of romantic love. They are different in kind. As Conlon puts it (borrowing C. S. Lewis' imagery) "we picture friends side by side and lovers face to face" (Conlon 1995, p. 298). This difference makes them incompatible. People cannot stand side to side and face to face at the same time.

Viewing romantic relationships as close friendships plus sex suggests that romantic relationships are just a slightly more intimate version of close friendships. Conlon's argument shows that this isn't the case: it demonstrates that the difference between close friendships and romantic relationships is more than sex. The level of intimacy that the presence of sex is meant to represent, is not in fact there to be represented. Romantic relationships are a completely different form of intimacy.

In addition to this, the fact that it seems possible to have a romantic relationship without sex, also challenges the close-friendship plus sex view. Consider Romeo and Juliet – their relationship is paradigmatically romantic despite the fact that they never have sex. There are also numerous examples of romantic couples who don't have sex until they are married, and of married couples who continue to have a romantic relationship even though they have stopped having sex. Someone that wants to hold on to the view that romantic relationships are close friendships plus sex would need to provide a strong argument as to why romantic relationships minus sex (such as those in the examples) are in fact close friendships.

Sex therefore cannot play the definitive role that is suggested by the 'close friendship plus sex' view of romantic relationships, and so a behaviour-based account that aligns with this view (where sex is only on the romantic relationship list, whereas all other behaviours can be on both close

friendship and romantic relationship lists) is not going to aid us in identifying what is distinct about a romantic relationship.<sup>49</sup>

How then are we going to explain the difference between romantic relationships and close friendships in a way that enables us to i) encompass the vast variety of behaviour that occurs within individual romantic relationships; ii) identify the romantic relationship as a distinct relationship type; and iii) not characterise the romantic relationship as close friendship plus sex. I propose that a role-based account enables us to do this.

### 3.2 Role-Based Accounts

Rather than focusing on, and describing, the behaviour that typically occurs within a relationship, a role-based account defines a relationship in terms of the norms governing the relationship. This is analogous to an account of playing the role of a character in a play. There are certain norms that govern how to play a role. If an actor violates these norms, then he fails to play the role in question. For example, when an actor plays Romeo he ought to recite the lines in the order found in the script of *Romeo and Juliet*; he ought to treat the other actors on stage, and respond to them, as their characters (and not the individuals playing those roles); he ought to be dressed in his costume and not his usual clothes, and so on. If he violates one of these rules then he fails to play the role of Romeo.

Moving back to relationships, this role-based approach allows us to distinguish between the purely biological relationship of X being Y's offspring and the normatively salient relationship of Y being X's parent. These are importantly different, as the example of adoptive parents

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<sup>49</sup> It might be suggested that whilst sex can occur in both close friendships and romantic relationships, only romantic relationships involve committed or exclusive sexual activity. If we understand this as a claim that romantic relationships are just close friendships plus committed or exclusive sex, then we can still use Conlon's argument to argue against the model this is based on. For a further argument that claims exclusive sex cannot provide the conceptual difference between romantic relationships and close friendships see Thomas (1989).

highlights. The latter relationship is defined in terms of the norms that govern it, the former is not.

A role-based account will provide an account of relationship-roles in terms of what occupants in those roles ought to do as inhabitants of those roles. It may base these norms on what behaviour is typically taken, within the society in question, to fulfil this role or it may be a critical analysis of the relationship role and specify some account of what norms ought to define the relationship. For example, a parent should (among other things) look after their children, or more specifically, they should provide material and psychological care for their children. Friends ought not to accommodate each other's casual racism and sexism, although it might in fact be the case that they do.

In the case of the romantic relationship, it will detail the role of a romantic partner in terms of norms spelling out how to be a romantic partner (which may be the behaviour that is typically taken to fulfil the role of the romantic partner or may also include certain critical additions or exclusions). The claim that I want to explore - and begin to defend - is that romantic relationships are distinguished as romantic by the norms constituting the role of a romantic partner. It is these norms, rather than the behaviour governed by them, that we should use to give an account of the romantic relationship (the paradigmatic marital relationship).<sup>50</sup>

I think it is fairly uncontroversial to suggest that relationship-roles, including the role of a romantic partner, exist. I think that we understand there to be a difference between these relationship-roles. I also think it is reasonable to say that we understand what it means to play a relationship-role, and that generally we understand what is required by particular relationship-roles (such as the role of a parent, teacher, spouse, friend or romantic partner) within the society we live in. Although there may of course be situations where it isn't always clear how, or how best, to fulfil the role that we are occupying (perhaps because of competing roles that we

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<sup>50</sup> I think something similar could likely be said for other personal relationships, such as friendships.

also occupy). Despite these intuitions, relationship-roles do not seem to have been explored fully as a way of describing the romantic relationship.<sup>51</sup>

### **3.3 The Structure of a Role-Based Account: Two Accounts of Social Roles**

In order to better understand what a role-based account of the romantic relationship will look like, I suggest that relationship-roles are similar to social roles, and could have similarly structured accounts. In this section I will introduce two accounts of social roles drawn from the work of Laurence Thomas and Stefan Sciaraffa before considering how relationship-roles might have a similar three-tiered structure.

Thomas' (1987) account highlights how social roles influence our behaviour whereas Sciaraffa's (2009) account explains what these roles are. Both accounts involve three tiers: the social institution at the top; the social roles that fit within that institution in the middle; and the patterns of behaviour taken to fulfil those roles at the bottom.<sup>52</sup>

#### ***3.3.1 Thomas' Account***

Thomas claims that most of our social interaction with each other is influenced by the social roles that we occupy.<sup>53</sup> Role governed behaviour and interaction occurs

whenever there are well-delineated modes of behaviour which are generally expected of a person, given the position which he occupies in an institutional structure (for example, professor or student) or the significant social category in which he falls (for example, member of a gang or affluent class); and the primary explanation for the person's behaviour in a given situation is that he occupies an

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<sup>51</sup> There is some discussion of the role of friends. For example see Annis (1987) and Jollimore (2000).

<sup>52</sup> We can imagine this either as a pyramid with the social institution at the top, or as a branching hierarchy with the a single social institution on the left, leading to a number of different social roles, which each in turn lead to a number of different patterns of behaviour.

<sup>53</sup> I draw on Thomas' (1987) paper "Friendship" in which he aims to explore this relationship in more detail. This exploration involves an account of social interaction in order to contrast the interaction of friendship with other forms of interaction. I focus on his account of social interaction here but comment on his contrast in section 3.4.4.

institutional position or falls into a social category of which the preceding is true. (1987, pp. 227-228)

We can see from this quote that Thomas has a three-tiered structure in mind. There is a social institution or category at the top. Underneath this, there are individual social roles that sit within this institution or category. At the bottom, there are then the patterns of appropriate behaviour for each individual social role.

The idea is that the role that is being occupied specifies “what the appropriate forms of behaviour are for the individuals over whom they range” (Thomas 1987, p. 228). Social expectations about what these roles entail influence individual’s behaviour. However, for Thomas, the roles do not dictate *exactly* what behaviour should occur - “most social roles ... can be and are played out in a variety of ways” (p. 228). This is because they are being played by unique individuals in different circumstances and contexts, and in conjunction with a different set of other social roles. This flexibility is due to individual variation in how we understand the roles (the middle tier), and what is taken to fulfil these roles (the bottom tier) in particular circumstances.

The parent role again provides a paradigm example. There are well-delineated modes of behaviour that are required of parents given the fact that they are in the parenting role, and this role governs their behaviour towards their children. Exactly how this role is played out will vary in individual cases. The role involves caring for your child, but some parents might think this requires protecting the child from all dangers, whereas others might think that they need to be exposed to some dangers in order to learn how to look after themselves.

### ***3.3.2 Sciaraffa’s Account***

Sciaraffa thinks that we are all aware of a number of social roles, including “mother, father, professor, club football coach, [and] citizen” (2009, p. 107) and like Thomas, notes that much of our behaviour and interaction is governed by the roles that we occupy. He is interested in explaining how and why these roles appear to bind us – why we feel that it is our duty to

behave in the ways that these roles dictate. Here however I want to focus on his account of what these roles, and the behaviour they dictate, are (rather than on his reasons for their bindingness). He also has a three-tiered account with social institutions at the top, social roles in the middle, and the required patterns of behaviour at the bottom.<sup>54</sup>

Sciaraffa views social roles and their associated patterns of behaviour in a manner that is akin to the way that legal positivists (like Hart) view laws – i.e. as “social facts” (2009, p. 108). He explains that on Hart’s account the social facts that constitute legal norms are “social rules” (p. 108). A social rule is “constituted by a pattern of convergent behaviour among a group” (p. 108), but in addition (in order for this pattern of convergent behaviour to be a *social rule* within a group rather than simply a *habit*) deviations from the pattern must be typically criticised by the group and the group must take the pattern of behaviour to be a standard that they should all meet.<sup>55</sup>

Sciaraffa uses the following example: “members of a group must habitually remove their hats in church for it to be the case that there is a social rule within the group of removing one’s hat in church” (2009, p. 108). In order for this to be a social rule (and not just a habit) not removing your hat in church must be habitually met with criticism and each member of the group must think that removing your hat in church is something that everyone in the group should do.

Relating these ideas back to Sciaraffa’s account of social roles, we need to start at the bottom of the three tiers with the required patterns of behaviour. Sciaraffa views these as “clusters of [Hartian] social rules that are taken to apply to persons who occupy certain roles within society” (2009, p. 109). When you occupy a social role, you should comply with the required pattern of behaviour (the social rules), and will be criticised for not doing so. Each individual social role has a particular required pattern of behaviour. The

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<sup>54</sup> Sciaraffa uses the term “role duties” (2009, p. 108), but as he views these duties as normatively inert in themselves (until/unless they are identified with) I think it will be less confusing to refer to them as required patterns of behaviour.

<sup>55</sup> See Hart (1994), pp. 55-58.

existence and content of this required pattern will be “determined by social practices” (p. 109), which includes the social institution that it is found in.

Sciaraffa takes social institutions to have an overarching aim or purpose. Within a single social institution there will be various social roles which together help to fulfil this overarching purpose. For example, the “professor fulfils a particular role within the university that together with other social roles in the university fulfils the university’s ends” (Sciaraffa 2009, p. 109). In addition to universities, Sciaraffa counts the “family, the state, and various places of employment and association within civil society” as examples of social institutions (p. 109).

Fleshing out the example of the professor’s role should help to illuminate this idea. The role of the professor sits within, and aims to partially fulfil the aims of, the institution of the university. In our society this role involves an expected pattern of behaviour which typically includes lecturing, leading seminars, grading assessments, researching and writing. It is these actions that are “widely taken to be standards that persons occupying the role ought to meet, and deviations [from this behaviour] by persons occupying the professor role are taken to be a reason for criticism” (Sciaraffa 2009, p. 109).

The role of a doctor is another useful example. This role sits (alongside other roles, such as that of nurses, health care assistants, administrators, etc.) within the institution of a health care system which has the overarching purpose of providing healthcare to the society in which it is situated. The role of a doctor helps to meet this overarching purpose, and has a pattern of expected behaviour that relates to this – seeing patients, diagnosing illnesses, prescribing medication etc. Or looking at it the other way – pattern of expected behaviour X exists, and has the content that it does (e.g. see/diagnose/prescribe) because we have social role Y (the doctor) that is part of the social institution Z (healthcare system).

### ***3.3.3 The Three Tiers***

These two accounts show that there is a three-tiered structure that social roles sit within. First, there are social institutions (or categories). These

institutions (or categories) are made up of a system of social norms, including a number of different social roles. Each particular social role then has an associated pattern of required behaviour which is taken to fulfil this role.<sup>56</sup>

### **3.4 Relationship-Roles: Borrowing the Three-Tiered Structure**

My suggestion is that relationship-roles (including the role of a romantic partner) fit into a similar three-tiered structure. The general idea is that there are patterns of required behaviour, governed by a set of social norms, and that this set of social norms constitutes a relationship-role. If certain norms apply to an individual, then *ipso facto*, they occupy a particular relationship-role. For example, if someone is required to give lectures, do research, and mark assessments then *ipso facto* they are occupying the role of a professor. The norms constituting relationship-roles are in part determined by the institution of which they are part. For example, the norms constituting the role of a professor are partially determined by the professor role being a part of the institution of the university.

Consider again the two different ways that we can think about familial relationships. We can describe the relationships of parent, grandparent, brother, sister, aunt etc. using purely biological categories. For example, we can describe siblings in the following way: A and B are both the offspring of X and Y. Once we shift to the normative viewpoint however, we then need to use terms given to us by the social institution of the family. So, for example, if someone is required to look after a child in a certain way (providing material and psychological care for example) then *ipso facto* they are the child's parent. The different familial roles (of parent, grandparent, sister, etc.) are governed by different norms, which require particular

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<sup>56</sup> I am interested in the structure of these accounts here. As such I do not endorse Sciaraffa's claim that social institutions have overarching aims or purposes (a teleological view). This is only one way of viewing social institutions (understood as systems of social norms) – an alternative would be a collective-acceptance view (for example, Tuomela 2007) that understands social institutions to be “created and maintained by collective acceptance” (Miller 2014, Section 3).



patterns of behaviour, and which are (partially) determined by the familial institution.

### ***3.4.1 Institutions***

Social institutions are systems of social conventions, rules, rituals, and norms (Miller 2014, Section 1). Some social institutions are organisations, such as hospitals or governments; others, such as the English language, are not (Section 1). Social roles can fit into both sorts of institution (for example, the role of a doctor, and the role of an English language speaker).

When building up accounts of social roles the social institution in which they sit is often a good place to start. As we saw in the accounts above we can say something about what these social roles look like by considering the institution that they are found within (and the other social norms etc. that make up that institution). This is because they fit within, and align with, the institution as a whole. For example, when we want to build up an account of the role of a professor we can begin by looking at the institution of the university in which this role sits. The role of a professor fits with the other social norms etc. that make up that institution and which make it an institution of research and learning.

Relationship-roles are clearly not part of an organisation, like a hospital or a government. There do however appear to be (non-organisational) systems of social conventions, rules, rituals and norms which relate to (and incorporate) relationship-roles such as the role of a romantic partner and the role of a friend. When we think of friendship there are certain things that we will typically do with our friends, there are ‘rituals’ such as buying rounds in the pub, and conventions such as inviting friends to birthday parties. With romance we can think of things that are only considered appropriate within a romantic relationship, there are scripts that people enact (dating for instance), and conventions such as chocolates and flowers being regarded as romantic gifts. Both of these examples could be described as a system of

social conventions, rules, rituals, norms and roles: as the social institutions of ‘friendship’ and ‘romance’.<sup>57</sup>

These institutions are less well defined than, for example, the institution of a university, and it isn’t as clear what unifies the social norms into one system (institution). This means that the social institution will be a less fruitful place to start when building up an account of (non-familial) relationship-roles. As a result when we come to build up an account of a (non-familial) relationship-role, we need a different approach. We need to start with the relationship-role itself (rather than the institution).

### **3.4.2 Roles**

Consider the ‘practice’ of promising (Rawls 1955). In a particular practice there are “rules setting up offices, specifying certain forms of action appropriate to various offices, establishing penalties for breach of rules, and so on” (p. 25). These are the constitutive norms of the practice. The practice of promising contains the roles of promisor and promisee (in some institutional cases, such as the practice of law, the term ‘offices’ may be more appropriate). The constitutive norms of the practice of promising establish this role, and they do that in part by stipulating the obligations, rights, and so on, governing the occupant of that role. For example, it seems that one rule constituting occupation of the role of promisor is: ‘if an agent knowingly and sincerely utters a promising phrase, that person must perform the promised action, unless released by the promisee’.

Rules that define practices are logically prior to any particular instance of that practice – they are the necessary “stage-setting” for performing those actions: “given any rule which specifies a form of action ... a particular action which would be taken as falling under this rule given that there is the practice would not be *described as* that sort of action unless there was the practice” (Rawls 1955, p. 25). You cannot make a promise without there

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<sup>57</sup> See Chapter Four, section 4.4.2, for a discussion of ‘romance’ being the social institution for the role of a romantic partner.

first being the practice of promising. You cannot be in the role of promisor or promisee without that role first being established.

Another helpful analogy is to think of the rules of a game: game rules define what the game is (whether it's chess or snap for example) and how to play that game (by moving certain pieces in a certain way across a board, or by placing cards in front of you). To play the game, the rules have to first be in place, and you then have to comply with those rules (otherwise you are not playing that particular game).<sup>58</sup> Just as you cannot 'checkmate' without the rules of chess, you cannot be a friend without the role of a friend.

Similarly relationship-roles (like social roles) are made up of constitutive norms – norms that define what the relationship is, and how to be an occupant of the relationship-role. These roles have to be established prior to anyone occupying and fulfilling them. Constitutive norms specify what a person in that role should and should not do (as well as the acts that are permitted), they set up the rights and obligations (or responsibilities) a person occupying that role has, and they specify who they have those rights, obligations, and so on towards. Someone becomes an occupant of that role by conforming to the constitutive norms, in engagement with someone else who is also conforming to the norms of the relationship. Just as there needs to be a promisee in order for someone to occupy the role of promisor, you cannot occupy the role of a friend without there being someone you are playing that role for (and who also conforms to the norms of the relationship).

Consider, again, the role of a parent. The constitutive norms of this role specify how one becomes a parent, and the rules of that role – the rights and duties that parents have. To be a parent (in the normative rather than the biological sense) is for these constitutive norms apply to you. You are a parent when you have entered that role in a specified way (for example, as a birth parent, or through adoption) and when you are required to comply with

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<sup>58</sup> See Suits (2014) for a definition of playing a game which includes constitutive rules: "one cannot (really) play the game unless one obeys the rules of the game" (p. 26).

the constitutive norms of that role. For example, when you have the obligation to raise and look after your child. Similarly, you cannot be in a romantic relationship (or friendship), nor be a romantic partner (or a friend), without first taking on that role for someone (in the specified way) so that the rights, duties etc. of that role apply to you.

### ***3.4.3 Patterns of Behaviour***

The constitutive norms of the institution determine what is in each set of rules (rights, duties etc.) that defines a particular role. When someone occupies a role they must act in a way so as to comply with this set of rules: this is the required pattern of behaviour for that role. A professor, for example, must conduct research and educate her students.

As Thomas (1987) notes however, the constitutive norms of a role won't necessarily dictate exactly what behaviour is required.<sup>59</sup> They don't specify exactly how research should be conducted, or how students should be educated, for example. Roles are "*interpretative*" (Hardimon 1994, p. 355, emphasis added), which means that people can disagree about what behaviour is required, and find a way of fulfilling a role so that it suits them. This means that a variety of different patterns of behaviour can fulfil the same role.

However, it does not mean that we can "custom tailor the obligations [we] undertake" (Hardimon 1994, p. 356) when we enter a role. A role may contain options but "those options are fixed by the role", and signing on for the role involves signing on "for the whole package, properly understood" (p. 356). Hardimon is talking about social roles (for example, the role of a professor or doctor), but the same applies for relationship-roles.

In addition to the constitutive norms of a role there are also regulative norms.<sup>60</sup> These determine what it is to fulfil a role in better or worse ways.

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<sup>59</sup> See Section 3.3.1.

<sup>60</sup> The distinction between "constitutive" and "regulative" rules in the literature is fairly common. David Lewis, for instance, makes use of it in Lewis (1979) p. 343. Kenneth Ehrenberg suggests - following Joseph Raz (1975) - that we should understand this distinction not as distinguishing

They concern *how* someone discharges the obligations of their role.

Regulative norms (for the same role) can be different in different contexts, and they can change over time. Whilst it used to be the case that a professor fulfilled his role well by grading hand-written papers and giving lectures in person, professors can now discharge their role well by monitoring online discussion forums and giving webinars.

Relationship-roles are similar. In addition to the required pattern of behaviour (determined by the constitutive norms of the role) there are regulative norms which determine how to fulfil this role well, although these might be more numerous and vague. Consider, again, the role of a parent. A parent is required to care for their child (this is a constitutive norm). In certain contexts, such as a particularly sunny day at the beach, there are various ways in which this duty can be done well: applying sun-cream to their child, or taking them into the shade for instance.

Different roles (formed of different constitutive norms) can have (some of) the same regulative norms. Both a professor and a graduate teaching assistant will fulfil their roles well by grading papers and leading seminars. Thinking about sport can help to illustrate this point. Consider the two different sports of rugby union and rugby league. These two different sports are formed of different constitutive rules; but there are a number of regulative norms (the directions for how to play well) that are the same, for example, running quickly, kicking accurately, aiming to place the ball over the line etc.

The same can be said for relationship-roles – there will be different behaviours, governed by regulative norms (for example, living together) that contribute to fulfilling different relationship-roles well.

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“two different types of rules” but as two different ways of describing “a rule’s use” (Ehrenberg 2018, p. 5).

### ***3.4.4 Some Notable Differences between Relationship-Roles and Social Roles***

So far I have been highlighting the similarities between social roles and relationship-roles in order to build up an account of a relationship-role as a set of constitutive norms (which define the role and govern how to be in that role), which fit within a social institution of some sort, and which have regulative norms that direct individuals in how to fulfil the role well. I claim only that social roles and relationship-roles are similar enough for the analogy to be a help rather than a hindrance. It illuminates the *social* nature of our personal relationships,<sup>61</sup> and shows how our behaviour and interaction is governed. There are however some differences which are worth highlighting.

Thomas (1987) claims that the interaction that occurs within “companion friendships and romantic loves” (p. 219) is different to most other forms of social interaction in that it is not governed by social roles, nor in fact any social rules at all. If the latter part of this claim is true, then it would challenge both my claim that there are relationship-roles, and that they are akin to social roles in the way I suggest.

Thomas does not explicitly argue for this claim. His aim is after all to explore the nature of friendship, and his remarks about social interaction are there to illuminate his claims on this score. He doesn’t provide any reasons for thinking that his claim is true, but he does provide good reasons for thinking that the interactions between those in romantic relationships and close friendships is different from the interactions that occur within social roles – that they are somehow freer, and less determinate. These reasons will help me to show in what way relationship-roles are different to social roles.

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<sup>61</sup> They are social - or socially constructed - in the sense that they are “socially distinguished, socially constituted, and socially caused” (Haslanger 2012, p. 197). We make a distinction between different types of personal relationships for social purposes, the conditions for something being a particular type of personal relationship (or not) are social features, and the differences between relationship types is socially caused.

The following passage highlights the differences that Thomas sees:

[P]recisely what distinguishes the interaction characteristic of companion friendships (and loves) from other forms of social interactions is that none of the social roles which friends occupy serve as the primary basis for their interaction. It is not primarily because they are fellow employees or have entered into a client-lawyer relationship, or some such thing, that friends interact with one another. Rather, the *raison d'etre* for their interaction is the delight they take in being with one another. It follows, then, that the expectations of others as refracted through the prism of social roles minimally, if at all, influence the way in which friends interact with one another. (Thomas 1987, p. 230)

The claims he makes here seem reasonable. With most social interaction, the roles that we occupy provide the reason for the interaction. We interact with people as a part of fulfilling our role: Dr Jones interacts with Sally (her patient) because that is what her role dictates. There would be no other reason for her to interact with Sally.

The reasons for interaction in romantic relationships and close friendships looks different. There are two ways in which occupying a role could be the reason for interaction within personal relationships, and neither seems correct. First, we do not interact with our friends because of any particular social roles (for example, doctor, teacher, parent) that they happen to occupy.<sup>62</sup> Second, we do not interact with our friends because we occupy the relationship-role of a friend for that person. We don't first take on the friend-role, and then for that reason, interact with our friend. Rather, as Thomas claims, we interact with our friends because we enjoy being with them, and want to interact with them. Relationship-roles don't appear to provide the initial reason for interaction to occur.

If a particular social role does not provide the reason for interaction in close friendships and romantic relationships then it seems like the requirements of that social role will play no part in that interaction. For example Jenny may be a doctor, but she can talk to her friend George about any topic (and not just George's health). There might be cases where certain role obligations

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<sup>62</sup> We might come to know them initially through interaction that is because of a particular social role (if, for example, you first interacted with them because they were your tutor, and then you decided to become friends).

might influence the interaction between friends, but these cases look like the exception rather than the rule. For example, if I am a teacher, and my close friend is making inappropriate advances towards my student, it seems that my role as a teacher will determine how I interact with my friend with regards to this particular issue. The rest of our interaction as friends will not necessarily be affected (unless it colours my overall view of my friend so that I no longer want to be his friend, whereupon our interaction would no longer be that of close friends).

Social roles (for example, parent, doctor, teacher) do not (usually) govern our behaviour and interaction with our friends and lovers. In an analogous way it might be suggested that if the relationship-role does not provide the initial reason for interaction within close friendships and romantic relationships, then the requirements of that role will not govern the interaction that occurs within the relationships either.

Here is where we can see that relationship-roles are similar *but not identical* to social roles. We can occupy social roles independently from any interaction with a specific individual. Jenny is a doctor whether or not she interacts with her patient Sally. We also need social roles to provide a reason for the particular interaction. Jenny interacts with Sally only because her role requires her to do so. When we first interact with people who will become friends and lovers, the norms of friendship or love cannot justify our interactions with them. They do not occupy those roles yet. We need a separate reason for the interaction— namely, liking them or wanting to be with them. If this reason remains in place, and continued interaction occurs, a relationship emerges, and the relationship-roles will be occupied. Once that relationship-role is occupied, the role governs the interaction that occurs in the way suggested above.

The requirements of relationship-roles might not be as prescriptive as the requirements of social roles. Even different social roles can be more or less restrictive in what behaviour they allow or require, and the rules governing



those roles can be more or less vague.<sup>63</sup> Thomas suggests that we can place all social interaction along a “continuum” (1987, p. 218). He puts the interaction between people in roles such as heads of state at one end, and the interaction between romantic partners and close friends at the other. The majority of social interaction is somewhere in the middle. He characterises the differences along the continuum as the extent to which interaction is governed by social roles. I think it is better to characterise it as the extent to which different social and relationship-roles restrict behaviours. This will depend on both the constitutive and regulative norms of the roles in question.

Some roles, such as the heads of state, have strict rules governing how they should interact with other heads of state for instance. Most social roles have rules, but they might only apply in specific situations, or they can be interpreted in multiple ways. How a doctor interacts with a patient will be different depending on whether they meet in the doctor’s office, or in the supermarket. How they go about diagnosing a patient will, at least to some extent, be up to them (for example, what tests to order etc.).

The constitutive norms that make up relationship-roles, and the regulative norms that tell people how to occupy these roles well, tend to allow for more of a variety of behaviours to fulfil that role, and more interpretation of the role to suit the individuals involved.

### **3.5 The Benefits of a Role-Based Account**

A role-based account of the romantic relationship will have a number of benefits. Firstly it enables us to account for the vast variety of behaviour that occurs within different romantic relationships. Different types of

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<sup>63</sup> This will, in part at least, depend on whether the social institution of which the social role is a part, is either formal or informal. A formal institution is codified – which means that its rules are formally declared in some way (for example, written into law). An example of a formal institution is money. An informal institution is uncoded (although it would be possible to codify it). An example of an informal institution is a cocktail party. The norms (rules) of informal institutions are more flexible, because it hasn’t been specified exactly how to understand or apply them. See Hindriks (2003), pp. 203-205 and Ehrenberg (2018), pp. 6-9.

behaviour can be seen as fulfilling the same role. Secondly it enables us to identify what makes behaviour distinctly romantic. For example, whilst both close friends and romantic partners can live together, the reason *why* they do so will be different because the reason will relate to the different roles being played. Thirdly, it enables us to show that romantic relationships are more than just ‘enhanced’ close friendships (or close friendships plus sex), because we can show these two relationships involve distinct relationship-roles made up of distinct constitutive norms.<sup>64</sup>

In addition, a role-based account seems to align with the insights drawn from Chapters One and Two. It will help to explain how love - which is a feature of both romantic relationships and close friendships - can be different in these two relationships. In each relationship love is governed by a different set of norms. In a romantic relationship ‘benefitting the beloved’ will be governed by the norms of the romantic partner role, in a close friendship it will be governed by the norms of the close friend role. The way that we evaluate our romantic partner and close friends (instrumentally and non-finally at least) will depend on how well they are seen to fulfil the role of a close friend or a romantic partner. When the other person is valued as a romantic partner this means that he is valued for playing the role of a romantic partner – for doing those things that romantic partners should do.

Thinking about the role of the romantic partner (or close friend) can also help us to think about the place that this relationship has in our lives – we might think that certain traits make people better at playing this role for us, which in turn might make them appropriate objects of the emotion of romantic love. Further, thinking about the romantic partner role, and what behaviour fulfils it, will help us to understand what level of intimacy is expected within romantic relationships and suggest what emotional responses are appropriate (i.e. which ones are required by, or aid the fulfilment of the role).

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<sup>64</sup> I demonstrate that the role-based account of romantic relationships has these benefits in Chapter Four, section 4.5.

### **3.6 Conclusion**

In this chapter I have argued against a behaviour-based account, and in favour of a role-based account of the romantic relationship to assist us in determining what makes this relationship unique. A role-based account is one which defines a relationship in terms of the norms governing the relationship; and provides an account of those norms.

I have suggested that a role-based account will have a three-tiered structure (akin to the accounts of social roles), and discussed what those three tiers might look like for relationships such as close friendships and romantic relationships. I have highlighted that relationship-roles are made up of constitutive norms which, along with regulative norms, govern the behaviour of those occupying the relationship-role in question.

In Chapter Four I will begin to build up an account of the romantic partner role, identifying constitutive norms, considering what the patterns of required behaviour and interaction might be, and suggesting what social institution this role might sit within.

## Chapter Four

### The Role of a Romantic Partner

So far in Part One I have shown that in order to understand what makes the romantic relationship (the paradigmatic marital relationship in our society) distinct, we need an account of the relationship as well as an account of romantic love. Chapter Three has demonstrated that we need a role-based account rather than a behaviour-based account, and explained what the structure of such an account might look like. This chapter will attempt to construct a role-based account of the romantic relationship.

The guiding question for this chapter is still: what is distinct about the pattern of behaviour and interaction that occurs in romantic relationships (as opposed to other loving relationships)? In order to answer this question I will build up an account of the *role of a romantic partner*. I will claim that the romantic relationship is a relationship in which the participants play the role of the romantic partner for each other. This role is meaningfully distinct from other relationship roles, such as the role of a parent, a friend, or a colleague.

I begin by looking back at Chapters One and Two to remind us of what we want an account of a romantic relationship to do, the things that it needs to explain, and the things which we want it to specify. My aim is to provide an account that can help to fill in these gaps. I propose four constitutive norms that make up (at least part of) the role of the romantic partner, and then flesh out this role-based account of romantic relationships a little bit more by discussing the pattern of required behaviour associated with the role and the social institution that it might be thought to sit within.

The focus on filling in the gaps identified in the love accounts means that I only identify the norms that clearly relate to these gaps, and so there could well be additional norms that I do not account for. I aim to be responsive to (changing) social practices within societies, and so this account is meant to be taken as a (continuing) work-in-progress. It does not provide a trans-

historical account of the romantic relationship. It is also fairly stipulative in nature, but I think that it is a fair interpretation of the romantic relationship as it is found within our contemporary society at this moment in time. It will at least suffice as a working account of what a romantic relationship is, and I round off the chapter by highlighting its benefits. We can then move on in Part Two to consider whether our institution of marriage fits this relationship.

#### **4.1 A Starting Point**

The role of a romantic partner is constituted by a set of norms governing how those who fill this role should behave and interact with each other. As such we might expect the role of a romantic partner to include norms surrounding how romantic partners feel about one another, what they know about each other, and what they do with and for each other.

If there is one thing that we can confidently say about the role of a romantic partner, it is that it will have something to do with love. In Chapters One and Two I discussed various different accounts of love. I have not argued in favour of any one account in particular, partly because this was not my aim, but also because I think that these separate accounts all identify important features of love (whether or not they are constitutive of love). These four main features - union, robust concern, valuation and emotion - are all interconnected. For example, if we value something, then we want to be associated with it, we will want to promote its well-being, and we will be emotionally vulnerable to its loss.

The discussion of these accounts of love brought to light various objectives that we would want an account of a romantic relationship to be able to meet. This seems like as good a starting point as any for considering what a role-based account of a romantic relationship will need to explain.

##### ***4.1.1 Union***

If love involves the desire for, or the formation of a union (a ‘we’), and romantic love involves a unique kind of union, then we want an account of the romantic relationship to be able to tell us what that unique union looks

like. A loving union is hard to describe, but the features that were suggested were things like pooled well-being, pooled autonomy, shared identity and shared interests.

This immediately suggests that the role romantic partners' play for each other is as people who share things with each other, whose well-being is intertwined, who have common interests, and who make decisions together. As such, the role of a romantic partner is governed by norms requiring these things and stipulating, to some degree, how to do these things 'romantically'.

We want our account to tell us something about what romantic partners should share, how their well-being should be intertwined, what interests they should have in common, and what decisions they should make together.

#### ***4.1.2 Robust Concern***

Having robust concern for someone involves caring about them for their own sake, and is often characterised as having the desire to benefit the beloved. This feature of love demonstrates that well-being is not only intertwined in love, but that people in love want to promote the well-being of the other person. Individuals playing the role of a romantic partner are those who have this desire and act on it.

I suggested in Chapter Two that if there was anything distinct about the romantic desire to benefit, then it would be seen in the behaviour exhibited in the relationship. This behaviour will be governed by the role of a romantic partner – it is the norms that make up this role which will tell us what it is appropriate for a romantic partner to do in regard to this desire. We want our account to be able to tell us in what ways a romantic partner should benefit the beloved.

#### ***4.1.3 Valuation***

All kinds of valuation are thought to be compatible with love, but (typically) only final and non-instrumental valuation are thought to be a part of love. As the romantic relationship clearly involves love, the role of a romantic

partner will need to (at least) be consistent with valuing the beloved in this way.

It was noted in Chapter Three that looking to the instrumental and non-final valuation that occurs within a romantic relationship might enable us to distinguish this relationship from other loving relationships. Part of the instrumental valuation of the beloved will include being *valued as*, for example, a close friend or a romantic partner. The different relationship types could provide different sources of reasons for valuing the beloved. Whilst this doesn't inform us about any specific features that the role of a romantic partner needs to include, it does remind us, and reinforce the thought, that we need the role for our account to indicate where and how it is different from other relationship-roles, and in particular from the role of a close friend.

#### **4.1.4 Emotion**

If we take love to be (or at least to involve) an emotion 'proper' then we will want our account of a romantic relationship to identify what an appropriate object of this emotion will be. For Hamlyn, the appropriate object of romantic love would be something that fits "with our conception of the place that [love] has in a human life" (Hamlyn 1989, p. 231). We need our account to tell us what that place is.

Whether or not we take love to be an emotion 'proper', it clearly involves emotional vulnerability to the beloved (and vice versa). People playing the romantic partner role for each other have an emotional vulnerability towards one another. This has already been acknowledged by the idea of pooled well-being, but the discussion of Emotion Complex Accounts in Chapter Three suggested that the nature of the romantic relationship would affect the level and nature of the emotional interdependency within a relationship, and the appropriate emotional responses romantic partners would have to each other's emotions. We therefore want our account to say something about these things.

For example, if we find that the role of a romantic partner demands more intimacy than the role of a close friend, then this would suggest that the

emotional interdependency between romantic partners is required to be greater. Or if the norms that constitute the romantic partner role require a romantic partner to be sympathetic and supportive, then certain responses to the beloved's despair are going to be ruled out. They cannot be indifferent to it, or be secretly pleased by it for instance, but rather they need to acknowledge it and feel concerned about it.

## **4.2 Building up a Picture of the Role of a Romantic Partner**

Drawing the insights of the previous section together we can see that our account of the romantic partner role is going to need to say something about the norms governing love; the things that are shared between romantic partners and the extent to which they are shared; and well-being – both how it should be affected and promoted. We also want this account to be able to show that the role of a romantic partner can be distinguished from the roles played within other loving relationships.

### **4.2.1 Love**

It is clear that there is an expectation that romantic partners will love each other, and continue to love each other throughout the duration of their relationship. The same can be said for close friendship. It is not as clear how we should understand this norm to govern our behaviour. Loving is generally not thought to be something that we can demand of people, as it is not generally thought to be (fully) under our control, nor is it something that we want to be controllable in this way (part of the beauty and wonder of love is its unpredictability). As such this particular norm seems more like a pre-condition than a rule to be followed.<sup>65</sup>

However, as Troy Jollimore notes with regards to friendship “[f]or a friendship to exist these feelings [of love and affection] must be brought into the open: they must be expressed through action” (2000, p. 72). In a similar way, in addition to the expectation that romantic partners love each other, there is also the requirement that this love will be expressed. Love can

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<sup>65</sup> Exactly what this norm requires will depend on your favoured account of love.



be expressed through both actions and words. I think that the romantic partner role requires all behaviour and interaction between romantic partners to be performed in a way that expresses love, or is at least consistent with the fact that the other person is loved. This in turn might be thought to help promote the continuance of love - we may not be able to command love, but we can work to maintain the conditions in which it flourishes.

I suggest, therefore, that the first constitutive norm of a romantic partner roles states:

- (1) *Romantic partners should love one another, and act in ways that express that love.*

Unsurprisingly (given the discussion of Chapters One and Two) this norm is likely to also be a part of the role of a close friend. We expect close friends to love one another and they should also express their love for each other in some way. This particular norm is therefore not a unique feature of the romantic partner role. As such, we will need to look to the other constitutive norms of the romantic partner role in order to see where the distinguishing features lie.<sup>66</sup>

#### **4.2.2 Sharing Things**

All relationships involve sharing things: we share conversations with acquaintances; a dance class with the other members; a place of work with colleagues; our thoughts and fear with therapists. These examples show that we can share both activities and information – we do things with people, and we share information about ourselves with them. There are norms in place that tell us what kinds of things to share with whom. We shouldn't (typically) ask our therapist to join us in a dance class, and we shouldn't share our intimate problems with acquaintances on the bus.<sup>67</sup>

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<sup>66</sup> Love could be expressed by fulfilling the other (unique) constitutive norms of the role. Or it could also be the case that there are regulative norms that direct romantic partners and close friends to express their love in different ways. I will discuss this in section 4.4.1.

<sup>67</sup> We shouldn't typically do this. However context can influence and change some norms – it might be considered appropriate to share intimate

We tend to, and are required to, share more (activities and personal information) with people that we like, and in relationships built on this mutual regard (such as friendships and romantic relationships). Only a minimal amount of sharing may be required by the role of a friend, but it seems that more is required by the role of a close friend and the role of a romantic partner. These relationships demand more sharing. We might happily call two people who occasionally meet up for coffee friends, but I think we would be less confident in calling them close friends, and we certainly wouldn't identify them as romantic partners. This is because they aren't conforming to the norms of these relationships. They aren't sharing in enough activities and don't have the opportunity to share enough personal information.

Whilst I want to say that both the role of a close friend and the role of a romantic partner have norms that require more than a minimal amount of shared experiences, comparing how much is required will not get us any further in determining what is distinct about the norms that constitute the romantic partner role. It might be thought that we could put the three relationship roles on a scale: with the role of a friend at one end that has a norm requiring only minimal shared experiences; the close friend role in the middle; and the role of a romantic partner at the other end where the norm demands the sharing of *all* activities and a *complete* sharing of personal information. I do not think this picture is correct for romantic relationships. I do not think that there is a norm, nor even an ideal, that requires romantic partners to do literally everything together, and to share all of their personal information. It would be an impossible norm to conform to.

We can however identify something distinct about the norms of a romantic partner in this respect. It is not that the norms demand romantic partners to share more experiences with each other, but rather that they require them to share *specific* activities and personal information - those that are taken as

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information with strangers if you find yourself in an emergency or life-threatening situation, for example.

central to the lives of the individual's involved - and require them to share these things in a *specific way*.

What knowledge and activities are central to an individual's life? The key point here is that the list will differ for different individuals. Whatever activities are taken to be central to an individual's life - whether living together, having sex, planning a future, playing sport, all or none of the above - it is those that should be shared with a romantic partner. Similarly whatever experiences, beliefs, interests and values etc. that are taken to be key parts of their lives and identities, it is those that should be shared.<sup>68</sup>

Consider Ron and Hermione who were romantic partners by the end of the Harry Potter books, and go on to get married. They both, as adults, have careers at the Ministry of Magic. Knowing that Hermione always worked hard at school we can assume that Hermione's career is something that she regards as central to her life. As such, it is something that she should share with Ron in their romantic relationship. There might be activities that she participates in that she regards as less central to her life (perhaps she plays quidditch to keep fit once a week), and these would not need to be shared with Ron (although they could be). The point is that the norms of the romantic partner role require Hermione to share her career with Ron (and relatedly require Ron to know about it), but they do not require her to share which particular sporting activity she does to keep fit.

The example of sharing a career highlights that not all activities can be shared in the same way. Whilst activities like living together and raising children might be shared in virtue of doing those things together, other activities (like one's career) will be shared through the sharing of information about those activities. This distinction might be thought to be between *sharing in* and *sharing of*.

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<sup>68</sup> This will also be governed by other norms within our society – norms about what things should be valued and focused on within our lives. This might explain why romantic relationships can look very similar in our society and very different across different societies and cultures.

Our example of Ron and Hermione can help to illustrate this distinction. When Hermione shares her career with Ron (which she is required to do as his romantic partner) she is not required to invite Ron to take on the same role as her within the Ministry, nor is she required to share in the day-to-day activities of this role with Ron. She can pursue and partake in her independent career as an individual. Rather, Hermione is required to share information with Ron about her career, sharing her successes, failures, worries, and joys relating to her career. She is required to *share of* (rather than *share in*) her career with Ron. In contrast, when Ron and Hermione go on to have children, if they both view the upbringing of their children as central to their lives, the role of a romantic partner requires that they both *share in* this activity.

All relationship roles have norms governing both the sharing in and sharing of activities (as well as the sharing of knowledge). However, it is only the romantic partner role that has the norm that requires the sharing in and sharing of those experiences that the participants take as central to their lives.

There is a further, and distinct, way in which the role of a romantic partner governs *how* experiences should be shared. Returning to the career example, there are different ways in which close friends and romantic partners are required to share of their career. Assuming that Hermione has shared of her career with Harry (her close friend) the norms of the close friend role demand that Harry listen, acknowledge, remember and respect what she shares with him. In addition Harry is required to ‘make space’ for her to pursue her career (or at least ensure that he, or their close friendship, does not prohibit her in any way). For instance, in order to fulfil this obligation, he might check with her when arranging a social event that it does not clash with any work engagements, or he might not contact her for a few weeks if he knows she is busy with work.

When Hermione shares of her career with Ron he is required to do similar things to Harry (listen, acknowledge, respect etc.) but the norms of a romantic partner role demand more as well. Rather than simply ‘making

space' for Hermione's career, Ron will be required to 'accommodate' her career within their *joint life*. This means ensuring that Hermione can pursue her career should become important for both of them. This might affect decisions on where they live, when to have children etc. Importantly, it should affect decisions about activities, beliefs, and values etc. that are central to Ron's life (because they are part of the *joint life* as well). Whereas Harry (as a close friend) is not required to sacrifice things that are central to his life to make space for Hermione's career, Ron (as a romantic partner) is required to (or at least to consider doing this).

One difference, then, between romantic relationships and close friendships, is that the norms of the romantic partner role and the close friend role govern the sharing of experiences in different ways. Romantic partners should put the experiences (activities, interests etc.) that are central to their lives into a mutual 'pot' – their *joint life*. These things should be accommodated by both partners (within this joint life that they lead together) as best they can. Close friends should 'make space' (and often quite a lot of space) for each other's activities and interests, but they need not accommodate these things in the same way as romantic partners.

I suggest that the second constitutive norm of a romantic partner role states:

(2) *Romantic partners should share the experiences that are central to their lives and accommodate these things within a joint life.*

In order to fulfil this part of the role romantic partners will need to be open and honest with each other, and in particular specifically about those things that are central to the lives and identities of each. If they aren't open and honest about these things, then they are not fulfilling their roles, and their joint life cannot be maintained.

#### **4.2.3 Well-being**

From the discussion about love we have seen that there are two distinct (although linked) features of love that concern well-being: wanting to promote the beloved's well-being (benefitting the beloved) and having your well-being intertwined with someone else's (emotional vulnerability). These

seem to be features of both close-friend love and romantic love, but the nature of the relationship (it was suggested) might highlight a difference. We want our account of the romantic partner role to add content to these features.

Whilst the roles that both romantic partners and close friends play for each other will be as people who promote each other's welfare and who have their well-being intertwined, there are norms that govern how this is done which distinguish the roles. The norms that constitute the role of a close friend (and of a friend) demand that close friends promote (in some general way) each other's general well-being (concerning things such as health, emotions and material/economic security). The norms that constitute the role of a romantic partner demand more - romantic partners should do more than simply promote the other's general wellbeing *in some way* - and are more specific.

Romantic partners, as we have just seen, are required to share and accommodate the central experiences of their lives within a joint life. The norms governing the promotion of well-being need to align with this sharing-norm. The well-being of romantic partners will be closely linked to this joint life. If something threatens a shared activity or interest for instance, then the central aspects of well-being of all participants will be threatened (because they each should take this thing to be of central importance in their lives). Romantic partners are in a position to act, and have reason to act, in ways that particularly promote the other's well-being, in ways that are directly related to the central experiences of their lives.

The role of a romantic partner demands romantic partners to use (and not abuse) this position. They should promote each other's *central aspects of well-being*. This will entail providing help and support in joint projects (whatever those might be), taking due care when making joint decisions about their joint life, and providing comfort for each other when things don't go so well.

We have so far considered *what* romantic partners are meant to be concerned with, but haven't said much about how romantic partners should

‘promote’ each other’s central aspects of well-being. It seems that romantic partners are required to do more than occasionally or half-heartedly act in ways that would promote the other’s central aspects of well-being, but how much more?

Here, the first constitutive norm of a romantic partner looks particularly relevant. Romantic partners should love each other and act in ways that express that love. We saw on Baier’s Emotion Complex account that all love involves a complex form of emotional interdependency. This ‘pooled well-being’ (as Union Accounts describe it) involves more than empathy. It is not simply the duplication of the other person’s emotion and the taking on of an “extra set of joys and sorrows” (Baier 1991, pp. 442-443). When people love each other (as they do in close friendships and romantic relationships) their emotions are geared towards each other in a much more complex way.

Each romantic partner’s emotions, and therefore their emotional well-being, are complexly intertwined. It seems reasonable to expect romantic partners to be aware of the fact that their emotional wellbeing directly affects the emotional wellbeing of the other, that they are therefore (jointly) responsible for the state of (each) other’s emotional well-being in an important way. This responsibility ought to extend to ensuring that the other central (non-emotional) aspects of well-being (relating to the joint life) are maintained, because these will have a direct effect on the emotional well-being of the participants in the romantic relationship.

In light of this I suggest that romantic partners are not simply required to promote the central aspects of each other’s well-being, but that they should take *joint responsibility* for it. Two contrasting examples will help to illustrate what this norm of joint responsibility entails.

Harry is a close friend of Hermione’s. As close friends, they are expected to comply with the close-friend norm that requires them to be concerned for each other’s welfare. They are not however held jointly responsible for each other’s central aspects of well-being. Hermione may be held at fault for acting in a way that diminishes Harry’s well-being in some way, but she

cannot be held responsible for ensuring that his central aspects of well-being are promoted. This is because Harry may not have shared with Hermione what those central aspects are (he is under no obligation to), and his emotional well-being is not so intertwined with Hermione's so that his central aspects of well-being are automatically or completely affected by hers. Harry and Hermione do not have a joint life because they are not romantic partners. This means that when Hermione and Harry make decisions about their lives (what to do, where to live, who to be friends with etc.) not all those decisions will affect the other's well-being. The norms of close friendship state that they only need to consider the impact on the other person's well-being of those decisions that do.

In contrast, consider again Ron and Hermione's romantic relationship. As romantic partners they will have a joint life in which the experiences that are central to each individual's life are shared and accommodated. Their well-being is also intertwined because of their emotional interdependence. This means that when they are making decisions about their lives (at least the central aspects that are shared) they will be required to consider the implications of all those decisions on the well-being of both individuals, and to act in a way that promotes the central aspects of the well-being of both.

A further example helps to bring out the difference I have in mind here.

... if you have an important job interview, but when you start to leave for it, your car won't start, you might legitimately expect your friend, who can easily drive you, to help. If your friend refuses, you would justifiably feel hurt and betrayed, and not understand how your friend could treat you this way. It isn't merely that decent or nice friends act this way, so that helping is supererogatory. Not helping seems inconsistent with the friendship, and if it happens often, the friendship has been abandoned. Notice that we wouldn't in general expect a stranger to drive us, and we would view it as being "awfully nice" of the person if he or she did help. (Annis 1987, p. 352)

The friend, unlike the stranger, should be concerned for our welfare and should help and support us if she can *easily* do so (in this case). If we altered the case so that it is a romantic partner who has the ability to drive you to the important job interview, I think the story proceeds a little differently. A romantic partner should drive you to the interview *even if it is not easy* for



them to do so. They should take joint responsibility for your well-being, which will be negatively affected if you do not go to the important job interview. They therefore have a responsibility to assist you in getting to the job interview unless there are very weighty reasons for them not to – i.e. reasons that relate to other shared central aspects of either's life (for example, an equally important interview, or the needs of a child or a parent).

I propose that the third constitutive norm of the role of a romantic partner states:

- (3) *Romantic partners should take joint responsibility for the central aspects of each other's well-being.*

#### **4.2.4 Trust**

Whilst it is not something that has been mentioned in the discussion of love, I think that trust is a key element of loving relationships, and is assumed by the various features of love, and the norms of the romantic partner role that we have identified so far. Romantic partners should trust each other, and trust each other deeply. If they did not do this then they would not be willing to share the central experiences of their lives, to put these into a joint life, nor to take joint responsibility for one another's well-being. Too much is at stake to do this without expecting a certain level of trust as well.

In particular the role of a romantic partner requires romantic partners to tell the truth (about the central aspects of their lives for instance), to use the information they are entrusted with in the ways that the norms of the role dictate, and to fulfil the role that they are occupying in its entirety. If romantic partners did not do this, then the romantic partners risk making themselves hugely vulnerable. The requirement of trust can go some way towards mitigating that vulnerability.<sup>69</sup>

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<sup>69</sup> Whilst there is a norm that demands close friends to be trustworthy, the way that they fulfil this requirement will be different, because it will relate to different constitutive norms (i.e. not those that relate to sharing the central aspects of each other's live etc.).

I will add a fourth constitutive norm to the role of a romantic partner which states:

(4) *Romantic partners should trust one another deeply.*

### **4.3 The Constitutive Norms that make up the Role of a Romantic Partner**

Using the discussion of romantic love as a starting point I have identified four norms that I propose constitute the role of a romantic partner.

(1) *Romantic partners should love one another, and act in ways that express that love.*

(2) *Romantic partners should share the experiences that are central to their lives and accommodate these things within a joint life.*

(3) *Romantic partners should take joint responsibility for the central aspects of each other's well-being.*

(4) *Romantic partners should trust one another deeply.*

These norms tell us what we need to do in order to be a romantic partner – we need to comply with these norms.

It is undeniable that romantic relationships involve love, and so it seems reasonable to assume that the features that accounts of love illuminate will be features of the role of a romantic partner too. It is possible, however, that these four norms could be explained in further detail, or broken down into more precise norms, and that these norms could change with time.

There could also be additional norms that I have not yet identified. As noted in Chapter Three, constitutive norms specify a range of things: for example, rights, obligations, how a role is entered, penalties for non-compliance etc. The four constitutive norms listed above all look like role-obligations that a romantic partner has towards the other person(s) within a romantic relationship. It seems likely therefore that there will also be additional constitutive norms specifying these further things.

My account of the role of a romantic partner is therefore meant to be provisional. It is however sufficient for our purposes – it gives us a working

account of the romantic relationship (in our current time and place) and will enable us to consider whether the political institution of marriage ‘fits’ this relationship.

#### ***4.3.1 Relationship Schmrelationship?***

Before moving on to flesh out this role-based account a little more, I first want to address a potential normative worry that might arise, along similar lines to that of the “Agency, Schmagency” objection levelled towards constitutive accounts of normativity (Enoch, 2006).

If we want to class romantic relationships as a relationship in which the participants play the role of a romantic partner for each other, and to claim that this role has normative force - that romantic partners *ought* to fulfil it - then problems might arise. It seems as though we would have to say that romantic partners who failed to fulfil this role are not in fact romantic partners, but then if they are not, then they are under no duty to comply with the role of a romantic partner. In order for the role of a romantic partner to have normative force it looks as though we need something (other than the role) which determines whether or not we are in a romantic relationship in the first place.

This potential concern is less worrying if we consider how personal relationships come about. As already noted (in section 3.4.4), the initial reason for interaction between friends and romantic partners will be some sort of desire or attraction to the other person. These relationships then build up through a process of interaction over time, and the participants come to take on the associated relationship-role for each other.<sup>70</sup>

At different points in this process friends and romantic partners might have taken on more or fewer of the duties that make up the relationship-role for each other. So long as they are fulfilling some subset of the duties that make up that relationship-role, then they are in (some form) of that relationship. This implies that there are ‘sub-standard’ forms of friendships and romantic relationships - relationships that don’t quite live up to the ideal - but then

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<sup>70</sup> See Chapter 8, section 8.3.3 for a discussion of how role-obligations can become binding.

this implication seems correct. We can find ourselves thinking that Harry shouldn't have done that to Hermione if they were 'real' friends – if he was fulfilling all of the duties of the role of a friend for Hermione. The fact that he hasn't fulfilled that duty means that they are not 'real' friends. In order to be 'real' friends, they both need to fulfil all of the duties of friendship.

A further concern might then arise. If Harry and Hermione have developed a 'real' friendship, and have taken on all of the duties that make up the role of the friend, then what happens if Harry then fails to fulfil one of his friend-duties? Is his action obligation-defying, or is it obligation-releasing? Has he really failed to fulfil his duty, or has he stopped playing the role of a 'real' friend and so been released from that duty?

I think, from an outside perspective, we would judge Harry to have failed to fulfil the duty of a 'real' friend, and so failed to be a 'real' friend. He has become a sub-standard friend. If he wanted to be a 'real' friend to Hermione then he should have fulfilled that duty. His actions have altered the nature of their relationship.

From Harry's perspective however, he might simply claim that he is now occupying the role of a sub-standard friend, and fulfilling the duties of that role. What, he might then ask, is the problem with failing to fulfil the duty of a 'real' friend – a duty that does he does not take to apply to him? Here it is important to keep in mind that personal relationships involve more than one person. Hermione is in the relationship too. She thinks that their relationship is a 'real' friendship, and expects Harry to fulfil the role of a 'real' friend. It could be the case that Hermione was mistaken, and that they in fact only had a sub-standard form of friendship. If this is the case, then her expectations were not legitimate, and Harry is not at fault. However, it could also be the case that Harry had led Hermione to believe that they were in a real friendship. If this is the case, then Harry is at fault for failing to meet Hermione's legitimate expectations. He should have fulfilled his role as a real friend.

#### **4.4 Fleshing out the Role-Based Account**

Role-based accounts define a relationship in terms of the norms governing the relationship; and provide an account of those norms. Having built up an account of the role of a romantic partner, this enables me to make the claim that a romantic relationship is one in which the participants play this romantic partner role for each other.

The role is only one part of a role-based account. On the three-tiered structure that I am proposing role-based accounts of relationships utilise, the relationship-role can be found in the middle tier. On the bottom tier there is the required pattern of behaviour of someone occupying a particular relationship-role. This pattern of behaviour is taken to fulfil the role, and can be understood as being governed by both the constitutive norms of the role, and the regulative norms which tell us how to fulfil the constitutive norms well. On the top tier there is the social institution that the role sits within.

##### ***4.4.1 The Pattern of Required Behaviour***

We can identify, within our society, required patterns of behaviour and interaction that, when performed, fulfil the role of a romantic partner. In the preceding sections I have spelled out some of the behaviour that is governed by the constitutive norms of the romantic partner role (sharing the central experiences of our lives etc.).

There are also a variety of regulative norms that dictate (within our society) how to fulfil the role of a romantic partner well. There are regulative norms that say we should express our romantic love on particular days (for example, on Valentine's Day), and in particular ways (that we should do it through particular gifts such as flowers and chocolates, or by having 'date nights' for example). There are also regulative norms that say we should share particular things with our romantic partners - things like living together, physical and emotional intimacy, raising children, and leisure activities etc. (these are the things identified in our discussion of behaviour-based accounts in Chapter Three).

However, as was highlighted in the previous chapter, there is a vast array of behaviour that is taken to be compatible with the role of a romantic partner, and a vast array of behaviour that is taken to be appropriate to both romantic relationships and close friendships. It appears that relationship-roles are less determinate than social roles in exactly what patterns of behaviour they demand.<sup>71</sup>

Let's take the vast variety of romantic behaviour first. Firstly, the interpretative nature of the constitutive norms allows for a variety of behaviour to be thought to fulfil them. Secondly, we can identify a 'typical' pattern of behaviour that is required by the regulative norms because it includes the things that people are expected to take as central to their lives (governed and influenced by further social norms). Within our society living together and raising children are seen as valuable things for instance. In light of this, the regulative norms state that people should share in these particular activities within a romantic relationship, because this will be a good way of fulfilling the romantic partner role for many. Despite this, a huge variety of concrete behaviours can emerge. The smaller details - such as what type of house, who does the cleaning, how to bring up children, etc. - will still vary greatly from one romantic relationship to another, without affecting how well the role is played.

The regulative norms of relationships (and seemingly what we should take to be central and valuable) can also be flouted. Flouting a regulative norm does not stop someone from playing the role of a romantic partner. Individuals can (and do) reject what the social norms tell us we should take as valuable and central to our lives. Whilst many people take living together, raising children and being sexually intimate etc. to be central experiences of their lives, not everyone does. For those that don't take these things to be central to their lives, they will (and should) not feature in the joint life that they share with their romantic partner. Other things will. The list of things that can be shared is restricted only by what the other

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<sup>71</sup> This was acknowledged in the discussion of Thomas's (1987) claim in section 3.4.4.

constitutive norms of the romantic partner dictate (they have to be consistent with loving and caring about someone for instance).

Moving on, the large range of behaviour that is taken to be appropriate within both close friendships and romantic relationships is regarded as such because it is taken to fulfil both of these roles. This is, again, in virtue of the interpretative nature of the constitutive norms, and in virtue of the regulative norms. As we saw in Chapter Three, different roles (with different constitutive norms) can have the same regulative norms. This was seen in the rugby league/ruby union example. Within our society there are regulative norms that say that both the role of a close friend and the role of a romantic partner can be fulfilled well by participating in the same activities and interacting in the same way.

#### ***4.4.2 The Social Institution***

As acknowledged in section 3.4.1, identifying what social institution a non-familial relationship-role sits within will be difficult. It also seems, in contrast to social roles, as though the institution is less important in determining the content of a romantic partner role. Nevertheless, I think there is a possible social institution (system of social norms etc.) that we can identify for the role of a romantic partner: namely ‘romance’.

Romance certainly forms a part of our social world, and we can identify norms, rituals and conventions that are thought of as romantic (as seen in Chapter Three, section 3.4.1). These are the type of social phenomena that typically make up social institutions. There are also a number of different relationship roles that could be thought to sit within this social institution: teenage ‘boyfriends and girlfriends’; 1950s-style model of heterosexual relationships with complementary but different gender roles; unrequited (but acknowledged) love perhaps; holiday romances; and, the role of a romantic partner. Each of these relationship-roles have patterns of required behaviour that are associated with them.<sup>72</sup> I will not argue for this suggestion here

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<sup>72</sup> I think there is also plausibly a social category of ‘friendship’ that includes relationship-roles such as acquaintances, close friendships, long-distance friendships as well as norms of civility and friendship gestures etc.

however as it will not add anything further to the characterisation of the romantic relationship.

#### **4.5 The Benefits of a Role-Based Account of the Romantic Relationship**

I will bring this chapter to a close by highlighting the various benefits of a role-based account of the romantic relationship. There are benefits that relate both to the problems that arose with behaviour-based accounts, and to the gaps identified in the accounts of love.

##### ***4.5.1 Addressing the Problems of Behaviour-Based Accounts***

In section 3.1 it was shown that there are certain problems that behaviour-based accounts of relationships will face. There I claimed that role-based accounts might be able to overcome these problems. I suggested that they might enable us to i) encompass the vast variety of behaviour that occurs within individual romantic relationships; ii) identify the romantic relationship as a distinct relationship type; and iii) not characterise romantic love as close friendship plus sex. Here I want to defend this claim.

The discussion surrounding the pattern of behaviour required by the romantic partner role demonstrated that there is a vast variety of behaviour that can be taken to fulfil this role, because there are a vast number of different things that people will take to be central to their lives. The role-based account of romantic relationships therefore enables us to account for the vast variety of behaviour that occurs within individual romantic relationships.

Acknowledging and allowing for this vast variety of behaviour within romantic relationships does not limit the role-based accounts' ability to identify the romantic relationship as a distinct relationship type. It is still the case that the same types of behaviour may occur in different relationships (including close friendships), but this is because roles are interpretative, and because different roles can have the same regulative norms, which people can ignore (to a greater or lesser degree). This doesn't stop us from distinguishing these relationships: the relationship roles they involve are made up of different constitutive norms. It is only in the romantic



relationship that the participants play the role of a romantic partner for each other. Whilst close friends and romantic partners can both live together, only the latter will live together because it is a part of their joint life, and helps them to fulfil their role as a romantic partner.

Characterising the romantic relationship as one in which the participants play the role of the romantic partner for each other also enables us to show that romantic relationships are not simply close friendships plus sex. There is more to the difference between these relationships than that. The role-based account enables us to show this because it identifies the unique constitutive norms of the romantic partner role.<sup>73</sup>

#### ***4.5.2 Meeting the Love Accounts' Objectives***

The role-based account just sketched enables us to claim that romantic relationships are unique, and has begun to explain in what ways they are unique. We can therefore understand in a little more detail what we mean when we say that we value someone (instrumentally) as a romantic partner, and we know a little more about what type of relationship can provide the source of the reason for (non-final) valuation of someone in a romantic relationship.

This account enables us to identify what is unique about the union of romantic love as well. Romantic partners share all of those things – activities, interests, values, etc. – that are central to their lives within a joint life. The decisions that might be made jointly (as a part of a pooled autonomy) will be about those things within this joint life. This is part of what ‘accommodating’ those things means. The distinction between ‘sharing in’ and ‘sharing of’ is important. When romantic partners share of a career for example, decisions that will affect the ability to pursue that career will be pooled – but day to day decisions about how an individual acts in their career-role will be up to the individual. Activities that are shared in however will include more joint decisions about day-to-day activities.

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<sup>73</sup> The role-based account also allows for the possibility of a romantic relationship without sex: if none of the participants regard sex as a central activity, it will not need to be a part of their joint life.

This account also allows us to fill in the pictures of what it means to desire to benefit a romantic partner, and to show that this desire is different in romantic and close-friend love. The norms governing what a romantic partner can do in this regard are influenced by the other norms of the romantic relationship – in particular the norm regarding the sharing of experiences that are central to the romantic partners' lives within a joint life, which is unique to the romantic partner role. A romantic partner will desire to benefit the romantic partner in ways that relate to this joint life.

Considering love as an emotion proper, we can now say more about what an appropriate object of this emotion would be – someone who we want to play the role of a romantic partner for, and who we want to play the role of a romantic partner for us.

Identifying the distinctive norms that constitute the role of a romantic partner also provides us with the means to distinguish between the emotional interdependence of romantic love and close-friend love. We can now show that the romantic relationship does involve a different level (or type) of intimacy, and that it will involve different appropriate follow up responses to the recognised emotions in virtue of the second and third constitutive norms of the romantic partner role.

Romantic partners ought to share (in and of) experiences that are central to the participants' lives, and they should do this in a distinctive way (within a joint life). Romantic partners should take responsibility for the central aspects of each other's well-being, which they are able to do because of this joint life. We can see that these are norms concerning how intimate romantic partners are (sharing the central aspects of our lives is very intimate) and what responses are appropriate (responses which will promote the other's well-being and contribute to continuance of this joint life). These norms affect the emotional interdependency of romantic relationships, and mark that interdependency out as distinct.

Whilst it might still be possible to say more, the fact that my role-based account allows us to at least begin to meet these objectives is a point in its favour.

## 4.6 Conclusion

The guiding question for this chapter has been: what is distinct about the pattern of behaviour and interaction (i.e. the relationship) that occurs in romantic relationships (as opposed to other loving relationships). Chapter Three showed that we needed a role-based account of the romantic relationship in order to answer this question. This chapter has begun to construct such an account. In particular it has focused on building up a picture of the unique role of a romantic partner. I have argued that it is in virtue of this role that the romantic relationship is distinct.

This enables me to draw Part One of this thesis to a close. It is the romantic relationship that is the paradigmatic marital relationship. The romantic relationship is a relationship in which the partners play the role of a romantic partner for each other. This role clearly incorporates the idea that romantic partners love each other, but demonstrates that there is more to the relationship than love. The role of a romantic partner is constituted by other norms as well which govern the behaviour (as well as the emotions) of those within the romantic relationship.

I have highlighted the social nature of this relationship, and the role itself, and have shown that whilst each individual relationship is of course unique and personal, our idea of what the relationship is, the role that it encompasses, and the pattern of the behaviour required to fulfil this role all sit within, and are strongly influenced by our social world. They are made up of social norms.

The question now is whether our current - political - institution of marriage 'fits' this paradigmatic marital relationship. I address this question in Part Two.

## Part Two

### *What Relation Should the State Bear to the Paradigmatic Marital Relationship?*

In the Introduction I identified a distinctive shift in common thinking about marriage. We have shifted from expecting the marital relationship to fit the marital institution, to expecting the marital institution to fit the marital relationship. I claimed that by noticing this shift two things became apparent: first that a more detailed investigation into the nature of the paradigmatic marital relationship was called for; and second that this focus on the paradigmatic marital relationship can and should be brought into the current debate surrounding the political institution of marriage.

Part One took on the first task: I identified the paradigmatic marital relationship as the romantic relationship and I argued that this relationship is distinct in virtue of the romantic partner role that participants of this relationship play for each other. I built up a picture of this role and its constitutive norms, which demonstrated the significantly social nature of this relationship.

With an account of the romantic relationship in hand, the question is now whether the institution of marriage that we currently have fits this relationship.<sup>74</sup> Within Western liberal democracies we have a *political institution of marriage*: marriage is more than just a social institution, it comprises a legal status that is conferred, recognised and regulated by the state, and has a particular bundle of legal rights and duties that attach to it. In order for the institution to fit the relationship, the relationship needs to provide reasons for each of these features.

There are a number of arguments that focus on and object to the political nature of the current institution of marriage. The arguments that I want to

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<sup>74</sup> As explained in Chapter 1, Section 1, the direction of fit that we are looking for is for the institution to be shaped by the relationship, rather than the other way around.

focus on claim, more precisely, that on entirely political liberal grounds there are decisive objections against a liberal state establishing and recognising an institution of marriage. I want to focus on these arguments because a significant number of contemporary political philosophers are political liberals and because Western liberal democracies are often thought to ideally adhere to political liberal principles. I take these arguments as my starting point for Part Two.

If these arguments are correct and the political nature of the institution of marriage is illiberal then this suggests that the state ought not to establish and recognise marriage. This still leaves open the question of what the (non-political) institution of marriage should look like. It also leaves open the question of whether the state should relate to the romantic relationship at all, and how, if so. There could still be liberal reasons for the state to regulate (and even recognise) such a relationship in some way.

If these arguments are incorrect, and the objections to the political institution of marriage are unfounded, we still need to know what reason the state has for regulating and recognising the romantic relationship, and whether a political institution of marriage is the best regulatory tool to do this.

The guiding question for Part Two is therefore: what relation should the political liberal state bear to the paradigmatic marital relationship (the romantic relationship)? Does the state have reason to regulate the romantic relationship, and if so, does it have reason to regulate it through the political institution of marriage, or via some other means?

I aim to demonstrate four things over the coming chapters. First, that none of the arguments I consider conclusively show the political institution of marriage to be incompatible with political liberal principles. State recognition of marriage is not as problematic as the anti-marriage theorists claim. Second, through reframing the debate in terms of direct and indirect regulation, that underlying the arguments against the political institution of marriage is a claim that the state should not directly regulate the romantic relationship (by which I mean it should not create a distinct legal category

corresponding to it). Third, and in contrast, I claim that it is not inappropriate for the state to directly regulate the romantic relationship. There is something about this relationship in particular that warrants direct regulation (namely, the fact that it leads to systematic material, physical and psychological vulnerability). Fourth, that the political institution of marriage is one regulatory tool that could be used to directly regulate the romantic relationship, but that it is not the only option.

I do all of this by drawing on the work of Part One, and as such show the relevance and importance of understanding the nature of the romantic relationship for the current debate surrounding the political institution of marriage.

I begin, in Chapters Five and Six, by presenting and evaluating the arguments against a political institution of marriage. I identify three levels of concern: first, a concern about the current structure of the political institution; second, a concern about the meaningful nature of the political institution *of marriage*; and third, a concern about the use of *any* political institution that recognises a particular form of adult personal relationship. I argue that the concerns at each level can be met. State recognition of marriage looks compatible with political liberalism.

In Chapter Seven I note that the notion of state recognition is unclear and reframe the debate in terms of direct and indirect regulation. Direct regulation occurs when a distinct legal category is created corresponding to the thing being regulated. I identify a complaint that can be taken to underlie each of the arguments against a political institution of marriage – namely, that this institution directly regulates the romantic relationship when there is no compelling reason to do so. I respond to this underlying complaint in Chapter Eight by showing that the state does have a compelling reason to directly regulate the romantic relationship because of the systematic material, physical and psychological vulnerability to which this type of relationship can lead.

This vulnerability is due to both the nature of the romantic relationship, and the social and political structures within our Western society. This makes it

particularly difficult to propose exactly how we should directly regulate the romantic relationship in order to mitigate the systematic vulnerability that it causes. I draw on the work of Iris Marion Young (1990; 2006) in my concluding remarks to show why this is the case.

The proposals that the anti-marriage theorists put forward would not be suitable because they do not create a distinct legal category that corresponds to the romantic relationship. Whilst a political institution of marriage is one option for directly regulating the romantic relationship – because it creates a distinct legal category corresponding to the romantic relationship – it might not be the best as, it might not fully address all of the systematic vulnerability that the romantic relationship can lead to. A more holistic approach that considers the whole picture of social and political structures in society may be called for.

## Chapter Five

### The Political Institution of Marriage: Three Levels of Concern

As already noted, Western liberal democracies tend to have a political institution of marriage that comprises a legal status and a bundle of legal incidents: rights, duties, privileges, liabilities, immunities, and powers. This amounts to state recognition of marriage.

The state directly regulates (creates a distinct legal category for) those relationships that are eligible for this legal status – typically the paradigmatic marital relationship (the romantic relationship) – via this institution. I begin addressing the guiding question of Part Two - what relation the political liberal state should bear to the paradigmatic marital relationship - by considering whether this current relation is appropriate.

In order for the political institution of marriage to be justified on liberal terms, two steps need to be completed. First, there needs to be a liberal reason for the state to directly regulate the romantic relationship. Second, there then needs to be a liberal justification for using the political institution of marriage to directly regulate it and for the state recognition this entails.

There are a number of arguments which claim that a political institution of marriage is incompatible with political liberal principles. These arguments challenge the second justificatory step. If these arguments are correct, then the liberal state should not relate to the romantic relationship via this institution. These arguments do not challenge the view that the romantic relationship warrants some form of regulation. Rather, they object to the political institution of marriage being used as the regulatory tool because they are concerned about there being state recognition of marriage.<sup>75</sup>

Before introducing these arguments I briefly outline some key political liberal principles. I then introduce the arguments, showing that they

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<sup>75</sup> However, in Chapter Seven, I identify that an underlying concern running through these arguments is with the fact that the state directly (rather than indirectly) regulates this relationship.



comprise three levels of concern regarding the political institution of marriage: first, concerns about its current structure; second, concerns about any political institution *of marriage*; and third, concerns about *any* political institution that involves the state recognition of adult personal relationships. I then move on to present, evaluate, and reject the Public Reason Argument from Elizabeth Brake (2012), which is an argument that raises the first level of concern.

I consider arguments from Tamara Metz (2010) and Clare Chambers (2017; 2013) which raise the second and third levels of concern in Chapter Six. The aim of these two chapters is twofold: firstly, I argue that none of the arguments (at any level of concern) conclusively show the political institution of marriage to be problematic for political liberalism; secondly, I highlight that despite being able to address the concerns raised by these arguments, we are still left wondering what relation the state *should* bear to the romantic relationship.

### **5.1 Political Liberalism: A (Very) Brief Overview**

As a liberal theory political liberalism (in all of its forms) is primarily concerned with personal freedom. It aims to find and defend political principles that maximise the liberty of citizens who hold diverse (yet reasonable) and often incompatible views, whilst still recognising the importance of equality, and the necessity of a stable society. One of the ways it typically aims to maximise personal freedom is by making a distinction between the political and non-political spheres of society - sometimes referred to as the public and private spheres.

In the non-political sphere, individual freedom reigns unfettered by the demands of political unity, and diversity flourishes. In the political sphere, universal norms and uniform laws govern actions of independent citizens. (Metz 2010, p. 6)

This means that there are certain areas of society where political involvement and regulation are appropriate (subject to strict political principles), and then other areas where it is not.

On a Rawlsian picture the main distinction is between the *basic structure* of society, which is clearly political, and then the other associations,

institutions and individual relationships that occur underneath this political framework. Rawls characterises the basic structure as “society’s main political, social, and economic institutions” unified into a “system of social cooperation” (1985, pp. 224-225). Rawls’ conception of justice - Justice as Fairness - which outlines his two principles of justice, is constructed specifically for this political sphere.

The purpose of the basic structure is to secure “background justice” (Rawls 2003, p. 10), which it does by allocating basic rights and duties, and ensuring a just distribution of the social and economic advantages of social cooperation. This is done according to Rawls’ two principles of justice:

- (a) Each person has the same inalienable claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all; and
- (b) Social and economic inequalities are to satisfy two conditions: first, they are to be attached to offices and positions open to all under conditions of fair equality of opportunity; and second they are to be to the greatest benefit of the least advantaged members of society (the difference principle). (2003, p. 42)

In order to determine whether a basic structure is just and to be able to make interpersonal comparisons between diverse citizens’ resources, Rawls introduces primary goods. Primary goods are resources that any ‘political person’ would reasonably want. The conception of a ‘political person’ that Rawls utilises characterises people as possessing two moral powers (the “capacity for a sense of justice” and the “capacity for a conception of the good”) along with “some determinate conception of the good” (Nussbaum 2011a, p. 4). Primary goods are the things that people need in order to develop and exercise these moral capacities, and to pursue their distinct conceptions of the good.

The list of primary social goods includes “basic rights, liberties, and opportunities, and ... all-purpose means such as income and wealth ... [as well as the] social bases of self-respect” (Rawls 1993, p. 180). It is these goods that the basic structure needs to distribute, according to the principles of justice.

The easiest way of explaining what makes political liberalism *political* is to contrast it with other forms of liberalism: in particular comprehensive, and perfectionist forms. Comprehensive liberals “base political principles on some comprehensive doctrine about human life that covers not only the political domain but also the domain of human conduct generally” (Nussbaum 2011b, p.5). Most versions of comprehensive liberalism are also perfectionist. Perfectionist liberalisms base their political principles on a comprehensive doctrine which involves a “doctrine about the good life and the nature of value” (p.5).<sup>76</sup> For example, a perfectionist liberal might claim that autonomy is important because it contributes to human flourishing, and justify political principles on this basis.

Political liberalism is neither comprehensive, nor perfectionist. It does not rely on any comprehensive doctrines (doctrines that cover all areas of human conduct, rather than just the political) to defend its political principles, and in particular, it does not advocate any theory about the good life, or what is valuable. A political liberal “asserts only that liberal values are required by justice, that they are in some sense the fairest way of adjudicating conflict and ordering society” (Chambers 2017, p. 52).<sup>77</sup>

Political liberalism therefore insists

on a distinction between the principles and ideals that ...define a liberal order for society, and the deeper values and commitments associated with particular philosophical outlooks. The political liberal insists that the articulation and defences of a given set of liberal commitments for a society should not depend on any particular theory of what gives value or meaning to a human life. (Waldron 2004, p. 91)

One reason that it insists on this is because of the recognition of the ‘burdens of judgement’. Within contemporary liberal societies people hold a variety of different conceptions of the good concerning what is valuable and what constitutes the good life, which are incompatible with each other. This

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<sup>76</sup> Non-perfectionist comprehensive doctrines would have no reference to the good life or the nature of value. Nussbaum gives the example of a comprehensive doctrine based on astrology which holds that our fate in all domains of human life is fixed by the stars (2011b, p. 5).

<sup>77</sup> See also Chambers (2017), pp. 52-55 for an explanation of the differences between political, comprehensive, and perfectionist liberalism.

means that they will not be able to come to an agreement on what political principles are best (when arguing from their particular and distinct positions). Rawls notes the persistence of these incompatible views and argues that this state of affairs is both inevitable and reasonable. This is not because all of the different views are correct, but because citizens face burdens of judgment when they use their powers of reasoning and judgment. These burdens of judgment - which include things like insufficient and inconclusive evidence, and different ways of assessing and weighing evidence - mean that citizens will inevitably come to different conclusions about important matters.<sup>78</sup>

As Nussbaum explains, this gives us reason to not ground political principles in comprehensive doctrines, and not to advocate particular views of the good life, especially if we think that we owe fellow citizens equal respect.

If we accept the burdens of judgment, then we have reason to try to ground our political principles in a set of “freestanding” moral ideas that can be accepted by citizens with a wide range of different views concerning the ultimate sources of value. Principles will be acceptable in this way only if their framers practice a “method of avoidance,” refusing to ground them in controversial metaphysical, religious, or epistemological doctrines, and not even in comprehensive ethical doctrines. Instead, they will seek a freestanding ethical justification for the principles that will ultimately form one part of the comprehensive doctrines of all of them... (2011b, p. 16)

This has particular implications for how political principles, and particular laws and political institutions, can be justified. In particular, it requires state neutrality and the use of public reasons when arguing for political principles, institutions and laws. It is these two concepts that are particularly relevant in the political liberal debate surrounding the political institution of marriage.

When political liberals discuss the principle of neutrality they usually make a distinction between consequential and justificatory neutrality.<sup>79</sup> Both types

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<sup>78</sup> See Rawls (2003), p. 35.

<sup>79</sup> See Kymlicka (1989), p. 884.

of neutrality require the political liberal state to remain neutral between the many varied conceptions of the good that its citizens hold. This means that the state should not hold or express a particular conception of the good itself. Consequential neutrality - where the consequences of state action must be neutral between different reasonable conceptions of the good (insofar as they affect the level of adherence to particular conceptions of the good) - is usually taken to be too demanding. Political liberals therefore tend to endorse the less demanding justificatory neutrality which focuses on how the state justifies its actions. It is primarily a principle that informs us of what a political liberal state *should not do* when justifying its principles, laws and institutions.

*The Principle of Neutrality:* The state should not hold or express a particular conception of the good nor appeal to any particular conception of the good when justifying its laws, policies and institutions.

In addition to the requirement of justificatory neutrality, there is the principle of public reason. This principle states that the “rules that regulate our common life [must] be, in some sense, justifiable or acceptable to all those persons over whom the rules purport to have authority” (Quong 2013, Introduction). This is to ensure that all citizens, with their many differing and often conflicting views, are treated as free and equal. The reasons appealed to when justifying these institutions and laws must therefore be public reasons – “reasons which everyone can reasonably recognise as valid public considerations” (Quong 2011, p. 256). This principle informs us of what a political liberal state *should do* when justifying its principles, laws and institutions.

*The Principle of Public Reason:* The state must appeal to public reasons when justifying its laws, policies and institutions so that they are understandable and acceptable to all citizens.

The arguments I consider in this chapter and the next claim that a political institution of marriage violates the principle of public reason and the principle of neutrality.

## 5.2 The Three Levels of Concern Regarding the Political Institution of Marriage

Whilst there are a variety of historical and contemporary debates surrounding marriage (for example, feminist concerns about marriage's oppressive nature, and the legalisation of same-sex marriage)<sup>80</sup> the one which I want to explore focuses on the question of whether there should be a political (as opposed to a merely social) institution of marriage *at all*.<sup>81</sup> If there are problems with the political institution of marriage then this suggests that the state should not relate to the romantic relationship via this institution.

A political institution of marriage exists when marriage comprises a legal status that is conferred, recognised and regulated by the state, and which has a particular bundle of rights and duties that attach to it. For example, in the UK, the marital status is a legal status that is conferred by state representatives (registrars) in state-sanctioned ceremonies. The state recognises this status as a distinct legal status, and regulates it in various ways; it decides who is eligible for the status, how the status can be dissolved, etc. There is also a particular bundle of legal rights and duties that is conferred on to couples that attain the marital status. This bundle includes things such as next of kin rights, inheritance rights, and tax benefits (among many other things).<sup>82</sup>

The state could bear a different relation to the romantic relationship. There are a couple of options. The political institution of marriage could be retained but reformed so that it is compatible with political liberal principles. Or, it could be abolished, leaving only a non-political institution of marriage in its place. This would mean that there would still be marriage, but it would be a non-legal status that could only be conferred by a non-

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<sup>80</sup> See Brake (2016) for a good overview.

<sup>81</sup> This debate owes a lot to the previous debates, in particular the same-sex marriage debates, as it often builds on and extends the logic of arguments put forward in favour of same-sex marriage (for example, those concerning equal treatment).

<sup>82</sup> See Brake (2012), pp. 158-159, for a comprehensive list of what is included in the US bundle.

political body, such as a church. As such, the state would not recognize the marital status as especially legally significant, and no legal rights or duties would depend on the status alone.

Even if the political institution of marriage is abolished, the state might still regulate the romantic relationship via other means. This could be directly, through an alternative regulatory framework which still creates a distinct legal category for the romantic relationship. Or it could be indirectly, through regulatory frameworks that are set up for (and which create distinct legal categories for) other personal relationships, such as caring relationships, or the parental relationship.

There could also be reason for the state to regulate (non-legal) marital relationships when the political institution of marriage is abolished. It might be necessary, for example, to have laws forbidding certain marriages (such as between parent and child) because of the harm such marriages could do to the individuals involved.<sup>83</sup>

The arguments that claim that the political institution of marriage is objectionable on political liberal grounds, and which I want to look at in more depth, are drawn from the work of Elizabeth Brake (2012), Tamara Metz (2010) and Clare Chambers (2017). Whilst Brake is strictly the only political liberal in this group, Metz raises issues concerning neutrality that a political liberal should be concerned about, and Chambers specifically addresses the arguments I consider to political liberals.

Each of the three authors have different overall projects. Brake considers and rejects moral defences of marriage before arguing that her proposed minimal marriage is all that can be justified on a political liberal framework. Metz is concerned that the state's involvement in marriage is assumed but never justified, and aims to show that liberal arguments in favour of a political institution of marriage only justify state recognition of intimate caregiving, and not of marriage per se. She therefore proposes an alternative Intimate Caregiving Union (ICGU) Status. Chambers aims to show that a

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<sup>83</sup> See Chambers (2017) Chapter Six.

political institution of marriage (and any alternative status plus bundle of rights and duties) violates both equality and liberty, and argues in favour of a marriage-free state.<sup>84</sup>

Whilst none of them argue that marriage (in some form) should be erased completely as an option for people to choose, they do all think that something needs to change with the political institution of marriage. Where they differ, is in what they think that change should be. Brake is a marriage reformer. She aims to show that whilst state recognition of marriage is justifiable *per se*, the current political institution of marriage is not, and stands in need of reform. Metz and Chambers both argue for the abolition of the political institution of marriage but differ in their alternative proposals. Metz argues instead for the state recognition of intimate caregiving relationships, whereas Chambers argues that we should regulate relationship practices through default state directives.

There are three levels of concern that can be identified within the arguments that these authors put forward: the first (and weakest) accepts the existence of a political institution of marriage but argues that the current structure of the institution needs to be reformed in order for it to be compatible with political liberalism; the second argues against any political institution *of marriage* however it is structured; the third (and strongest) rejects any form of political institution (of marriage, civil union, or alternative status) that involves state recognition of adult personal relationships.

*1<sup>st</sup> Level:* the *current* political institution of marriage is structured in a way that is problematic for political liberalism.

*2<sup>nd</sup> Level:* any political institution *of marriage* (however it is structured) is problematic for political liberalism.

*3<sup>rd</sup> Level:* any political institution (a legal status plus a bundle of rights and duties) that recognises adult personal relationships is problematic for political liberalism.

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<sup>84</sup> I provide more detail on each author's alternative proposal in Chapter Seven.



I consider Brake's (2012) Public Reason Argument for the first level of concern in the next section. This argument is concerned that the current structure of the political institution of marriage cannot be justified by appeal to public reasons, and so the institution violates the political liberal principle of public reason. I argue that a public reason for the current structure could possibly be found.

In Chapter Six I address the second and third levels of concern. I present and evaluate Metz's (2010) Neutrality Argument and Chambers' (2017) Argument from Meaning, both of which raise the second level of concern. These arguments highlight the meaningful nature of marriage. They claim that the state's involvement with something that has such meaning will violate the principle of neutrality. I aim to demonstrate that a political institution of marriage doesn't necessarily have to *mean something*, but acknowledge that, practically, it might be preferable to have a political institution *of something else* (for example, civil union).

Finally I consider Chambers' (2017) Justificatory Neutrality Argument, and in particular her Argument from Bundling and her Argument Concerning Hierarchy (which form a part of the Justificatory Neutrality Argument along with the Argument from Meaning) which aim to show that any political institution that recognises a particular adult personal relationship is *prima facie* non-neutral. This means that the state can only use such an institution if it can find sufficiently weighty public reasons (that override the *prima facie* non-neutrality) to do so. I intend to show that the concerns regarding bundling and hierarchy are unfounded, especially as we will have shown, when discussing the second level of concern, that marriage doesn't have to have a comprehensive meaning.

### **5.3 The 1<sup>st</sup> Level of Concern: An Argument against the Current Political Institution of Marriage**

The Public Reason Argument focuses in on a structural feature of the current political institution of marriage - the fact that only romantic couples are eligible for the marital status. The argument claims that this restriction is unjustifiable on political liberal terms, and should be removed.

This argument assumes that there is a legitimate reason for the existence of the political institution of marriage and so it does not give us reason to be concerned that the state currently relates to the paradigmatic marital relationship (the romantic relationship) through such an institution. Rather, the concern it highlights is that the state bears a *special* relation to the romantic relationship. Brake claims that the state should recognise other personal relationships as well (in particular, for Brake, other adult caring relationships). If the institution was reformed in a way that addressed this concern (for example, Brake's proposed minimal marriage), then it would no longer be problematic for political liberalism (according to the Public Reason Argument at least). As such, we can understand this argument to be situated at the first level of concern.

### ***5.3.1 The Public Reason Argument***

The Public Reason Argument starts from the assumption that the political institution of marriage is a "part of the basic structure" of society, and so unquestionably subject to the requirements of public reason (Brake 2012, p. 134). This argument claims that the current political institution of marriage violates the principle of public reason because the state has to appeal to non-neutral value judgments, "drawn from within comprehensive doctrines", concerning the value of romantic couples in order to justify its current structure (p. 168).

It follows a typical argument made in favour of same-sex marriage, and Brake aims to show how this argument has more extensive implications than the same-sex marriage proponents realised. These arguments begin with the "recognition that the state provides numerous benefits through marriage ... which are denied to same-sex relationships" (2012, p. 140). They characterise "marriage as providing a legislative framework for certain adult relationships" (p. 140) – typically either "intimate or committed or caring adult relationships" (p. 144). They then claim that the restriction to heterosexual couples requires a justification that appeals to public reasons because homosexual relationships can also be intimate, committed and caring. The proponents of same-sex marriage aim to show that there is no

way to distinguish same-sex and different-sex relationships without appealing to reasons that depend on contested (rather than public) views, for example views about the “value or permissibility of same-sex activity” (p. 144). This demonstrates that the restriction to heterosexual couples is unjustifiable because it violates the principle of public reason. This restriction should therefore be removed and marriage should be made available to homosexual couples as well. Brake, assuming that marriage is characterised in the same way, demonstrates how this argument can be taken further.

As already noted, the Public Reason Argument focuses on a particular feature of the current political institution of marriage. This feature is the restriction to “sexual or romantic relationships, [that involve] shared domicile or finances, aspirations to permanence or exclusivity, or a full reciprocal exchange of marital rights” (2012, p. 168). The argument rests on a (potential) concern about equal treatment: the state provides numerous benefits through marriage that are denied to caring (or intimate or committed) relationships that do not fit the romantic couple norm, such as close friendships and adult care networks. These benefits include both the legal rights and benefits (financial and otherwise) conferred on to married couples, as well as state recognition of their relationship (p. 144). The principle of public reason, claims Brake, demands a justification “for excluding friendships, care networks, and groups from the benefits of marriage” that appeals to public reasons (p. 145). Such a justification, she claims, cannot be provided.

The reason why Brake thinks that this restriction cannot be justified appropriately is because the justification has to appeal to the view that this particular type of relationship - the romantic couple - is especially valuable. In other words, the only way to distinguish romantic couples from other relationships such as friendships or care networks, is to appeal to the special value of romantic couples. This is because all of these relationships have the relevant (public) features of, for example, care, intimacy, and commitment.

The view that romantic couples are especially valuable is not one that all citizens can endorse or accept because it is not a view that they will all share as there are “many varying conceptions of good relationships [which] exist within different comprehensive doctrines” that citizens hold (2012, p. 168). The view that romantic couples are especially valuable is contested, and so it cannot be appealed to when justifying the restriction that is present in the current political institution of marriage. To appeal to such a view, is to violate the principle of public reason. The current political institution of marriage, with this restriction, can therefore be seen to be problematic for political liberalism.

The argument can be set out as follows:

- 1) If a law or a political institution cannot be justified by appeal to public reasons then it is illegitimate.
- 2) The current political institution of marriage restricts eligibility to romantic couples.
- 3) The restriction to romantic couples is only justifiable by appeal to a contested (non-public) view about the value of romantic couples.
- 4) The current political institution of marriage illegitimate.

This argument can therefore be understood as claiming that the relation that the state (exclusively) bears to dyadic romantic relationships (the paradigmatic marital relationship) via the current political institution of marriage is problematic because this institution cannot be justified by public reasons. The concern is not that the state provides recognition and legal rights and benefits to certain relationships. Rather, the concern is that the category of relationship eligible for these benefits is too narrow.

### ***5.3.2 An Evaluation of the Public Reason Argument***

As Ralph Wedgwood (2016) notes, defending a claim that says there is *no* suitably public justification for the current political institution of marriage requires demonstrating that all possible justifications are unsuitable. He claims that Brake does not do enough to establish this conclusion. It also opens her up to an obvious form of objection: providing a public reason for the current institution (with its eligibility restriction). Wedgwood does just

this. He offers one possible public reason for the current institution of marriage; namely that it promotes the common good in virtue of satisfying citizens' preferences – preferences that could not be satisfied in any other way, other than through the political institution of marriage (with its current eligibility restriction).

Wedgwood assumes that a political institution of marriage can be appropriately, publically, justified if it “promotes the common good of society” (2016, p. 39). He claims that it would promote the common good if it meets three criteria: first, that “it is a central part of many people’s *most fundamental goals and aspirations in life* to participate in the institution of marriage, and a legal institution of civil marriage is the best way for these people to satisfy these aspirations”; secondly, that “the existence of the institution of marriage does not in itself cause any serious harms”; and third, that “at least *prima facie* marriage is consistent with justice...” (p. 39, emphasis in the original). He goes on to argue that the current political institution of marriage meets these three criteria.

His argument for the first criterion rests on the observation that many citizens of Western liberal democracies “aspire to participate in the institution of marriage” and treat this aspiration as central to their lives (Wedgwood 2016, p. 39). This aspiration specifically involves the desire to acquire the legal marital status, rights, and duties which bring with them a “generally understood social meaning” (p. 39). This social meaning is “a body of common knowledge and general expectations about marriage that is shared among practically all members of society” (p. 32).

The social meaning of marriage is important (and desired) because it allows couples to communicate their marital status, by saying they are ‘married’, within a diverse pluralistic society. Marriage law, including the package of legal rights and duties (and the eligibility restriction) reflects this social meaning and “reinforces society’s expectations” that marital relationships will tend to have the generally expected features this social meaning describes (Wedgwood 2016, p. 35). Wedgwood therefore claims that maintaining the current political institution of marriage is the best way for

the state to enable its citizens to satisfy their aspirations to be a part of this institution.

Wedgwood then provides reasons for thinking that the further two criteria can also be met. He thinks that any harms that might be thought to result from the existence of a political institution of marriage are either not due to the existence of the political institution or can be easily mitigated through other means (for example, by extending third party benefits to individuals/relationships that are ineligible for marriage). He claims that nobody's rights are violated by the existence of a political institution of marriage (once it has rid itself of its sexist traditions and is extended to same-sex couples). In particular he claims that the restriction to dyadic couples does not violate the rights of people in polyamorous relationships because their exclusion from the institution is not "arbitrary and unjust" (2016, p. 42). This is because there is a reasonable concern that the "serious harms that have historically accompanied polygamy" (p. 42) - for example, harm to women - would be reintroduced if the restriction was relaxed.

How does Wedgwood's response meet the Public Reason Argument's concerns? It claims that there is a public reason - promoting the common good - for having (and maintaining) the current political institution of marriage complete with its eligibility restriction.

Brake rejects Wedgwood's response for a number of reasons. She disputes the idea that there is a shared social meaning of marriage, given the diverse conceptions of the good within society and the various definitions and debates surrounding it (2012, p. 186).<sup>85</sup> She also points out that it might not only be romantic couples that want their relationships recognised by a legal institution (p. 142). Denying this recognition could potentially constitute a harm, and isn't mitigated by extending third party benefits to ineligible relationships. I think the claim that concern about the reintroduction of past

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<sup>85</sup> Brake says this in reference to a different point (relating to her reasons for retaining the label 'marriage') but it is a relevant objection to Wedgwood's argument. See Chapter Six, section 6.3.2, for more on this point, and why I think we should be wary of accepting Wedgwood's claim that we have such a comprehensive view of what marriage 'means'.

injustices justifies the restriction to dyadic relationships also looks problematic (it at least requires further evidence).

I will not go through these objections to Wedgwood's view in more detail because I think there is an alternative, and preferable response to the Public Reason Argument that avoids these objections. This response also suggests that public reasons can be provided for the current institution of marriage (with its eligibility restriction), but it focuses more directly on the restriction to romantic couples. It also concentrates on one of the relationship features - care - that the legal framework of marriage is taken to legitimately recognise.

I think we can directly challenge claim 3) of the Public Reason Argument - namely, that the restriction to romantic couples is only justifiable by appeal to a contested view about the value of romantic couples - by demonstrating that there is a relevant difference in the care that occurs in romantic relationships.

As noted above, marriage is often thought to be a legislative framework for caring relationships. Pointing to the care that usually occurs in marriage, and demonstrating how marriage can foster, protect and promote this care via the tangible benefits that attach to the marital status is in fact a typical, liberal way of providing a defence for the political institution of marriage. A number of authors (including Brake, Chambers and Metz) think that care is something that the political liberal state is legitimately concerned with. Brake and Metz also hold that the recognition of certain caring and care-giving relationships is something that can be justified by appeal to public reason.

What the Public Reason Argument makes clear however is that we need to be able to show that the care that is being recognised in romantic relationships by the legislative framework of marriage is relevantly different from the care that occurs in other relationship types. Otherwise there would be a legitimate complaint of unequal treatment.

If it can be shown that there is a relevant difference in the care that occurs in romantic relationships, then this will directly challenge Brake's claim that

there is no relevant way to distinguish romantic couples from (non-dyadic and non-amorous) friendships and other group relationships without appealing to contested views about the value of romantic couples. I think such a relevant difference can be found.

Christopher Bennett for instance suggests that the romantic couple - or in his terms “the relationship of *conjugal love*” (2003, p. 286) - is the only relationship in which the participants assume particular relationship duties: namely to take on “responsibility for the whole person, the whole life of one’s partner” and to have a “generalised duty to support the other and see them through any problems that they are having in any area of their life” (2003, p. 296). These unique duties of care, according to Bennett, lead to a particular type of reciprocal recognition which is crucially important for promoting our social bases of self-respect (a Rawlsian primary good). Appealing to this feature of the romantic relationship - if true - could provide a relevant, and public, reason for regulating and recognising the romantic relationship and only the romantic relationship through marriage.

For his full argument to be successful, he would need to defend the further claim “that getting married itself protects and promotes conjugal love” (Bennett 2003, p. 286), which he does not do in any detail. Rather, he just suggests that “marriage is instrumentally valuable in promoting and preserving conjugal love because it makes breaking up harder to do” (p. 287). Nevertheless, the key idea that I want to draw out of his argument is that there is a difference between dyadic romantic (*conjugal love*) relationships and other caring relationship which could warrant differential treatment.

Bennett’s view provides a reason to think that romantic relationships are *better* at providing crucial aspects of care. When it comes to questions of political justification there are other differences that might also justify differential treatment – namely the risks of care. Tamara Metz argues that state recognition of personal relationships is warranted when the relationships involve intimate caregiving. Whilst she acknowledges the value of caregiving in general and of intimate caregiving in particular, it is



not the value of the caregiving that warrants state recognition. Rather, it is because intimate caregiving involves particularly grave “material, physical and psychological” risks (Metz 2010, p. 126).<sup>86</sup>

All caregiving involves some risk. This is because it “creates vulnerability” for the caregiver who has to “expend resources” on the person they are caring for, resources which “they might otherwise use to care for themselves” (Metz 2010, p. 126). These resources will include material resources such as money, physical resources such as physical health, and psychological resources such as mental health and self-respect. Whilst we might expect these expended resources and/or care to be reciprocated within a personal relationship (between equals) reciprocation is not guaranteed to occur, nor is it predictable what form it will take. This is because caregiving is “unmonitored, unpredictable, and often incommensurable” (p. 126).

Intimate caregiving is particularly risky because it is “unpaid, unrecognised and undervalued, and not seen as producing ‘marketable’ skills” (2010, p. 126). This leads to the generation of “systematic vulnerabilities” for intimate caregivers and “serious disincentives” to become an intimate caregiver (p. 127). The state has an interest in intimate caregiving work being “done well” and in the “benefits and burdens” of intimate caregiving being “distributed justly” (p. 127). For this reason, and because the state is the body that has the “task and tools [for] protecting citizens from physical harm and securing a framework for the just distribution of the costs and benefits of political life” (p. 127), the state is warranted in recognising intimate caregiving relationships in order to mitigate against these risks, by for example, ensuring neither party is impoverished by divorce, and thereby mitigating the economic risk.<sup>87</sup>

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<sup>86</sup> Note that caregiving is just one aspect of a caring relationship, which also involves an attitude of care and concern (see Brake 2012, p. 174). As I will show, I think the nature of the caring relationship (including the attitude of care and concern) affects how risky it is to provide caregiving in the relationship.

<sup>87</sup> I look at Metz’s argument in more detail in Chapter Seven, sections 7.3.2 and 7.3.4.

Metz claims that intimate caregiving is present in a variety of relationship types. She argues for an institution that makes all relationships that involve intimate caregiving eligible for recognition via her ICGU Status. I think her argument is reasonable, and agree that it could demonstrate that all instances of intimate care require some kind of state insurance. However, I also think that this focus on the risks of intimate caregiving could provide a reason for the differential treatment that occurs in the political institution of marriage. If the risks in one type of relationship are further intensified by the nature of that relationship, then this could provide a reason for recognising that particular caring relationship in a different way.

If it could be shown that romantic couple relationships involve particularly risky intimate caregiving, then this might warrant the restriction to romantic couples present in the current political institution of marriage, and justify the differential treatment of caregiving relationships that results (relieving the potential charge of unjustified unequal treatment).

The account of the romantic relationship given in Chapter Four gives us reason to think that romantic couples do involve particularly risky intimate caregiving, due to the nature of this caring relationship. The role of a romantic partner requires those in that role to share the experiences that are central to their lives and accommodate these things within a joint life, and to take joint responsibility for the central aspects of each other's well-being. The fulfilment of these relationship duties is arguably going to require greater amounts of physical, material and psychological resources than the obligations of other relationships. The failure to fulfil these obligations will likely also be more detrimental, particularly considering the emotional interdependence of people in such relationships.<sup>88</sup>

Whilst I do not claim that romantic relationships are always dyadic, I think there is a reason to treat dyadic relationships differently. When there are just two individuals involved the caregiver is dependent on just one other person to reciprocate the intimate care, which means that it is more detrimental when the reciprocation does not happen, or is reciprocated in a way that still

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<sup>88</sup> I develop this line of thought further in Chapter Eight.

leaves the caregiver vulnerable. This can be seen, for example, when caregiving leads to financial dependence. If there were more people to rely on, the risks of no reciprocation would be less acute.

It might be objected that it isn't only romantic couples that involve such risky care – that other dyadic relationships, for instance, also involve this acute vulnerability. However I think the unique obligations of romantic relationships give us reason to think that these relationships enable particularly deep and intimate knowledge to be gained of the other person, which while opening up the possibility of individually tailored care, also leaves one distinctly vulnerable, making the care that occurs in such relationships particularly risky. We allow those we love to learn how best to care for us, and are motivated to care for them using our own resources. This in turn puts those we love in a unique position to be able to harm us.

My claim is that romantic relationships (and in particular dyadic romantic relationships) have a unique nature which can generate acute instances of physical, material and psychological vulnerability when they involve caregiving (which they typically do). The existence of this risky caregiving could provide a public reason for restricting which relationships are eligible for marriage. Claim 3) of the Public Reason Argument can therefore be challenged, as the restriction to romantic couples could be justified by appeal to this public reason.

### **5.3.3 Summary**

The Public Reason Argument raised the concern that the current structure of the political institution of marriage (with its restriction to romantic couples) could not be justified by appeal to public reasons. I have argued that we can find public reasons to justify this restriction – reasons that either focus on the particularly beneficial care (that leads to recognition) that occurs only in romantic relationships, or on the particular riskiness of intimate caregiving within romantic couples. This suggests that there is no concern with the fact that the state bears a *special* and unique relation to the romantic relationship. This special relation can be appropriately justified.

## **5.4 Conclusion**

This chapter has introduced the three levels of concern that can be found within political liberal arguments against marriage. Whilst I have argued that this first level of concern - regarding the structure of the current institution - can be assuaged, there are further, more serious concerns to be faced.

We still need to consider the concern that any political institution of marriage (whatever form it takes) violates political liberal principles; and even more seriously, that any political institution that recognises adult personal relationships violates political liberal principles. These are the second and third levels of concern identified above. These concerns question whether the state should be involved in the institution of marriage at all, and whether it can relate to adult personal relationships (including the romantic relationship) via any form of political institution that entails state recognition. I consider these next two levels of concern in Chapter Six.

## Chapter Six

### The Political Institution of Marriage: The Second and Third Levels of Concern

This chapter further investigates whether the current relation that the state bears to the paradigmatic marital relationship (the romantic relationship) via a political institution of marriage is appropriate. It focuses on arguments for the second and third levels of concern (identified in Chapter Five).

The second level of concern is worried that any political institution *of marriage* is problematic for political liberalism because of the meaningful nature of this institution. I first consider Metz's Neutrality Argument and then Chambers' Argument from Meaning, both of which are situated at this level of concern. If the concern is warranted, it suggests that the state should not establish and recognise marriage. If it has reason to regulate, or even recognise, the romantic relationship (for some independent reason) then it should not do so via this particular political institution.

The third level of concern is worried that *any* political institution (a legal status plus a bundle of rights and duties etc.) that provides state recognition of adult personal relationships will be problematic for political liberalism. I present and evaluate Chambers' Justificatory Neutrality Argument which is situated at this level of concern. If this argument is correct it would suggest that the state should not recognise any adult personal relationships (the romantic relationship included) via any kind of political institution (and so should use an alternative regulatory tool that does not provide any state recognition, if regulation is required).

I aim to show that the concerns at both levels can be dismissed. The arguments considered do not conclusively show that it is inappropriate for the liberal state to regulate and recognise the romantic relationship through a political institution of marriage.

## 6.1 The 2<sup>nd</sup> Level of Concern: Arguments against the Political Institution of Marriage

I will consider two separate arguments for the second level of concern, drawn from the work of Tamara Metz (2010) and Clare Chambers (2017), both of which claim that the political institution of marriage is problematic for political liberalism. Even if there are independent liberal reasons for regulating and recognising romantic relationships, these arguments claim that this should not be achieved through a political institution *of marriage*. We need to find some alternative political institution (for example, of civil unions or ICGU status).

Both of these arguments are concerned with the principle of neutrality which claims that the state should not hold or express a particular conception of the good nor appeal to any particular conception of the good when justifying its laws, policies and institutions. They each focus on the first part of this principle (concerning the state holding and expressing a particular conception of the good). However, each claims that the violation occurs for subtly different reasons.

The key reason for this concern with neutrality, in both arguments, is that marriage appears to have some sort of *meaning* within our societies, rather than simply being an instrumental form of state regulation. We can see that marriage is treated by some U.S courts as having a particular meaning in *Baker v. State of Vermont* (1999) which concluded that a civil union status should be created for same-sex couples. This civil union status was to convey the same civil benefits on to same-sex couples that the marital status conveyed on to heterosexual couples. Insisting on different statuses that have the same instrumental purpose, and retaining ‘marriage’ only for heterosexual couples implies that marriage is taken to have a particular, special, meaning – a meaning the State of Vermont did not want to extend to same-sex couples.<sup>89</sup> Again, however, each author takes different approaches

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<sup>89</sup> See Metz 2010, p. 34.

to spelling out what this meaning is, and why it is problematic for state neutrality. This will be explained below.

## **6.2 Metz's Neutrality Argument**

Whilst Metz argues from a broadly liberal point of view, she highlights worries about neutrality that a political liberal should be particularly concerned with. Her focus throughout *Untying the Knot* is on the fact that marriage is a political institution - or in her terms "established" - which means that "governments define and confer marital status and use it as an exclusive and privileged means for meeting public-welfare aims [and] ... the state exercises final say over the content and public use of the marital label" (2010, pp. 3-4).

Focusing on the courts in Western liberal democracies, and on liberal theorists (including Locke, Mill and Okin) she illustrates that the political institution of marriage is often viewed and treated in one way – as having some sort of meaning – but justified in another way, namely, in purely instrumental terms. As a result, she claims, the state's recognition of marriage is never fully defended.

Metz aims to build up a fuller picture of how marriage is viewed within our Western liberal societies, and in doing so uncovers the "meaning side of marriage" (2010, p. 87). She then argues that the liberal state's involvement in marriage (viewed in this way) cannot be defended. She claims that "the establishment of marriage flirts with violating liberalism's most basic values" including equality, liberty, stability, and the public/private divide (p. 7). I will focus on one of her arguments for why the political institution of marriage violates liberty and the principle of neutrality.

### ***6.2.1 Marriage as a Formal, Comprehensive Social Institution***

First, we need to understand the view of marriage that Metz is working with. On this view marriage is not a legal framework for regulating some forms of adult relationship (the view Brake takes). Rather, it is a "formal, comprehensive social institution" (Metz 2010, p. 85), and it is because of this that it is incompatible with political liberalism. She claims that citizens

of liberal societies - despite their varied and diverse “*conception[s]* of marriage” - nevertheless share this “*concept*” of marriage as a formal, comprehensive social institution (p. 86, emphasis in the original). There are three central features to this view of marriage (which I explain in more detail below):

First, marriage is a social institution, which is to say a pattern of expected behaviour that exists outside or before secular law...  
 Second, marriage has a comprehensive purpose: it relies on and reproduces complex accounts of the connections between individual and community; public and private; belief and behaviour; and sexuate, social, and political self-understanding. The third concerns method: marriage relies on formal, public recognition and regulation by ... an ethical authority”. (Metz 2010, pp. 86-87)

Viewing marriage in this way, claims Metz, gives us a fuller picture of what marriage means: it tells us

*what* the extra value of marriage is (its unique capacity to integrate individuals to each other and to their community, from the inside out) and *how* it achieves this value (through the formal recognition of an ethical authority). (2010, p. 107)

Social institutions, as we have already seen in Chapter Three, are “patterns of behaviour explained and promoted by a socially significant story” (Metz 2010, p. 96). They are made up of social norms which impose positive and negative social sanctions on individuals, influencing them to comply with the pattern of expected behaviour. These sanctions are often experienced as “natural” (p. 96) rather than as coercive or freedom-limiting.

The (pre-legal) social institution of marriage, claims Metz, is comprehensive both in its purpose, and in its concerns. Marriage aims to alter both “behaviour *and* belief” (2010, p. 97) – it governs behaviour through instilling social norms. Marriage is concerned not only with people as citizens (as political persons), but as whole individuals – from their “sexuate to political identity” (p. 97).

Marriage is a particular type of social institution – one that requires “*formal public recognition*” (Metz 2010, p. 98): you cannot be married without the formal public recognition that you are. Not all social institutions require this. Motherhood, for example, is a social institution that doesn’t require



formal public recognition: you can fulfil the role of a mother (caring for your child etc.) without it being formally and publicly recognised that you are in that role.

In order for this formal public recognition to come about, the social institution of marriage needs “the formal involvement of a public authority” (Metz 2010, p. 99). Without such an authority the social institution cannot exist. This authority also needs to be *ethical* – “an authority whose directives are experienced as natural and freedom-guiding ... by dint of the shared view[s] ... between the individual and the community of which this authority is representative” (p. 103).<sup>90</sup> Crucially though, Metz claims, this public ethical authority does not have to be the state.

To explain why this public authority needs to be ethical, Metz draws on the work of Hegel.<sup>91</sup> On Hegel’s view, marriage both governs behaviour and material matters, and also “integrates individuals with each other and with their community and its norms, practices and institutions, so that their inevitable interdependence is experienced as natural and ... not constraining” (Metz 2010, p. 101). It is this integration that marriage enables which requires an ethical authority. Such integrations are only possible when an ethical authority has “formal, public control over and involvement in the institution” (p. 101).

This integration occurs in marriage when

...the individuals formally and expressly consent to the terms of marriage, when they self-consciously acknowledge their entrance into the institution and its norms of behaviour ... in the announced presence of the community that determines those terms and norms. (Metz 2010, p. 102)

This highlights that the authority representing that community needs to be ethical (rather than merely legal) because it requires the authority to have “shared understandings about the nature of the relationship it labels and, crucially, about the appropriateness of that authority’s commands in matters of the most intimate nature, including belief” (Metz 2010, p. 103). Both the

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<sup>90</sup> The Pope is an example of an ethical authority for Catholics.

<sup>91</sup> In particular she draws on Hegel’s (1952) *Philosophy of Right* here.

individuals getting married, and the authority conferring the marital status, need to recognise and accept the social norms that constitute the institution of marriage. Without such shared understandings, the integration could not occur.

The political institution of marriage is problematic for political liberalism because it is associated with this formal, comprehensive social institution of marriage. It is this (pre-legal) social institution that gives the political institution meaning.

The extra value of the civil status of marriage has everything to do with *marriage* – the socially significant (if variously defined) ‘pattern of expected action’ that ... pre-exists legal definition and regulation. (Metz 2010, 2010, p. 95)

However we reform the political institution of *marriage* it will always be associated with the social institution of marriage and its meaning, and so it will always be problematic according to Metz.

### **6.2.2 *The Violation of Neutrality***

In particular, it is because the state is cast in the role of public ethical authority when the institution of marriage is political, that makes it so problematic.

Metz doesn’t clearly spell out her argument here, but she does claim that the marital status is akin to the bar mitzvah status. We think that it is completely inappropriate for the state to recognise and confer the bar mitzvah status because that status is meant to integrate a person into the Jewish community, and in order to do this the (ethical) authority that confers the status must represent a “community of shared religious belief” which “gives the status meaning” (2010, p. 119). If the state tried to play this role it would be a “violation of even the least restrictive variety of state neutrality” (p. 119). We can see that this violation of the principle of neutrality would occur if the state conferred the bar mitzvah status because in order to confer this status it would have to hold a particular (Jewish) conception of the good that views the status as meaningful and valuable (for non-instrumental reasons).

Similarly Metz claims that in order to play the role of an ethical authority for the political institution of marriage, the state reproduces and relies “on belief in a particular, comprehensive account and institutional form of intimate life and its tie to the community” (2010, p. 114). The state has to represent this set of beliefs. It both holds these beliefs, and encourages its citizens to hold them by channelling them into the institution of marriage (by recognising the marital status) (p. 96). The claim seems to be that this amounts to the state holding a particular conception of the good – one that says something about marriage and its integrative nature and views the marital status as meaningful and valuable (for non-instrumental reasons). This is not something that the political liberal state should be doing.

### ***6.2.3 An Evaluation of Metz’s Neutrality Argument***

Simon May (2016) provides reasons to be wary of Metz’s bar mitzvah analogy. May is primarily interested in finding a neutral justification for the political institution of marriage. However he notes that even if such a neutral justification could be found, there are further ways in which neutrality can be violated: when there is “state propagation of a philosophical conception of the good life” (p. 23). This is precisely the concern Metz has about the political institution of marriage.

May is responding to various neutrality arguments against the political institution of marriage that claim the state’s involvement with the institution endorses the *matrimonial ideal*. The matrimonial ideal can be “defined to encompass any belief that marriage constitutes an ultimately superior type of relationship” and that it, in some way, “gives ultimate meaning and value to human existence” (2016, pp. 10-11). This is a particular conception of the good that aligns with a number of different (religious and secular) views and is a view that the political liberal state has no business in holding or endorsing as a result.

May includes Metz’s argument in this list of neutrality arguments that make this claim. Whilst I do not think that the matrimonial ideal quite captures the view Metz claims the state has to hold as an ethical authority (because it doesn’t say anything about marriage’s integrative nature), I think it is

similar enough for May's arguments to pose a challenge. Metz is concerned about a view that takes marriage to be valuable and she treats this view as a conception of the good which is compatible with a variety of different views (she claims, after all, that it is a view all liberal citizens hold).

These neutrality arguments liken the political institution of marriage to state promotion of religious practices, and contrast it with state promotion of particular sports. In the case of sport, the state cannot say whether one sport is ultimately better than another, but it can recognise empirical evidence (if there is any) that shows, for example, that football encourages social unity because it is accessible and cheap. This would amount to a public, instrumental, and neutral reason for promoting football (over other sports that aren't beneficial in this way) via school and community funding.

The case of religious practices is different. For example, some religions involve pilgrimages to holy sites, whilst others do not. The state cannot have a position on "whether the true religion requires a pilgrimage to a holy site" (May 2016, p. 24). It can recognise that annual pilgrimages have a reliable economic impact, and that this is better than the economic impact that ordinary tourism has. However, it cannot encourage citizens to go on a pilgrimage (as it encourages them to play soccer rather than other sports) because this would be to "encourage them to adopt certain religious views" (p. 24).<sup>92</sup> The concern is that a political institution of marriage is analogous to the pilgrimage example: that it encourages people to adopt the matrimonial ideal (or in Metz's terms, the comprehensive view that takes marriage and its integrative nature to be valuable).

The problem with pilgrimage (and allegedly marriage) is that it is "presumptively doctrinal" (May 2016, p. 26). A cultural practice is presumptively doctrinal when it is "governed by a certain social norm: to participate in the practice in good faith, an individual must endorse a particular doctrine or, at least, some range of its tenets" (p. 25). Pilgrimage is an example of such a practice because a certain religion must be endorsed

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<sup>92</sup> The encouragement, we can imagine, might be provided by giving tax breaks to those who make the pilgrimage.

in order for the pilgrimage site to be treated as holy. This means that even instrumental reasons cannot justify state promotion of pilgrimage, because it would “promote either belief in the religious doctrine or bad faith participation in the activity” (p. 25). The state should not do either.

May claims however that marriage is not presumptively doctrinal (unlike religious practices). This is because “there is no social norm that newlyweds must also endorse the matrimonial ideal” (2016, p. 25). Some people will marry because they endorse the matrimonial ideal. Others however will have very different reasons. It is after all an easy way for people to express their commitment to each other. These alternative reasons are not insincere or cynical, and they don’t imply a belief in the matrimonial ideal. I think the same can be said about the view Metz is concerned about – there is no social norm that says people getting married have to endorse the comprehensive view about marriage and its integrative nature.

May recognises that this is an empirical, and contingent, claim. But so long as there is no such social norm, marriage is not presumptively doctrinal, and it is therefore more like a particular sport than a religious practice. The political institution of marriage therefore does not violate the principle of neutrality because it is not propagating the matrimonial ideal, or the comprehensive view about marriage as integrative.<sup>93</sup>

That there appears to be no such social norm also challenges Metz’s claim that there is this shared concept of marriage as a formal, comprehensive social institution in the first place. The diversity of liberal societies also gives us reason to doubt this claim and the idea that there can be such a shared concept of marriage. Metz’s argument rests heavily on this claim, and so showing that there is reason to doubt it gives us strong reason to reject her argument.

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<sup>93</sup> There are social norms about marrying solely for instrumental reasons (for example, to avoid tax or for immigration rights) without any form of loving or committed relationship, but this is a view about what the institution of marriage is for.

People within liberal societies have vastly differing views about pretty much everything – marriage included. Getting married is compatible with endorsing a whole host of different religious, cultural, and philosophical views. These views have different conceptions of marriage, and people get married for a whole host of different reasons – some practical, some meaningful, some traditional. Not all of these conceptions of marriage will view it as something that integrates individuals into a community of shared beliefs, or see this as valuable. The dominant view of marriage I identified in Chapter One for instance focuses on enabling individual's to have a flourishing, loving relationship. Integration into a community of shared beliefs doesn't necessarily look integral to this.

Even if such a shared concept is possible, I think it is very unlikely that this shared concept will view marriage as a formal, comprehensive social institution. It seems far more likely that if there is some sort of shared concept then it will be more practical than meaningful – for example that it joins some number of people together in some sort of legal union.

This again is a contingent claim that would need to be empirically verified. Nevertheless it suggests that the political institution of marriage is not as problematic for political liberals as Metz claims. There are however further worries at the second level of concern - also relating to neutrality and the meaning of marriage - which cannot be dismissed in this way. These are highlighted by Clare Chambers in her book *Against Marriage* (2017).

### **6.3 Chambers' Argument from Meaning**

The Argument from Meaning - which raises the second level of concern about the political institution of marriage - sits within a larger argument that raises the third level of concern which I will consider in section 6.5. To understand both this argument, and the larger argument, we first need to get clear on what Chambers means by 'political liberal neutrality'. As has already been noted, in Chapter Five, political liberals tend to endorse justificatory neutrality – the idea that the state should not appeal to any particular conception of the good when justifying its laws, policies and institutions. Chambers highlights that there are two ways of understanding

the requirement of justificatory neutrality: a strict and a lax reading of the principle.

For “lax neutrality” there needs to be some suitably public justification for a particular policy or institution that “does not rest on advocating some conception of the good” (Chambers 2017, p. 71) – i.e. it requires a public reason. All that matters is that this reason is “true” (p. 71). In contrast, for “strict neutrality” the public reason needs to both be true, and “sufficiently weighty” (p. 72). This means that it has to “objectively outweigh other justifications” and it has to “be sufficiently strong to overcome any objections associated with the policy’s association with a particular doctrine”, if it has any (p. 71).

This distinction indicates that Chambers thinks that there is a further way that a particular policy can be non-neutral – by being associated with a particular conception of the good. She terms this as being *prima facie* non-neutral. For a particular policy to be *prima facie* neutral it “must be compatible with all reasonable conceptions of the good” (2017, p. 55).<sup>94</sup>

To see the difference between strict and lax justificatory neutrality, consider the case of school prayer which is associated with a Christian conception of the good. Implementing a policy of school prayer would require a public reason to justify it – for example, that it “teaches children to sit still and concentrate” (2017, p. 71), something that aids learning in general. On a lax understanding of neutrality all that is required is that this reason is true. It doesn’t matter that there are other activities that teach the skill just as well, nor that this justification does not outweigh the *prima facie* non-neutrality of praying. On a strict understanding of neutrality, the only way that school prayer would be justified is if it is the only way, or a significantly more effective way, of teaching this skill.

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<sup>94</sup> This is related (but not identical) to the first part of principle of neutrality (as defined in Chapter Five) – if a policy is associated with a particular conception of the good then the state that enforces that policy might be thought to be holding and expressing that particular conception of the good.

Whilst Chambers acknowledges that it is unclear which understanding of the principle of neutrality (strict or lax) political liberals endorse, she suggests that they should endorse the strict understanding. This is because it appears to better align with political liberalism's overall aims: "The goal of the politically liberal state is not to perfect society or the choices of its citizens but to secure justice" (2017, p. 74). As such citizens should only be restricted in following their own conceptions of the good if it is necessary for justice. Implementing policies that are associated with particular conceptions of the good (such as mandated school prayer) simply because *some* public reason can be found seems to amount to the state "unduly interfering with the legitimate choices people may make to follow alternative conceptions of the good" (p. 74). If other policies are available (that are not associated with particular conceptions of the good) then it is not necessary for justice that this particular policy (school prayer) be implemented. For example if listening to classical music teaches children quiet concentration, then mandated school prayer is not necessary for justice. It would only be necessary (and it could only have its *prima facie* non-neutrality outweighed) if there was no alternative.

The Argument from Meaning forms part of Chambers' argument for the claim that the political institution of marriage is *prima facie* non-neutral. It does not, by itself, conclusively show that the political institution of marriage cannot be appropriately justified so as to meet the requirements of strict justificatory neutrality. It does however give us reason to question the state using such a meaningful institution, and if it shows that the political institution of marriage is *prima facie* non-neutral, it would force us to look for sufficiently weighty public reasons to justify its use.<sup>95</sup>

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<sup>95</sup> I will explain Chambers' larger argument, how the Argument from Meaning fits in to it, and how Chambers argues for the conclusion that a political institution of marriage does violate the principle of strict neutrality in section 6.5.



### 6.3.1 *The Argument from Meaning*

Recall that in order to show that a particular policy is not *prima facie* non-neutral it needs to be shown that it is “compatible with all reasonable conceptions of the good” (Chambers 2017, p. 55).

Chambers argues that the meaning of marriage causes the political institution of marriage to be incompatible with some reasonable conceptions of the good - including non-monogamous, feminist and celibate conceptions of the good (2017, p. 55) - making it a *prima facie* non-neutral policy. It is incompatible with these particular conceptions of the good because they “reject assumptions that underpin the special treatment thereby given to marriage” within a political institution (p. 55).

Traditional marriage is a cultural practice that has a particular, profound, weighty and controversial meaning. Its historical and current significance to many people involves metaphysical and perfectionist claims that can be reasonably rejected by others. These controversial meanings affect any state use of the concept of marriage. (p. 57)

This passage highlights that, like Metz, Chambers is concerned with the fact that marriage *means something* to people.

Chambers, following Wedgwood, claims that within our Western liberal societies marriage has a particular social meaning which “involves shared assumptions about what marriage typically entails” (Chambers 2017, p. 57). Wedgwood suggests that we take marriage to involve “sexual intimacy, economic and domestic cooperation, and a mutual commitment to the relationship” (Chambers 2017, p. 57). Whilst this social meaning can allow for a range of different relationships to fall within it (crucially for Wedgwood it doesn’t rule out homosexual relationships), Chambers claims that it is *prima facie* non-neutral as it “invoke[s] a conception of human flourishing that is decidedly non-political” (p. 57).<sup>96</sup>

Chambers claims that we can see that the meaning of marriage is non-political when we look at traditional, conservative views which are often put

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<sup>96</sup> By which she means that the conception is “not neutral between reasonable conceptions of the good” (2017, p. 57).

forward in arguments against same-sex marriage (2017, p. 57). These views not only tend to ascribe to patriarchal and heterosexist norms of marriage, but also often rest on appeals to comprehensive views about human nature and the good life. Chambers gives the example of Catholic bishops who have said that “the roots of the institution of [heterosexual] marriage lie in our nature” – a claim which is “inescapably perfectionist and metaphysical” (p. 58).

The meaning of marriage can however change. For example, by allowing more relationships (such as same-sex relationships) to attain the status we can alter the nature of what marriage symbolises because “less approbation is reserved for any one particular” relationship form (Chambers 2017, p. 61). This is exactly what some feminists hope will happen by allowing same-sex marriage – they want to change its meaning so that it is less patriarchal (p. 61). This suggests that it would (at least in principle) be possible to alter the meaning of marriage so that it doesn’t rest on values about human nature and the good life.

This does not make the problem go away, according to Chambers. No matter how much we reform the meaning of marriage it will always, necessarily, conflict with *some* reasonable conceptions of the good. If marriage retains its “traditional and patriarchal” meaning then it “conflicts with feminist and other egalitarian conceptions” (2017, p. 61). If marriage is reformed so that it is less discriminatory and more egalitarian then it “conflicts with the conception of the good of those who revere its traditional meaning, a meaning that they see as sacred and inviolable” (p. 61). Whichever meaning marriage has, it is still *prima facie* non-neutral because it conflicts with some reasonable conception of the good.

If this is correct, then it means that a political institution of marriage will always be *prima facie* non-neutral. This suggests that there is (at least a *prima facie*) reason for the state not to recognise marriage.

### ***6.3.2 An Evaluation of the Argument from Meaning***

One way that political liberals could respond to this worry, and which Chambers considers, is to claim that the conceptions of the good that the

values of reformed marriage conflict with are *unreasonable*. This would mean that they do not have to worry about marriage being incompatible with them.

Reasonable conceptions of the good are those that do not “necessarily conflict with political liberal tenets such as the conception of citizens as free and equal and a commitment to public reason and state neutrality” (Chambers 2017, p. 55). If a conception of the good conflicts with these things it is incompatible with justice, and can be legitimately ignored (and rejected) by a political liberal.

Are conceptions of the good that endorse the traditional religious or conservative views of marriage unreasonable? They would be if they aimed to “impose their traditional views of marriage on others via the coercive power of the state” (Chambers 2017, pp. 61-62) as this would conflict with political liberal principles. Chambers claims however that there are versions of these conceptions of the good which maintain religious and traditional conservative views and values, and which also “could argue that marriage should not be recognised by the state” (p. 62). These versions are reasonable conceptions of the good (because they don’t aim to coercively impose their views). A political institution that recognised marriage (with a reformed meaning) would conflict with this reasonable conception of the good: “state recognition of some alternatively configured marriage [is] unreasonable ... because state recognition of non-traditional marriage would be invoking the traditional, honorific term ‘marriage’ in a way that conflicted with that reasonable traditional understanding” (p. 62).

I agree with Chambers that we cannot dismiss conceptions of the good with traditional conservative and religious views about marriage as unreasonable (unless they coercively impose their views). Attempting to show that these conceptions of the good are unreasonable would require showing that the traditional and conservative views of marriage make state recognition of marriage (as they understand it) necessary. This seems unlikely. As such, the unreasonableness response is not open to political liberals.

I think there is a further challenge to the Argument from Meaning however. The problem of *prima facie* non-neutrality arises because the different meanings that we are comparing all involve comprehensive and perfectionist claims. When one conception of the good claims ‘marriage means x’, this conflicts with another conception of the good that claims ‘marriage means y’. The assumption underlying the Argument from Meaning is that the political institution of marriage always has to reflect one of these meanings, and that these meanings are always *comprehensive* and *perfectionist*. Something has a comprehensive meaning when it is based on a comprehensive doctrine - a doctrine that concerns all human conduct (and not just the political). Something has a perfectionist meaning when the comprehensive doctrine it is based on makes claims about human flourishing and what is valuable in life. We can see that Chambers endorses this assumption when she quotes Torcello at the conclusion of her argument.

We cannot genuinely imagine any definition of marriage that does not in some sense call upon a comprehensive notion of the meaning of marriage. (Chambers 2017, p. 61)

This is an assumption that can be challenged. If we reject the assumption, then Chambers’ argument does not go through. If it is possible for a political institution of marriage not to reflect a comprehensive meaning, then it will not always (necessarily) conflict with a reasonable conception of the good.

Not everyone within the literature accepts this assumption. For example Elizabeth Brake, who we saw above argues for the reformation of the political institution of marriage, explicitly questions this assumption when she argues for retaining the label of ‘marriage’ for her proposed reform – minimal marriage.<sup>97</sup> She does not opt to distance her proposal from marriage, and in fact seeks to maintain the association with it. It is the reason that she puts forward for retaining this label that I want to consider here.

In short, Brake’s claim is that using the term ‘marriage’ for a reformed version of the institution is a way of “rectifying past amatonormative and

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<sup>97</sup> I present this proposal in Chapter Seven, section 7.3.1.

heteronormative discrimination” (2012, p. 186).<sup>98</sup> It is able to do this because first, its meaning is malleable; and second, changing its meaning will enable the state to “create new social scripts and make alternative relationships salient, by recognising them as equal under law” (p. 187). This will enable the state to affirm different relationships (through the designation of the marital status to non-heterosexual, non-monogamous relationships) and get rid of the “ideal of heterosexual monogamy” (p. 187) that marriage has historically promoted.

Brake acknowledges that retaining the term ‘marriage’ can only have these beneficial effects if the term really is malleable, and if it is not inherently “patriarchal, ethnocentric, or comprehensive” (2012, p. 186). Brake thinks that the meaning of marriage can change, noting that “many institutions with historically unjust or inequalitarian symbolism have altered their symbolism” (such as the term ‘citizen’ which was historically sexist). Chambers would agree with this point.

Chambers (and Metz) clearly think that marriage, however, is “essentially comprehensive” (Brake 2012, p. 186), and so would challenge Brake’s claim that it can be used to rectify past injustices. Brake disagrees, and claims that marriage has “become unmoored from comprehensive doctrines” and that this is “reflected in the social confusion about what it means” within our Western liberal societies (p. 186). If ‘marriage’ has become unmoored from any comprehensive meaning (including perfectionist meanings) in this way then a political institution of marriage does not necessarily reflect a comprehensive meaning of some sort.

I think Brake is right. If the meaning of marriage can be altered so that it means one comprehensive thing rather than another, then what stops it from being altered so that it means something purely instrumental? It seems perfectly plausible that there is a definition of marriage which is not based on a comprehensive doctrine, and which does not appeal to claims about

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<sup>98</sup> Amatonormative discrimination, according to Brake, includes both the tangible (lack of legal marital benefits) and non-tangible (lack of recognition) disadvantages that relationships face when they do not live up to the romantic couple norm. See Brake (2012), Chapter 4.

human flourishing or value. Brake for instance redefines marriage so that it recognises all adult caring relationships (which are seen as necessary to function as political persons rather than as particularly valuable or as contributing to human flourishing). Such a definition would be ‘thin’, but then this would make it compatible with all conceptions of the good. If individuals wanted to add extra, comprehensive, meaning to their marriage they could then do so by choosing a particular ceremony or way of life that went with it.

Brake acknowledges that it might be tricky to ensure that the symbolism of the term ‘marriage’ remains *just right*. The marital status needs to be strong enough to rectify the past injustices,<sup>99</sup> but weak enough so “that children or adults outside minimal marriage [don’t] face stigma” (2012, p. 187). This is why Brake urges that her minimal marriage should only convey “status designation” (p. 187) and not “legitimacy in any substantive sense” (p. 188).<sup>100</sup> We have political institutions (for example, which regulate contracts or driving) that are purely instrumental and only designate status. Marriage could be altered so that it is like these.<sup>101</sup>

Some might worry that even if marriage does not *necessarily* reflect a comprehensive meaning, it is *likely* that it will always do so, and for this reason we should be wary of the state being associated with it. This might give us pragmatic reasons to concede that the meaning of *marriage* can be (but is not necessarily) problematic for political liberalism.

One obvious move here would be to simply get rid of the term ‘marriage’ and replace it with an alternative status, such as a civil union. Or, as Metz proposes, we could reform both the institution and the status so that it better aligns with the instrumental justifications we have for recognising personal relationships, and have something like her Intimate Caregiving Union

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<sup>99</sup> Brake claims that it achieves this by “placing all [adult caring] relationships on an equal footing under law” (2012, p. 188).

<sup>100</sup> The only type of legitimacy the marital status should convey is “procedural legitimacy” (Brake 2012, p. 188) – showing that the rights have been obtained by due procedure.

<sup>101</sup> Chambers, as we will see in sections 6.5 and 6.6, would argue against this claim. See section 6.7 for my response.

Status. If the problem is with the meaning that attaches to a particular institution - the institution *of marriage* - then let's just get rid of the thing that this meaning attaches to. Let's have a political institution *of something else*.<sup>102</sup>

That won't do, argues Chambers, because it isn't only the meaning of marriage that is the problem: "even reformed or re-named marriage ... violates neutrality since in recognising it the state endorses a conception of the good and denies endorsement to those who are not in the mandated form of relationship" (2017, p. 64). I will look at her reasons for raising the third level of concern in sections 6.5 onwards.

#### **6.4 Summary of the 2<sup>nd</sup> Level Arguments**

Metz's Neutrality Argument and Chambers' Argument from Meaning both raised the second level of concern. They aimed to show that a political institution of marriage is problematic for political liberalism because of the meaning associated with this institution. If these arguments are correct, then it would suggest that marriage should no longer be recognised and no longer be a legal category. This would mean that if there were reasons for the state to regulate and recognise the romantic relationship in some way, then it should not do so via the political institution of marriage.

I have argued that the concerns at this second level can be met, but there is still the third level of concern to address.

#### **6.5 The 3<sup>rd</sup> Level of Concern: An Argument against any Political Institution for Adult Personal Relationships**

The third level of concern submits that *any* political institution (of marriage, civil union, or alternatives) is problematic for political liberalism. If there

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<sup>102</sup> One concern with this type of response is that it is simply relabelling what is essentially the same status and institution. The worry is that changing the name will not be enough to disassociate the new political institution from the institution of marriage and its meaning. This suggests that in addition to a name-change, the institution might also need to alter in other ways too, perhaps an alteration in scope (to allow more relationships to be eligible) for instance. Nevertheless changing the name could at least be seen as a symbolic attempt to break away from the meaning of marriage.

are reasons for the state to regulate personal relationships between adults (the romantic relationship included), then it should not do so via any political institution (a legal regulatory framework that utilises a status and associated bundle of rights and duties) which provides state recognition of certain adult personal relationships.

The argument I present here is one which Chambers addresses directly to political liberals, and which leads her to claim that “state recognised marriage is a violation of political liberal neutrality” (p. 49).<sup>103</sup> It is the larger argument that the Argument from Meaning fits into, and which I will term the Justificatory Neutrality Argument. It utilises the particular understanding of the principle of neutrality set out in section 6.3.

The Justificatory Neutrality Argument states that political liberals should endorse a strict principle of justificatory neutrality which requires that the implementation of *prima facie* non-neutral policies be justified by sufficiently weighty public reasons (reasons that outweigh the *prima facie* non-neutrality). The argument then takes the following general structure: first, it states that a policy is *prima facie* non-neutral when it is not compatible with all reasonable conceptions of the good; second, it claims that marriage, and any other political institution that provides state recognition of adult personal relationships, is *prima facie* non-neutral because it is incompatible with various reasonable conceptions of the good; third, it goes on to claim that there are no sufficiently weighty public reasons that can justify a political institution of marriage (or alternative status); and finally, it concludes that a political institution of marriage (or alternative status) violates a strict principle of justificatory neutrality.<sup>104</sup>

There are a number of ways in which this argument could be challenged. Firstly, as Chambers notes (and as outlined in section 6.3), it is not clear that

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<sup>103</sup> Whilst Chambers is herself a comprehensive liberal, she addresses political liberals directly because most contemporary liberals are political liberals and because she wants to show that “political liberals have a particular reason to reject state-recognised marriage” (2017, p. 49). She also has a second argument against marriage which claims that it violates equality, which I do not address.

<sup>104</sup> See Chambers (2017), pp. 55-76.



political liberals do (or should) endorse strict justificatory neutrality. If they do not need to endorse strict justificatory neutrality (and need only endorse lax justificatory neutrality instead) then this argument will not apply.<sup>105</sup>

Chambers devotes a whole further chapter (2017, Chapter 3) to arguing for the claim that there is no sufficiently weighty justification for a political institution of marriage (or alternative). She considers five liberal defences of the political institution of marriage that appeal to public reasons - “based on communication, gender equality, caring relationships, the interests of society, and children’s interests” (p. 77) - and argues that they are not sufficiently weighty to outweigh the *prima facie* non-neutrality of marriage. I will not consider these arguments in detail here.<sup>106</sup>

I want to focus on Chambers’ arguments for the claim that marriage (or any alternative status) is *prima facie* non-neutral. It is the arguments for this claim that are directed at political liberals in particular, and it is this claim that I want to challenge. The Justificatory Neutrality Argument rests heavily on this particular claim. If it is shown to be false, then there is no need (when evaluating this argument) to decide whether or not political liberals should endorse strict or lax justificatory neutrality, and there is no need to determine whether sufficiently weighty public reasons for a political institution of marriage can be found.

### **6.6 Arguments for the *Prima Facie* Non-Neutrality of Marriage (and Alternatives)**

Chambers claims that there are “three ways in which the state recognition of marriage rests on values which are incompatible with some reasonable

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<sup>105</sup> Chambers (2017, pp. 72-73) gives Wedgwood (2016) as an example of a political liberal argument that argues from a position of lax justificatory neutrality and claims that the political institution of marriage can be justified by appeal to a public reason; namely preference satisfaction that contributes to the common good (as seen in section 5.3.2).

<sup>106</sup> For an argument that attempts to identify a sufficiently weighty public reason for the political institution of marriage see May (2016) who suggests that the “presumptive permanence” (p. 13) of the marital relationship may amplify the beneficial effects of caring relationships, and the institution of marriage may further enhance these effects.

conceptions of the good, and therefore violates political liberal neutrality” (2017, p. 56): via meaning, bundling, and hierarchy. The first of these (meaning) concerns the political institution of marriage only (which is why I considered the Argument from Meaning under the second level of concern). The second (bundling) and third (hierarchy) concern not only the political institution of marriage, but any political institution that might be used for the regulation of adult personal relationships (civil unions, intimate caregiving union, or another alternative status) and which provide state recognition of those adult personal relationships. The Argument from Bundling and the Argument Concerning Hierarchy attempt to show that *any* political institution that recognises adult personal relationships will also be *prima facie* non-neutral. This puts these arguments (and the full Justificatory Neutrality Argument of which they are a part) at the third, and strongest, level of concern.<sup>107</sup>

### **6.6.1 The Argument from Bundling**

State-recognised marriage allocates a bundle of rights and duties to those who marry. The assertion that this bundle belongs together constitutes a conception of the good life. State recognition of that bundle is inescapably perfectionist and non-neutral. (Chambers 2017, p. 57)

This passage highlights that Chambers is concerned here not with the meaning of marriage, but with the mechanism by which marital rights and duties are assigned to married couples – via *bundling*. She characterises bundling in the following terms: “giving a married couple a bundle of rights and duties covering various aspects or practices of a relationship (a) because they are married, (b) regardless of whether the couple does in fact perform those practices, and (c) that do not apply to other relationships that do include those practices” (p. 65).

Bundling is problematic, according to Chambers, whether or not the status that the bundle attaches to is called ‘marriage’, ‘civil union’, or something else. Bundling makes these statuses into a “conception of the good: a claim

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<sup>107</sup> I discuss the significance of having the three separate arguments (concerning meaning, bundling, and hierarchy) in section 6.7.3.

about the sorts of functions and interactions that belong together, and which properly change a relationship between two people into a capital-R Relationship, given an honorary title” (2017, p. 64). This is because bundling a particular set of rights and duties together only makes sense, claims Chambers, “from within a conception of the good that assumes that certain relationship practices should go together, and which prioritises unifying those practices over and above supporting them individually” (p. 65).

When the state then recognises this status, it endorses the conception of the good that says these relationship practices should belong together. This makes any political institution (i.e. a legal status plus a bundle of rights and duties) that recognises adult personal relationships incompatible with conceptions of the good that would not bundle relationship practices in the same way. Bundling therefore makes such political institutions *prima facie* non-neutral.

### **6.6.2 The Argument Concerning Hierarchy**

The opting-in requirement of state recognition enacts a hierarchy between marriage and non-marriage, which violates both equality and neutrality. (Chambers 2017, p. 57)

The third way in which the state recognition of marriage rests on values which are incompatible with some reasonable conceptions of the good, is by enacting a hierarchy. Chambers claims that the political institution of marriage (or alternative status) effectively ranks some relationships (those that have the status) higher than others (those that don't).

I think there are two stages to this claim. First, in virtue of the opt-in nature of a political institution of marriage (or alternative status) “the state withholds certain rights and duties from those who have not opted in to the relevant status, even if their relationships are otherwise identical” (Chambers 2017, p. 66). In other words, the state treats relationships that are alike differently, not because they involve different relationship practices (they don't), but because they have opted (or not) to receive a particular status. This can lead to a “practical” (p. 66) difference between relationships

with and without the status (for example, tax breaks) which might benefit the relationships that have opted in.

So far Chambers has shown that there is differential treatment, but it has not yet been shown that this differential treatment amounts to a hierarchy – that it ranks relationships that acquire the status higher than relationships without the status. The second stage makes this further claim. Marriage is “recognised by virtue of a formalised, state run or endorsed ceremony, one that is cast as the celebratory conferral of an honorific status” (2017, p. 66). It is through this ceremonial aspect that we can see that the state marks out those relationships that opt-in to the status as better or higher up the hierarchy. This looks as though the state is endorsing and expressing a positive value judgment about relationships that acquire the status – which would violate the fundamental aspect of the principle of neutrality. This hierarchy is “symbolic” (rather than practical) – it “gives those named relationships a veneer of state sanctioned respectability and approbation” (p. 66).

There are two types of relationships that are disadvantaged and discriminated against by this hierarchy: those that are eligible but choose not to opt in, and those that are not eligible. Chambers claims that “every form of marriage enacts discrimination” (2017, p. 66). The traditional form “discriminates between heterosexual and homosexual couples, but even reformed ... marriage discriminates between monogamy and non-monogamy, between sexual relationships and other relationships, between permanent and temporary relationships” (p. 66). This highlights the problems that ineligible relationships face – they are excluded from the status and its benefits. Yet even if we were to make marriage available to every type of relationship (monogamous and non-monogamous, sexual and non-sexual, permanent and temporary), the fact that you need to opt in to attain the status and the bundle of rights and benefits means that relationships that have not chosen to opt in to the status are still placed lower in the hierarchy, not receiving the rights, benefits, or approbation of the status.

## **6.7 Evaluating the Arguments for *Prima Facie* Non-Neutrality**

I have already provided reasons for thinking that the Argument from Meaning, situated at the second level of concern, does not necessarily show the political institution of marriage to be *prima facie* non-neutral (in section 6.3.2) because the institution does not necessarily have to reflect a comprehensive meaning. Here I focus on Chambers' arguments that are situated at the third level of concern, and which claim that any political institutions which involve state recognition of an adult personal relationship (e.g. marriage, civil union and the ICGU status) are *prima facie* non neutral. I aim to show that neither the Argument from Bundling nor the Argument from Hierarchy are successful.

### **6.7.1 Evaluating the Argument from Bundling**

There are two possible ways to read Chambers' claim that bundling makes a status into a conception of the good. The first reading is that bundling, wherever it occurs in regulation, makes any status into a conception of the good. This would imply that a political institution of marriage is just one instance of a general form of regulation that is *prima facie* non-neutral. The second reading is that bundling rights and duties etc. that relate to relationship practices (but not bundling in general) makes a relationship status into a conception of the good. We can show that both readings of this claim are false.

The first reading - that bundling always makes a status into a conception of the good - cannot be the claim that Chambers wants to make. All states - from the paradigmatically liberal to the most illiberal theocracy - bundle. It is a standard and unavoidable governance technique. If this made a state illiberal, then all states would be illiberal. Take contract law, for instance. When we sign a contract - and take on the legal status of 'contract holder' - a bundle of rights and duties relating to contract law and the judicial system are conferred on us (in addition to those that are stated in the contract). There is no reason to think that bundling makes the status of a contract holder into a conception of the good, or that state recognition of this status

amounts to an endorsement of a conception of the good. Bundling is simply a useful and efficient legal tool.

It must therefore be the second reading that Chambers intends – that bundling rights and duties, when they relate to relationship practices, makes a status into a conception of the good. The reason that it does this, according to Chambers, is because the bundle only makes sense from the point of view of a particular conception of the good – one which says that these relationship practices belong together.

It is unclear why Chambers thinks that this is the only point of view that is available. State action is open to multiple interpretations, and she has provided no reason to think that other possible interpretations are unavailable. Bundling relationship practices does not only make sense from the point of view of a conception of the good that views the related relationship practices as belonging together. There are alternative points of view that it also makes sense from. Once this has been shown, there is nothing left on which to base the claim that bundling makes the status into a conception of the good, or that state recognition of that status endorses a particular conception of the good.

Chambers acknowledges (but quickly dismisses) a possible response along these lines (one that shows there is an alternative interpretation of bundling). She notes that political liberals might claim that bundling is simply a “*convenient but not exclusive* way for people to access bundles of rights and duties” (2017, p. 65). In other words, bundling the rights and duties relating to relationship practices makes sense for reasons of efficiency, and not only from the point of view of a particular conception of the good (just like bundling the rights and duties that relate to contracts). Here I want to spell out this objection to the Argument from Bundling in more detail to show that it cannot be so easily dismissed.

We can see that bundling the rights and duties relating to relationship practices makes sense as an efficient policy for the regulation of personal relationships. Whilst it is true that people will have different views on how best to bundle their relationship practices, and will in fact bundle them in

different ways, it is however the case that many people do in fact bundle a particular set of relationship practices together within one core relationship. This is a (contingent) sociological fact. It is therefore efficient for the state to provide the rights and duties for these relationship practices in a bundle, for those that want it. It is worth noting though that if, in time, people tended not to bundle these relationship practices together, then the state may well lose its interest in providing rights and duties through that bundle (and associated status), as it would not be an efficient tool to do so.

It might be objected that this bundling of relationship rights and duties isn't particularly efficient because some people who opt to acquire the bundle will not make use of all of the relationship rights and duties that constitute that bundle. Putting them together, it might be claimed, only makes sense if people are expected to conform. Making these rights and duties available to these relationships might therefore be thought to encourage the individuals in those relationships to start participating in those relationship practices that these rights and duties relate to.

In order to make good on this claim, something more than an appeal to bundling is needed. There is no sense in which the bundle requires particular relationship practices to occur. The rights and benefits for certain relationship practices within the bundle (for example, parental rights or health benefits) will only come into play when required – when and if that particular relationship practice occurs. If that relationship practice does not occur in a particular relationship, then the right or benefit will never materialise. This is not a problem. There is no penalty for these relationship practices not occurring. For example if a couple that has gained a civil union or marital status do not have children, then they will not receive parental rights. If both partners work, and both partners have partner health benefits, then neither partner needs to use the other's entitlement, but it is still there.

In a similar vein it might be objected that bundling is not an efficient policy because some relationships that include many, if not all, of the same relationship practices are either ineligible for the status or will not opt to acquire the status. This again is not a strong objection. Acquiring a

relationship status is not the only way to acquire rights and duties that relate to these relationship practices. The state can (and does) recognise that these relationship practices can occur in other relationships (both those that are ineligible and those that don't opt in). The state confers rights and duties that concern, for example, property owning and child rearing outside of marriage (and other proposed statuses) as well as within it. Those who are married can obtain these rights and duties with people other than their spouse, civil partner, etc. Those who lack any relationship status can also attain these rights and duties without acquiring a status. Acquiring a status is just one option for obtaining these rights and duties among others. It is still efficient to enable the many relationships that do bundle these relationship practices together to obtain the bundle of rights and duties that relate to them, if they want to.

Having demonstrated that bundling makes sense for reasons of efficiency, and so not only from the point of view of a particular conception of the good, there is nothing left on which to base the claim that bundling makes a relationship status into a conception of the good, nor that state recognition of this status amounts to an endorsement of a particular conception of the good.<sup>108</sup>

Chambers dismisses the efficiency response by introducing the Argument Concerning Hierarchy. She is concerned by the fact that there are two ways to attain an identical set of rights and duties - via a status, and not via a status. She claims that the state's recognition of relationships that opt for the bundle "as marriages or civil unions" (or alternative) when it doesn't recognise relationships that acquire the same rights and duties in the alternative way, is "clearly recognition in the symbolic sense: recognition bringing with it approbation" (2017, p. 65). We can see here that the issue is not to do with *bundling*, but with the *status* that the bundle attaches to. This

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<sup>108</sup> Each particular right and duty would also need to be justified on neutral grounds in order to be included within the bundle. If some particular 'incidents' in current bundles cannot be justified on neutral grounds (for example, as would be the case if the marital bundle still included a right by a husband to his wife's labour) that would be reason to remove them from the bundle.



is because, as we have seen, Chambers thinks that having an opt-in status enacts a hierarchy – the third way in which she thinks political institutions for adult personal relationships are *prima facie* non-neutral.

I will argue in the next section that the Argument Concerning Hierarchy is also unsuccessful. As such it is an ineffective way of dismissing the efficiency response. It also seems to miss the point of the response. Chambers asks “if there are various ways to acquire rights and duties what else can the state be doing by attaching a special label to one of them” (2017, p. 65)? This is something that the state should not be doing “particularly if those labels are traditional and deeply resonant” (p. 66). The efficiency response has shown that the state isn’t necessarily attaching a ‘special label’ – it is simply utilising an efficient and convenient regulatory tool. The worry that these labels are traditional and deeply resonant seems to imply that Chambers is assuming this label is the marital one, and that it conveys a comprehensive meaning. I have already suggested (in section 6.3.2) that the marital label does not have to convey such a meaning, and additionally this worry would not apply if it was a civil union or ICGU label being used.

### ***6.7.2 Evaluating the Argument Concerning Hierarchy***

The first worry - that two relationships with identical relationship practices end up being treated differently in virtue of their choice to opt in to a status, or not - is addressed by the response to the *bundling* problem. If there is a legitimate reason to provide rights and duties that relate to a particular relationship practice, then people that perform that relationship practice should have access to those rights and duties. If these rights and duties are available both with and without the status, then they do have the required access.<sup>109</sup>

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<sup>109</sup> Chambers does argue that these rights and duties should apply by default (on an opt out basis) - so that no one misses out on the relevant rights and duties because they have failed to opt in - but I think that this is a slightly different point to the one being made here.

It might be objected that some relationships, despite having the same relationship practices, are unable to access the rights and duties through the status (because they are ineligible for that status for some reason). There may be a concern that these relationships are not treated equally because they can only access the rights and duties without the status. This would only be a concern if there was no legitimate (political liberal) reason for the eligibility restriction, and if accessing the rights and duties via the status brought with it exclusive, unjustifiable, benefits – i.e. if it brings state approval and honour.

This is the second worry: that the status is honorific and conveys approbation. This worry is generated by the claim that ceremonies that convey relationship statuses on people are both state run and celebratory. It appears that the state congratulates and approves of people opting in to statuses because they convey this status within a ceremonial setting, which in turn appears to put relationships that have acquired that status higher up the hierarchy of relationships. This is something that both ineligible relationships and eligible relationships that don't opt in face.

This worry again seems to be making the assumption that the status being conferred is marital, and that the legal status has to be conferred in a ceremonial setting. The obvious response to this worry is to recommend that the state no longer utilises ceremonial settings to convey relationship statuses, whatever they are labelled.<sup>110</sup>

### ***6.7.3 The Significance of Three: Meaning plus Bundling plus Hierarchy***

Chambers presents the tri-partite argument (concerning meaning, bundling, and hierarchy) initially against the political institution of *marriage* and then against *any* other political institution that recognises some type of adult personal relationship. She thinks that the combination of these three aspects

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<sup>110</sup> For example, the legal part (signing the marriage register etc.) could be done in a separate non-ceremonial setting, so that it is more like obtaining, for example, a drivers licence. If individuals then wanted an additional (non-legal) ceremony and celebration, they can do so.

within the political institution of marriage makes it particularly problematic for political liberals.

The first part (meaning) is concerned with marriage in particular, and suggests (so long as we think marriage will tend to retain some comprehensive meaning) that the state should have nothing to do with the institution of marriage, and in particular that it should not recognise it. If it has reason to regulate the romantic relationship, then it should do so via an alternative regulatory tool.

The second and third parts of this argument (bundling and hierarchy) are meant to tell against using any form of political institution (which will utilise a legal status and bundle of rights and duties to recognise particular adult personal relationships) to regulate adult personal relationships. If correct, this would provide a strong case for thinking that the relation the state currently bears to the romantic relationship is problematic, and would continue to be, so long as it uses a political institution to regulate (and as a result, recognise) it.

The preceding discussion has shown that the concerns regarding meaning, bundling, and hierarchy can be addressed. As such, the political institution of marriage, and (particularly) alternative political institutions (which all entail state recognition of adult personal relationships) do not look incompatible with political liberalism. This means that these political institutions look like viable options for the regulation of adult personal relationships, so long as there are independent reasons that justify the regulation and recognition of those relationships.

It becomes evident that it is this latter claim that Chambers wants to challenge. Her issue is primarily with the state recognition of adult personal relationships.<sup>111</sup> She does not think that there are liberal reasons to recognise adult personal relationships (of any kind, the romantic relationship included). To see that this is the case it will be helpful to look at the

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<sup>111</sup> The state recognition of other personal relationships – those not between adults – such as the relationship between parent and child could be recognised by the state still on Chambers' view.

comparison that she makes with unproblematic political institutions (for things other than adult personal relationships) that don't have all of three problem-causing features (meaning, bundling and hierarchy) at once.

For example, the state can legitimately recognise the status of a 'driver' and confer a bundle of duties on to people with this status, via the provision of driving licences (a completely un-ceremonial affair). Whilst you do not need to opt-in to this status in order for the rules of the road to apply, you do need to opt in in order to be able to drive legally. This status is "minimal and functional, and public reasons can be provided" for it (Chambers 2017, p. 68). The reason the state recognises the status of 'driver' is "not that driving is an inherently valuable activity or that there is some difference between a state recognised 'driver' and a mere person who drives a car; the reason is that the activity of driving itself is something that requires regulation if it is to be done safely" (p. 68).

My evaluation of the Arguments from Meaning, Bundling and Hierarchy suggest that the legal marital status (or alternative status) is (or at least could be altered to be) a lot more like the driver status than Chambers thinks. The state could convey the marital (or alternative) status and the associated bundle of rights and duties in a completely un-ceremonial way. This could be justified for efficiency reasons, whilst ensuring at the same time that anyone participating in relationship practices that warrant certain rights and duties also have access to these rights and duties without the status and bundle (if preferred). I think the key reason why Chambers does not see this as a viable option is because she claims that "relationships do not need state recognition if they are to be performed safely or in line with justice, and the state does not need to stipulate who counts as being in A Relationship" (2017, p. 68).<sup>112</sup> As such, she is suggesting that there is no reason for the

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<sup>112</sup> Chambers of course acknowledges that there are particular relationship practices that, for reasons of justice, need to be regulated. However, these can occur in all sorts of relationships (not just those eligible for certain statuses, and not just those that would opt in to a status). For this reason she claims that we need "laws against domestic violence, laws about distribution of property between partners in case of separation or dispute, laws about children" etc. that apply to all (2017, p. 68). These state directives would

state to recognise any adult personal relationship, let alone the romantic relationship.

## 6.8 Conclusion

Chapters Five and Six have explored three levels of concern regarding the political institution of marriage. I have argued that none of these arguments are successful. They give us no reason to be concerned about the state recognition of marriage. It therefore seems that the state is justified in regulating the romantic relationship via a political institution of marriage, so long as there is a legitimate, liberal reason for the state to regulate and recognise this relationship.

We have just seen that, for Chambers, it is a concern that there is no reason for the state to recognise the romantic relationship that is key. In Chapter Seven I draw out the implications of the anti-marriage position and show that there is in fact an underlying concern that there is no reason for the state to directly regulate the romantic relationship.<sup>113</sup> In Chapter Eight I provide an argument against this claim. I aim to draw on the insights of Part One to show why I think there are justice-based reasons for the state to directly regulate the romantic relationship. I discuss whether this also means that there is a reason for the state to recognise this relationship, showing that this depends on our understanding of what precisely state recognition consists in, at the end of Chapter Eight.

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directly regulate the relationship practices, and only indirectly regulate the adult personal relationships they occur in.

<sup>113</sup> I address the question of whether direct regulation and state recognition amount to the same thing in Chapter Seven, section 7.1.3 and in more detail in Chapter Eight, section 8.5.

## Chapter Seven

### The Underlying Complaint against Marriage

The preceding chapters have shown that there are three different levels of concern and a variety of different complaints against the political institution of marriage. They have also pointed to a range of different alternative proposals to replace the current political institution of marriage. Whilst this diversity is clearly not a problem in itself, it does leave open the question of whether there is a more fundamental, common and underlying complaint running through these arguments.

Whilst I have suggested that each individual level of concern can be addressed within a political liberal framework, this doesn't get us very far in answering the question of what relation the state should bear to the paradigmatic marital relationship (the romantic relationship). All that I have shown, so far, is that *if* there are legitimate, instrumental, public and neutral reasons for the state to directly regulate and recognise the romantic relationship, *then* the political institution of marriage is a regulatory framework that the political liberal state can consider utilising (as are alternative statuses such as civil unions).<sup>114</sup>

In order to consider whether there is an underlying complaint against the political institution of marriage that still needs to be addressed, and to get clearer on what implications the debate has for my guiding question, I am going to reframe this side of the debate and draw out the implications of the anti-marriage position. I begin by noting there are similarities between the various arguments considered in the previous two chapters, and show how these similarities point to three central ideas: (1) personal relationships; (2)

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<sup>114</sup> Questions would still remain as to whether the political institution of marriage is an effective way of regulating the paradigmatic marital relationship. Additionally, there are further complaints against the institution which haven't been considered here which focus on the purported in-egalitarian nature of the institution, which would need to be addressed. See Chambers (2017), Chapter 1.

the romantic relationship; (3) the distinction between *direct* and *indirect* state regulation. I then explain these three ideas in more detail.

I go on to identify and provide reasons for maintaining that there are two key claims that fall out of the various arguments against the political institution of marriage: first, that some personal relationships warrant direct regulation (via the creation of a distinct legal category); and second, that the romantic relationship does not warrant direct regulation (it does not warrant a distinct legal category). Identifying these two claims involves drawing on Brake's, Metz's, and Chambers' proposals for alternative regulatory frameworks for personal relationships, and on the discussion of the previous two chapters.

I bring the chapter to a close by identifying an underlying complaint against the political institution of marriage: that the political institution of marriage creates a distinct legal category that corresponds to the romantic relationship, when that relationship does not warrant a distinct legal category. This claim, if true, would suggest that the state should not directly regulate the romantic relationship, and that there should not be a political institution of marriage.

### **7.1 The Three Central Ideas**

Each of the arguments against the political institution of marriage considered in Chapters Five and Six exhibited a variety of different concepts and ideas: they characterised the political institution of marriage differently; they focused on different political liberal principles; and pinpointed different features of state action that they took to be problematic. Despite this variety, certain commonalities can be drawn out.

The first commonality is that each argument treats marriage, in its current form, as a political institution constituted by a legal status (the marital status) and a (large) set of associated legal rights and duties. They each take this institution to provide state recognition of the romantic relationship (the paradigmatic marital relationship), and take issue with this.

Each author (Brake, Metz and Chambers) also acknowledges that there are legitimate political liberal reasons for the state to regulate certain personal relationships. They all, after all, aim to provide alternative proposals for such (legitimate) regulation.<sup>115</sup> They each also would seem to accept that the romantic relationship might be legitimately (indirectly) regulated under their proposals, but they do not appear to think that the state should pay any particular attention to the romantic relationship.

This appears to be, at least in part, due to the recognition of a plurality of conceptions of the good, which in turn leads to a plurality of views about which personal relationships are valuable, and how best to structure one's life.. Some will choose and value romantic relationships, others will not. Whether or not someone chooses a romantic form of personal relationship, these authors appear to claim, should be of no particular interest to the state.

Bringing these commonalities to the fore helps us to identify three central ideas at play within these various arguments: (1) personal relationships; (2) the romantic relationship; (3) the distinction between direct and indirect regulation. I will explain each of these in more detail below.

### ***7.1.1 Personal Relationships***

In this context, personal relationships typically encompass those relationships that we have with our friends, lovers and family members. A wide variety of different relationship types fall under the 'personal relationship' heading but there are some typical characteristics that most personal relationships are thought to involve. They will all, for example, "involve some degree of mutual regard, personal disclosure, and particularized knowledge" as well as "material and emotional mutuality" (Wasserman et al 2016, Section 3.1).

In the Introduction to this thesis I introduced a way of thinking about relationships which broke them down into four broad categories: first, the people involved; second, the structure of the relationship; third, the purpose or function of the relationship; and fourth, the typical things that occur

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<sup>115</sup> I will present these accounts in more detail in section 7.3.



within the relationship. This analytical tool will help us to identify the nature of personal relationships a little further.

First, personal relationships can be between individuals of any age and any sex. They include those relationships between parents and children, siblings of any age, as well as adult friendships and romantic relationships. Whilst friendships and loving relationships are generally thought to require equality of some sort between participants, this is not the case for many familial relationships, and it is disputed what kind of equality is required (whether it is equality of status or simply equality of respect for instance).<sup>116</sup>

Second, personal relationships involve a minimum of two people, but there is no set maximum – although an individual's capacity to maintain a personal relationship may limit the number they can successfully have. All personal relationships tend to be enduring, and are voluntary in the sense that they are un-coerced. We (typically) choose our own friends and lovers, and what type of relationship to have with them. Whilst we don't choose who our family members (or at least, blood relations) are, we can voluntarily choose whether or not to have a personal relationship with them.

Third, personal relationships don't have a typical, unified purpose or function as such. Some (non-personal) relationships have clearly defined purposes and functions. For example, the purpose of the relationship between a shopkeeper and her customers, is centred on the buying and selling of goods. Personal relationships are not (necessarily) like this. They might involve many different purposes and functions, or they might simply centre around the particular other(s) in the relationship. It might only be because of the individual in question (rather than my need to, for example, buy or sell goods) that I am motivated to form a personal relationship with them. This could be due to a number of reasons: mutual attraction, liking, caring, etc.

Once a personal relationship has been formed the participants will however take on particular roles, and the associated rights and obligations that attach

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<sup>116</sup> See Wasserman et al 2016, Section 3.1.

to those roles, for each other. The roles that we associate with personal relationships include (but are not limited to) that of a friend (whether close or casual), a romantic partner, a parent, and a sibling etc.<sup>117</sup>

Fourth, different personal relationships will involve numerous different typical activities, depending on the type of personal relationship that it is and the role being fulfilled within it. Parents and children will tend to do different things compared to adult friends. However, these activities will usually involve spending time together, and doing things together.

Generally personal relationships do tend to involve intimacy to a greater or lesser extent which means that the participants will know each other, and know things about each other. These relationships also generally involve emotional bonds: the participants often love each other, and care about each other. Both of these features mean that participants in a personal relationship often care for each other and come to each other's aid and support in different ways (emotionally, materially etc.).

### ***7.1.2 The Romantic Relationship***

The romantic relationship, as identified in Part One, is a personal relationship in which the participants play the role of a romantic partner for each other. In Chapter Four I argued that this role is made up of the following constitutive norms:

- (1) Romantic partners should love one another, and act in ways that express that love.
- (2) Romantic partners should share the experiences that are central to their lives and accommodate these things within a joint life.
- (3) Romantic partners should take joint responsibility for the central aspects of each other's well-being.
- (4) Romantic partners should trust one another deeply.

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<sup>117</sup> Recall there is a difference between biological and normative familial relationships (see Chapter Three) – I am concerned here with the normative.

It is this relationship that is typically taken to warrant the legal marital status (the relationship that I have termed the ‘paradigmatic marital relationship’), and which the institution of marriage (whether political or not) is meant to ‘fit’.<sup>118</sup>

### ***7.1.3 The Distinction between Direct and Indirect State Regulation***

To put it very roughly, regulation occurs when the state imposes some sort of policy or rule, and some form of activity, object etc. is captured under it. We can identify a variety of different types of regulation. Legal rights, taxation, criminal laws and state sponsorship are just four varieties of state regulation on the long list of possibilities.<sup>119</sup> An important distinction which I want to draw attention to, is between *direct* and *indirect* forms of state regulation (both of which can involve any type of regulation – law, tax, etc.), which I will explain in more detail below.

As already stated, it is the state *recognition* of marriage that Brake, Metz and Chambers take issue with. State recognition is clearly a form of state regulation, but what exactly it consists in is unclear. Chambers defines the state recognition of marriage in the following way: “a marriage regime recognises marriage by applying a *bundle* of rights and duties to married people *because* they are married” (2017, p.142) – because they have attained the legal marital status. Recognition doesn’t have to involve a bundle of rights and duties, though. Brake’s Minimal Marriage is an example of state recognition that rejects the bundling feature, and can convey a single right or duty with the status. It isn’t obvious that state recognition always has to involve a status either. In Section 6.7.3 we saw that Chambers accepts some instances of state recognition. The examples she offers include the state recognition of drivers and employers. Whilst it might seem appropriate to say that there is a legal status of ‘driver’, where

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<sup>118</sup> By which I mean the institution should be shaped by the relationship, and not the other way around, as discussed in Section 1 of the Introduction.

<sup>119</sup> It is unclear whether other state actions, such as providing incentives (for example, building leisure centres and providing subsidised public transport on the weekends might incentivise people to keep fit and healthy), also count as ‘regulation’ but if they do then this list could be significantly longer.

there is a process by which one has to obtain a license in order to acquire this status, this seems less appropriate in the employer case. In this case, as Chambers states, “the state sets out grounds on which someone becomes an ‘employer’” (2017, p. 68). It is the state definition of what counts as a ‘driver’ or an ‘employer’ that looks key.

Whilst they all object to state recognition of marriage, only Chambers objects to the state recognition of adult personal relationships. Brake and Metz both propose alternative frameworks that would provide state recognition – just to a different category of relationship. Due to this lack of clarity and consensus surrounding state recognition, and because I think it aids the understanding of the debate surrounding marriage, I will reframe this debate using the terms *direct* and *indirect* regulation.<sup>120</sup>

Direct regulation occurs when the state creates a distinct legal category for a particular thing, and puts in place regulation (whether it is a law, tax, right, etc.) specifically for that legal category. This regulation will (among other things) specify what conditions something must meet in order to count as an instance of the legal category, and what legal rights, duties, and powers etc. attach to it. The following examples are not intended to be an exhaustive list, but rather to demonstrate the huge variety of things that are regulated directly.

First, there are distinct legal categories created for particular roles that people can occupy. For example, there are distinct legal categories which correspond to political roles such as ‘judge’ and ‘citizen’. These roles are legally constructed, and the people that occupy them acquire particular legal status, powers, rights, duties etc. in virtue of occupying those roles. Another example is of the distinct legal categories that correspond to professional roles where a license has to be obtained, such as that of a ‘doctor’ or a ‘hairdresser’. There are also other roles that don’t require licenses, such as

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<sup>120</sup> Whilst I think it may be the case that direct regulation just is state recognition, it isn’t clear that this is quite what anti-marriage theorists have in mind. State recognition (as they use the term) is however at least an instance of direct regulation. This is discussed further in Chapter Eight, section 8.5.

that of ‘employer’, that also have corresponding legal categories, and which feature in employment laws and regulations.

Second, there are distinct legal categories that are created for particular objects. For example, the state directly regulates wine by having a corresponding legal category that specifies what legally counts as ‘wine’, and laying down the law surrounding its production and sale.<sup>121</sup> Another example of the direct regulation of objects can be found in building regulations. These regulations will specify what counts as a ‘domestic dwelling’ or ‘stairs’, for example, and will stipulate the standards that the objects that fall under these categories have to meet. Other objects have corresponding legal categories in order for the state to tax them (such as other alcoholic drinks and cigarettes).

Third, there are activities which have corresponding legal categories. Disposing of rubbish (‘tipping’) and cycling, for example. These activities have their own legal categories, and there are laws which stipulate when and where these specified activities are or are not allowed (tipping is only allowed in designated waste sites, and cycling is not allowed on certain roads or footpaths).

Indirect regulation on the other hand occurs when something is regulated, but there is no corresponding legal category. For example, the activity of gardening and garden rakes are indirectly regulated. There are no corresponding legal categories of ‘gardening’ or ‘garden rakes’. However, this activity and object are still regulated. For instance, I cannot do my gardening in the middle of the night if this involves using a very loud chainsaw. This would constitute a disturbance of the peace, and so the activity of gardening is indirectly regulated by the criminal laws prohibiting breaching the peace. I am also not at liberty to do anything I wish with a garden rake. Hitting someone over the head with a garden rake would count

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<sup>121</sup> See, for example, Regulation (EU) No 1308/2013 of the European Parliament and of the Council which can be found at <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32013R1308>.

as assault. As such, this object is indirectly regulated by laws prohibiting assault.

It will be useful to clarify here that indirect regulation also occurs when something is regulated in virtue of falling under an umbrella category (which is in itself directly regulated). To illustrate this, imagine the umbrella category is a genus, and that there are different species that fall under it. The genus is directly regulated when there is a corresponding legal category. The species that fall under this genus are indirectly regulated by the regulations that pick out the genus' legal category when there are no further distinct legal categories that correspond specifically to those species.

Consider, for instance, dogs. Dogs, and activities such as breeding dogs, are directly regulated. Most individual breeds of dog are indirectly regulated by the laws and regulations that pick out the legal category 'dog'. Some individual breeds are however directly regulated, and have their own corresponding legal category – pit bulls for instance, which are banned by name in the UK.

When it comes to disputes about regulation, it is important to get clear on what exactly is being disputed. It is important to distinguish between rejecting a particular form of regulation and rejecting regulation in general. It might be the case that in some cases direct regulation is inappropriate and unjustified, whereas indirect regulation is appropriate and justified.

Additionally, showing that there are reasons for the state not to make use of a particular type of regulation (law, tax, etc.) when directly regulating something is not (necessarily) the same as showing that there are reasons for the state to stop directly regulating that thing. An argument that claims, for example, that Class C drugs should not be directly regulated by criminal law is not an argument against the direct regulation of Class C drugs by other regulatory means (for example, via high levels of VAT). There is still a reason to have a distinct legal category of Class C drugs.

## 7.2 Two Underlying Claims

I think that there are two claims which underlie the anti-marriage position. These claims are implications of each of the various political liberal arguments against the political institution of marriage, and the alternatives proposed in response. Each author (Brake, Metz and Chambers) thinks that there are some personal relationships that warrant direct regulation. This gives us our first claim:

*The Direct Regulation Claim:* the liberal state has compelling reasons to directly regulate some personal relationships, and so it is appropriate for the state to create a distinct legal category corresponding to those relationships.

The second claim maintains that the romantic relationship is not something that warrants direct regulation.

*The Romantic Relationship Claim:* the liberal state does not have compelling reasons to directly regulate the romantic relationship, and so it should not create a distinct legal category that corresponds to it.

If the Romantic Relationship Claim is true, then we can immediately see why a political institution of marriage is thought to be problematic. Through the institution, the state (apparently unjustifiably) directly regulates – and so creates a distinct legal category corresponding to – the romantic relationship. In what follows I aim to show that these two claims do in fact underlie the various arguments against the political institution of marriage.<sup>122</sup>

## 7.3 The Direct Regulation Claim

In this section I will explain which personal relationships are considered to warrant direct regulation by Brake, Metz, and Chambers, and why. This will both provide evidence for the suggestion that each of these authors can be

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<sup>122</sup> I do not argue for the truth (or falsity) of either claim in this chapter. I endorse the Direct Regulation claim, but I challenge the Romantic Relationship Claim in Chapter Eight.

understood to be making the Direct Regulation Claim, and help us to flesh out this claim in more detail. What becomes clear is that the state needs to have some compelling – political liberal – reason to directly regulate a personal relationship and create a corresponding legal category.

### ***7.3.1 Brake's Adult Caring Relationships***

For Brake, it is adult caring relationships that warrant state recognition, and therefore direct regulation. Her proposed legal framework of minimal marriage would directly regulate these relationships. Any 'species' of adult caring relationships (close friendships, adult care networks, romantic relationships, etc.) would be indirectly regulated under this framework. She focuses on the value of adult caring relationships and claims that they are primary goods, and as such, subject to claims of justice. It is this that warrants the creation of a distinct legal category for adult caring relationships.

Adult caring relationships are relationships in which the individuals “know one another, take an interest in one another as persons, and share some history” (2012, p. 174). Crucially they involve “attitudinal care” (p. 174) - the participants have an attitude of care and concern for each other. These relationships can also (but don't necessarily) involve “material caregiving” which Brake takes to include things like “basic tending such as feeding and dressing, or activities designed to cheer or stimulate the cared-for such as grooming, playing games or chatting” (p. 174). These are things that are usually required by a dependant and which can be done by a paid caregiver.

Brake thinks that adult caring relationships are primary goods. She claims that they are essential both for the development and exercise of our two moral powers, and for pursuing particular conceptions of the good. Relationships are the context in which people tend to develop their moral powers (it is hard to do it in isolation) and “provide psychological, emotional, and even health benefits that enable parties to pursue their varied goals” (2012, p. 177). In addition to this, she claims that adult caring relationships are linked to (and can possibly promote) self-respect. Being in a relationship with another person can help us to develop a sense of our own



value because they involve another person, who knows us particularly well, and values us for who we are. This in turn can help us to feel that our life plans are valuable.

Adult caring relationships are extremely valuable to us as political persons. Yet, they are not the kinds of things that a state can distribute. Brake introduces the Rawlsian distinction between *social* and *natural* primary goods to explain this. She claims that adult caring relationships are natural primary goods, and that they are analogous to the primary good of self-respect in this way.

Natural primary goods include “health and vigour, intelligence and imagination” (Rawls 1971, p. 62). Whilst these are clearly things that a political person would want and need, they are not the kinds of things that the state can distribute (because they are natural, not social goods). Social primary goods on the other hand are the kinds of things that the state can control and distribute. “They are social goods in view of their connection with the basic structure; liberties and powers are defined by the rules of major institutions and the distribution of income and wealth is regulated by them” (p. 92).

Self-respect (understood as ‘self-esteem’ on a Rawlsian picture) is a natural primary good. This is because it is an *attitude*: it includes valuing oneself and one’s conception of the good, as well as a “confidence in one’s ability, so far as it is within one’s power, to fulfil one’s intentions” (Rawls 1971, p. 440). In virtue of being an attitude, self-respect is not the kind of thing that can be distributed by the basic structure (unlike income for example).

However, there are things that the state can control and which help to ensure that self-respect is developed and maintained. These things are the *social bases of self-respect* – and these are considered to be social primary goods. The social conditions (or bases) of self-respect are “those aspects of basic institutions normally essential if citizens are to have a lively sense of their worth as persons and to be able to advance their ends with self-confidence” (Rawls 2003, p.59). They include things such as “the institutional fact that

citizens have equal basic rights, and the public recognition of that fact” (p. 60).<sup>123</sup>

Brake claims that adult relationships are similar. They are natural primary goods with social bases that are social primary goods.

Just as the social bases of self-respect are the social primary goods related to self-respect, so there are social primary goods related to caring relationships that can be distributed and objectively compared: the social bases of caring relationships, that is, the social conditions for their existence and continuation. (Brake 2012, p. 176)

A legal framework is required to protect and support these relationships because even though people might form caring relationships without such a framework, the fact that adult caring relationships are primary goods makes it a matter of justice for the state to ensure that the social bases of these relationships are equally distributed, especially as the construction of the basic structure can affect the “type and distribution and the number of caring relationships” (Brake 2012, p. 181). In order for adult caring relationships to be formed and maintained, for example, the participants tend to need to be able to spend time together and do things together. This means that “institutional design should attend to the social conditions for such access” (p. 182) which will require things like immigration rights to cross state imposed borders.

The social bases of adult caring relationships are the rights and legal frameworks that “designate and enable day-to-day maintenance of relationship” (Brake 2012, p. 176), and it is these social bases that Brake’s proposed minimal marriage would distribute. She proposes that this direct regulation of adult caring relationships would retain the use of a legal status.

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<sup>123</sup> Rawls makes the distinction between natural and social primary goods in *A Theory of Justice*. He does not continue to make use of this particular distinction in his later work, although he does still make a distinction between self-respect and its social conditions: In *Justice as Fairness* he makes the distinction between the attitude of self-respect, which he views as a “fundamental interest” (2003, p. 60n) of citizens (citizens have “fundamental interests in developing and exercising their moral powers and in pursuing their particular (permissible) conceptions of the good” (p. 192) – self-respect is a part of this), and the social bases of self-respect which he simply terms “primary goods” (p. 60).

Even though it would still retain the marital label, this status would now correspond to adult caring relationships. The set bundle of rights and duties that attach to the current marital status would be removed. Instead, people in adult caring relationships would be able to pick and choose from a range of rights and duties (a subset of those that usually attach to marriage) and decide who they would like to exchange each individual right and responsibility with. This system would enable individuals to be minimally married to more than one person, and to decide for themselves which marital rights and responsibilities they will exchange with each person. This could be done either “reciprocally or asymmetrically” (p. 157) for each marital right.

To sum up, Brake’s view proposes that a distinct legal category should be created which corresponds to adult caring relationships. The compelling reason that the state has for doing so (and therefore for directly regulating these relationships) is that these relationships are natural primary goods, and have social bases which are social primary goods (which means that the state can and should distribute these social bases as a matter of justice). Minimal marriage utilises particular types of regulation (state recognition via a status, and un-bundled rights, duties etc.) in its direct regulation of adult caring relationships.

### ***7.3.2 Metz’s Intimate Caregiving Unions***

For Metz, it is intimate caregiving relationships that should be recognised and therefore directly regulated. She claims that there are “very good reasons for the liberal state to recognise and protect intimate caregiving” (2010, p. 120).<sup>124</sup> She proposes an alternative regulatory framework to the current political institution of marriage which create a distinct legal category for this type of relationship, which she terms an “Intimate Caregiving Union

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<sup>124</sup> In addition to the argument presented here Metz claims that the arguments often put forward in defence of a political institution of marriage (arguments that focus on “care of children and partners, property rights, labour, and material resource distribution”) are in fact arguments in favour of the state regulating intimate caregiving in whatever relationship it occurs in (2010, p. 48).

(ICGU) Status” (p. 113). This would have a similar structure to the political institution of marriage (using similar types of regulation – a status eligible individuals can register for and a bundle of rights and duties) but all intimate caregiving relationships would be eligible for it.

[An ICGU status] would afford legal recognition from which would flow various legal presumptions (lines of rights and responsibility), protection (that is, from certain types of intrusion), and material benefits (tax benefits). (pp. 134-5)

An intimate caregiving relationship is characterised by Metz as having three defining features. The first feature is the private nature of these relationships. They are private in the sense that the “day-to-day interactions ... are not subject to direct regulation by public authorities” (2010, p. 121). This allows for diversity within these relationships and is important because it enables both the giving and receiving of care to be tailored to the individuals involved in that particular relationship, “in accordance with their particular needs, desires, and ... power dynamics” (p. 121).

The second feature of intimate caregiving relationships is that they involve “deep (to the point of life sustaining), diverse (material, emotional, physical, and spiritual), particular, and non-contractual ‘terms’, ties, and motivations” (Metz 2010, p. 121). This highlights the complexity of these relationships, and in particular, the numerous ways in which people interlink themselves with one another – materially, emotionally, physically and spiritually.

The third defining feature is the existence of an exchange of “diverse and often incommensurable goods and care – psychological, social, emotional, physical, spiritual ... financial and material” (Metz 2010, p. 122). This exchange is however “unpredictably, if ever, strictly reciprocal” (p. 122). This means that whilst reciprocation can often be expected, it isn’t determined when, or in what kind, this reciprocation will occur, and it is not guaranteed.

Why should such relationships be of particular interest to the state? Metz notes the particular value of such relationships for both the individuals involved in them, and for the society that they are found in. For example, intimate care aids an individual’s development and flourishing in numerous

ways, and the relationships that it occurs in provide the space for people to discover “new and possibly better ways of living” (2010, p. 124) that others could then adopt.<sup>125</sup>

However, as we saw in Chapter Five it is not the value of intimate caregiving that provides reasons for treating the relationships that involve it as suitable for direct state regulation and recognition on Metz’s account.<sup>126</sup> This is because the value of such relationships cannot give us a good enough reason to differentiate them from other caring relationships (such as friendships) which are also valuable in a similar way, and yet are not thought to require direct state regulation.<sup>127</sup> Rather, as briefly explained in section 5.3.2, it is the particularly risky nature of intimate caregiving that provides the justification for this type of state involvement.

It is the vulnerability that these relationships can lead to which differentiates them from other valuable caring relationships. Intimate caregiving relationships are “characterised by greater degrees of material and physical vulnerability, dependency, and risk than typical, nonintimate caregiving friendships” (2010, p. 126).

All caregiving is risky. This is because when we provide care for someone, we use our own physical and material resources. These are the same resources that we might have otherwise used to care for ourselves. As such, providing care can leave the carer in a position of “physical and material vulnerability” (2010, p. 126). This is clear in the case of providing care for vulnerable people, such as children or the elderly, where no reciprocal care or exchange of resources would be expected from the care receiver. Once the carer has used up her resources on the care receiver, that is it. Metz thinks that caregiving is also risky between equals however. This is because of the nature of the reciprocation in intimate caregiving relationships. Whilst

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<sup>125</sup> These are similar to the benefits Brake highlights for adult caring relationships.

<sup>126</sup> In Chapter Five, section 5.3.2, I introduced Metz’s account of risky intimate care in my response to Brake’s Public Reason Argument.

<sup>127</sup> Metz and Brake disagree on this point (Brake’s minimal marriage would be available to adult friendship networks).

it may generally be expected that some sort of reciprocation will occur, it may not be in kind and could occur at a much later date. As such,

the unmonitored, unpredictable, and often incommensurable nature of caregiving means it involves serious material, physical and psychological risk, even among [equally] able-bodied, and able-minded adults. (2010, p. 126)

This already substantial risk of vulnerability is further exacerbated in *intimate* caregiving relationships. This is because the caregiving that occurs in such relationships is “unpaid, unrecognised, and undervalued, and not seen as producing ‘marketable’ skills” (Metz 2010, p. 126). This indicates that Metz is particularly concerned about “systematic vulnerabilities” (p. 127). Not only does intimate caregiving make us vulnerable as a result of lacking the resources required to look after ourselves in particular instances of needing care; but it also makes us vulnerable in relation to social structures within our society which do not recognise or value caregiving, and this can cause long-term harm. For example, intimate caregiving can be a full-time occupation, meaning that caregivers cannot enter the workforce, but also do not have any access to other forms of financial support. The experience of caregiving would also be seen as irrelevant if the caregiver was to then attempt to enter the workforce, making it harder to find employment.

The liberal state has an interest in intimate care being done well (if it is done privately in intimate caregiving relationships then the state does not have to provide it). It also should want the “benefits and burdens” of intimate caregiving (the advantages and risks identified above), which it contributes to producing, to be “distributed justly” (Metz 2010, p. 127). In order to do this it should provide some level of insurance against these identified risks. Metz thinks that it is the state that is the appropriate body to provide this insurance because, in a liberal society, it is the state that is “charged with the task and tools of protecting citizens from physical harm and securing a framework for the just distribution of the costs and benefits of political life” (p. 127).

Her proposed ICGU status would directly regulate (and recognise) intimate caregiving relationships. It does this by creating a distinct legal category that corresponds to these relationships. On her proposal all intimate caregiving relationships would be eligible for the ICGU status, and a set bundle of rights, duties etc. would attach to it.<sup>128</sup> Particular ‘species’ of intimate caregiving relationships (romantic relationships, parent-child relationships etc.) would be indirectly regulated by the ICGU status.

It is clear from Metz’s account that she considers vulnerability of individuals as something that the state should be particularly concerned about. But vulnerability to what exactly? Not all vulnerabilities are of state concern. To illustrate, notice that whilst Metz includes the exchange of “psychological, social, emotional, physical, spiritual ... financial and material” goods and care in her characterisation of intimate caregiving relationships, she only includes the resulting “material, physical and psychological risk” as potential reasons for state involvement in those relationships (2010, p. 126). Presumably, however social, emotional and spiritual resources are used up through intimate caregiving in a similar way to the physical, material and psychological resources, and are also subject to un-guaranteed reciprocity in personal relationships. This leads to the question of why material, physical and psychological vulnerabilities are considered to be of legitimate state concern, whilst other (for example, social, emotional and spiritual) vulnerabilities are not.

Looking back to Chapter Five (Section 5.1) we can see why this is the case. Physical, material and psychological resources are clearly going to be included in the list of things needed to develop and exercise a conception of justice and a conception of the good, and to pursue a particular conception of the good. They are primary goods. People need to have a basic level of health, a certain level of income and wealth, and self-respect in order to function as free and equal citizens. The state is therefore, as a matter of

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<sup>128</sup> She views this as a better alternative to the political institution of marriage because it can recognise and support *all* intimate caregiving relationships, and avoids the purported use of an ethical status (the concern highlighted by Metz’s Neutrality Argument in Chapter Six).

justice, concerned about the equal distribution of these resources. It can (and should) distribute income and wealth, and the social conditions for health and self-respect, according to the two principles of justice.

If physical, material and psychological resources are threatened by particular personal relationships, then this provides a reason for the state to mitigate against this, to ensure a just distribution of social primary goods is achieved or maintained. However, as mentioned above, it is not a simple lack of physical, material and psychological goods that concerns Metz, or that warrants direct state regulation and recognition. Metz wants to create a distinct legal category for intimate caregiving relationships because of their particular riskiness, which she identifies as the risk of individuals being exposed to *systematic* vulnerability.

When we consider intimate caregiving in isolation we can recognise its risks. We give up material, physical and psychological resources, and might not have those resources reciprocated, leaving us potentially vulnerable. However, it might be thought that these risks could be relatively easily mitigated by the individual, and that the state does not need to directly regulate intimate caregiving in order to ensure a just distribution of these resources. Individuals after all should have access to employment, and so should be able to generate the means to pay for material and physical resources if needed. It might be assumed that individuals also have other caring relationships in which they could be the care receiver – making up the lost resources (including psychological resources). It might also be thought that autonomous individuals should be able to recognise these risks, and be responsible for mitigating them in some way. In other words, the primary goods should already be secured via other laws and regulations of the basic structure, and the state does not need to do anything further.

What Metz's account of intimate caregiving relationships highlights is that this is the wrong perspective to take when considering such relationships. Intimate caregiving does not simply occur in isolated relationships, unaffected by the outside world. Intimate caregiving relationships exist in our social world, and are affected and influenced by its social and political



structures. What Metz highlights, is that these influences and affects lead to further vulnerability: vulnerability that is not due to intimate caregiving alone, but due to the fact that it occurs alongside other social and political structures and norms.

We have seen that Metz lists four reasons why intimate caregiving is particularly risky, and which contribute to it leading to systematic vulnerability: it is unpaid, unrecognised, undervalued and it is not viewed as producing marketable skills. We can see that this isn't due to the intimate caregiving in itself. This is due to social and political structures and norms surrounding both caregiving, and such things as employment and what is viewed as valuable and marketable within society. It is not due to the nature of caregiving in itself that causes systematic vulnerability (as is the case with the immediate lack of resources), but rather it is due to the social facts surrounding caregiving. If caregiving was 'paid',<sup>129</sup> recognised, valued and viewed as producing marketable skills in our society then it would not lead to systematic vulnerability. This is something that the individual themselves cannot mitigate, as they cannot easily change the social and political structures and norms causing this vulnerability.

It is due to social and political structures that intimate caregivers - who are already doing valuable *work* - have to look for other employment in order to gain income. It will be harder for intimate caregivers to find this employment because the skills that they have developed through their intimate care are not viewed as marketable. If intimate caregivers do manage to find employment, the intimate care that they do will be undervalued and unrecognised – as such, it will not count as a legitimate reason for paid leave, for example. It is due to the interaction of all of these

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<sup>129</sup> Exactly how, and when, care should be 'paid for' in intimate caregiving relationships would have to be carefully worked out. It might not always be appropriate as it might threaten or change the nature of the personal relationship (payment instigates contractual features into a typically non-contractual relationship). However, some sort of financial state benefit, or the entitlement to some of the income earned by other relationship members, might avoid this concern. The recognition and valuation that care is the type of thing that can have market value outside of these relationships is however vital.

different things that intimate caregivers are acutely, and systematically vulnerable.

I have cashed out this explanation of vulnerability in terms of Rawlsian primary goods. There are of course those who disagree with the Rawlsian focus on social primary goods as the currency of egalitarian distributive justice. The “Capabilities Approach” for example suggests that we shouldn’t be solely focused on resources (like social primary goods), but rather think about how these resources contribute to what an individual can achieve, something which is also affected by “objective possibilities, the natural environment, and individual capacities” (Gosepath 2011, Section 3.8). Whilst the proper currency of egalitarian justice is debated, whatever currency you subscribe to, I think you would be hard pushed to claim that systematic physical, material and psychological vulnerabilities were not a matter of legitimate state concern, especially considering the harm that an individual could come to without these resources (or at least without access to these resources, or to what these resources enable).

To conclude, then, the preceding discussion demonstrates that, according to Metz, the existence of systematic material, physical and psychological vulnerability is a compelling reason for direct state regulation.<sup>130</sup> She has shown that intimate caregiving unions can create systematic material, physical and psychological vulnerability, and this is why they warrant direct regulation. The particular type of direct regulation that she proposes is her ICGU status which would also provide recognition (on her account).

### ***7.3.3 Chambers’ Relationship Practices***

For Brake and Metz it has been easy to identify what personal relationship they consider to warrant direct regulation, because they each propose

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<sup>130</sup> There is a growing literature in legal theory on vulnerability, led by the work of Martha Fineman (2008). This challenges the liberal assumption that citizens should be conceptualised as autonomous beings, and highlights the fact that we are all vulnerable and dependent in many ways, suggesting that our legal and political theories need to recognise this. This literature develops a specific meaning for the term and concept of ‘vulnerability’ which I am not using here.

alternative regulatory frameworks that provide direct regulation for a particular class of personal relationships (adult caring relationships for Brake, and intimate caregiving relationships for Metz, warrant corresponding legal categories). Things aren't quite so clear cut when it comes to Chambers because her alternative proposal of a marriage-free state defends direct regulation of "relationship practices" (2017, p. 147).

A relationship practice is:

an activity or area of life which is carried out in a personal relationship ... [including] property ownership, financial interdependence, emotional interdependence, care, parenting, cohabitation, next-of-kinship, and sexual intimacy. (Chambers 2017, p. 147)

In the marriage-free state (where only private, non-legal, marriage ceremonies would be allowed) these relationship practices would be directly regulated through an alternative type of regulation - a series of piecemeal, practice-based, default (opt-out) "state directives" (2017, p. 144) which each pick out a separate legal category corresponding to the separate relationship practices. The personal relationships that these practices happen to be a part of would be indirectly regulated by the state directives that directly regulate the relationship practices.<sup>131</sup>

In her book, Chambers doesn't provide fully worked out arguments for why each of the identified relationship practices (property ownership, parenting, caring, etc.) warrant direct state regulation.<sup>132</sup> She acknowledges that for each there would need to be individual arguments to "identify each area of state interest and to specify what the just regulations should be" (2017, p. 148). We can however see from her work that systematic physical, material,

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<sup>131</sup> This indirect regulation is more like the regulation of gardening, than the regulation of most individual breeds of dog.

<sup>132</sup> Chambers acknowledges and endorses Brake's and Metz's claims that the state should be involved in regulating caregiving because it is "a primary good essential to human flourishing that nevertheless brings with it risks and vulnerabilities" (2013, p. 135), but rejects both ICGU statuses and minimal marriage as the model for regulating care. We can see from the list of relationship practices that care is just one practice among many that Chambers thinks warrants direct regulation.

and psychological vulnerability is again (as with Metz) of key concern, and would provide a sufficient reason for direct state regulation.

We can see this in particular in an example from the Law Commission of England and Wales which concerns the relationship practice of financial interdependence. She presents the example whilst arguing against status-based models of regulation which entail state recognition. Her concern is that such models of regulation would still leave people vulnerable in unacceptable ways.

Take the position of cohabitants who have children and have been living together for a long time. The mother stays at home to look after the children and has no real prospects of re-entering the job market at a level that would enable her to afford the child-care that her absence from home would require. ... In order to obtain any long-term economic security in case of the relationship ending, she would first have to persuade him that he should take steps to protect her position. It might well be that he is quite happy with the status quo, which favours him.

Even if she were able to overcome this initial hurdle and persuade her partner that something should be done, they would then have to decide what steps were appropriate. It might be thought that the obvious answer is that they should marry. But research suggests ... that many cohabitants think it wrong to marry purely for legal or financial reasons. The alternative would be for them to declare an express trust over their home or enter into a contract for her benefit. However, such arrangements may be complex and require legal advice. The couple may simply conclude that the issue is not sufficiently pressing to take any further, that they have other spending priorities. (Chambers 2017, p. 152)<sup>133</sup>

We can clearly see that the potentially vulnerable position that the woman (and presumably children) would be left in is of central importance here. The particular worry is financial vulnerability. The woman is currently financially dependent on her husband, and if the relationship ended, she would be “left without financial protection” (Chambers 2017, p. 152) – protection she would only have (on the current status-based model) if she was married and divorcing.

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<sup>133</sup> Chambers takes this example from the Law Commission of England and Wales (2007) *Cohabitation: The Financial Consequences of Relationship Breakdown* LAW COM No. 307, p. 33.

This is an example of systematic vulnerability. It is the woman's financial dependence, within our particular society that is structured in a particular way so that she will have poor job prospects, that leads to her vulnerability. She is systematically financially vulnerable because the job market is set up in such a way that she would not be able to re-enter it at the level required in order to be able to afford the childcare she would need. She wouldn't be able to re-enter it at the required level because she has stayed at home and looked after her children – an activity that is unpaid, undervalued, unrecognised, and not seen to produce marketable skills. Her vulnerability is systematic because it is not solely down to the fact that she cohabits and parents full time, but because the social structures in which she does these things prohibit her from being able to mitigate against this vulnerability. This systematic financial vulnerability is something that she needs to be protected from by the state.

The other relationship practices listed by Chambers could also plausibly lead to systematic material, physical and psychological vulnerability. Property ownership, emotional interdependence, care, parenting etc. are all things that have the potential to go badly for those involved. There could however be other reasons, for Chambers, which also justify direct state regulation of relationship practices, which have not been identified here.

Despite this focus on relationships practices (rather than personal relationships), I still think it is the case that Chambers would accept the Direct Regulation Claim, and claim that some personal relationships warrant direct regulation. In particular, I think she would accept the claim that the parent-child relationship warrants direct regulation. We can see that this is the case because the parent-child relationship appears to meet the conditions that she stipulates for state recognition (which I take here to be at least an instance of direct regulation).

There are (at least) three possible ways to justify state recognition according to Chambers. We can extrapolate these from the following statement which claims that adult personal relationships meet none of these three conditions:

Relationships do not need state recognition if they are to be performed safely or in line with justice, and the state does not need to stipulate who counts as being in A Relationship (2017, p. 68).<sup>134</sup>

We can assume, therefore, that state recognition of something is justified when one of three things is true: first, when state recognition is required in order for that thing to be done safely; second, when state recognition is required in order for that thing to be performed in line with justice; and third, when the state needs (for public, political reasons) to be able to stipulate who counts being in a particular relationship.

The state has compelling reasons to stipulate who counts as being in a parent/guardian – child relationship. The state needs to know who is responsible for which child's well-being so that it can, for example, direct state benefits and prosecute child-neglect appropriately. In order to do this it has to stipulate what counts as a parent-child relationship, and so creates the corresponding legal category.

Chambers does also argue that the non-legal (private) marital relationship in the marriage-free state might require direct regulation. I will defer discussing the reasons for this – which seem particularly focused on the social institution of marriage – to Section 7.4.3, to show why this does not amount to a claim that the romantic relationship should be directly regulated. The central thought however is that this direct regulation is required for reasons of equality.

To sum up, Chambers thinks that when it comes to adult personal relationships the primary focus should be on relationship practices, and it is these that her proposal would directly regulate. Despite this, the Direct Regulation Claim still underlies her view, as there are certain personal relationships that still warrant direct regulation.

#### ***7.3.4 Summary: The Direct Regulation Claim***

Having gone through each of Brake's, Metz's, and Chambers' proposals we are now in a position to see that each can be understood to accept the Direct Regulation Claim: that the liberal state has compelling reasons to directly

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<sup>134</sup> Chambers is referring to adult personal relationships here.

regulate some personal relationships, and so it is appropriate for the state to create a distinct legal category corresponding to those relationships. The discussion has shown that there are a number of different, individually sufficient, reasons for thinking that a personal relationship warrants direct regulation.

Brake focused on the idea that some personal relationships are natural primary goods, with social bases that are social primary goods. Metz showed that some personal relationships can lead to systematic, material, and psychological vulnerability. I showed that Chambers would likely accept that it is necessary for the state to stipulate what counts as a particular personal relationship in some specific cases.

#### **7.4 The Romantic Relationship Claim**

Moving on, the second claim that I take to underlie the arguments against the political institution of marriage is the Romantic Relationship Claim. In this section I aim to demonstrate that Brake, Metz and Chambers all treat the paradigmatic marital relationship, *qua* romantic relationship, as something which does not warrant direct regulation. There is nothing in particular about the romantic relationship itself, on their views, that warrants direct state regulation and the creation of a distinct legal category.

To be clear, each author recognises that the romantic relationship could (and often does) warrant indirect regulation. For Brake the romantic relationship can be seen to be a ‘species’ of adult caring relationships. Minimal marriage directly regulates adult caring relationships, and indirectly regulates the romantic relationship. It is similar for Metz: the romantic relationship is a species of intimate caregiving relationship, and so is indirectly regulated by the ICGU status. For Chambers, the story is slightly different, but the result is the same. The romantic relationship is not a ‘species’ of some ‘genus’ of relationship that is directly regulated. However, there are direct regulations of relationship practices that end up indirectly regulating the romantic relationship because those practices occur within this relationship (just like gardening is indirectly regulated by laws concerning breaches of the peace).

#### ***7.4.1 The Contested Value of Amorous Dyadic Relationships***

As we have just seen, Brake argues for minimal marriage – a legal framework that directly regulates adult caring relationships. The romantic relationship is a ‘species’ of adult caring relationship, and so would be indirectly regulated by minimal marriage. However, it does not warrant its own distinct legal category for Brake. That is precisely what Brake is arguing against.

We saw in Chapter Five that Brake is concerned about the restriction to romantic couple relationships found in the current political institution of marriage. This institution does create a distinct legal category that corresponds to the romantic relationship. The Public Reason Argument claims that this restriction cannot be justified by appeal to public reason. Any justification would have to appeal to the value of amorous dyadic relationships and this, the argument claims, is an inappropriate and non-public reason. This is because the value of amorous dyadic relationships is contested. Not all people will agree that the romantic couple relationship is valuable, or particularly valuable, because this relationship is not a part of all conceptions of the good.

On Brake’s account personal relationships warrant direct regulation when they are natural primary goods, and have social bases that can be properly considered as social primary goods. The romantic relationship is not, *qua* romantic relationship, a natural primary good with social bases that are social primary goods. It is not something that all citizens would reasonably want in order to develop their moral powers and to pursue their distinct conceptions of the good. There are other adult caring relationships that could play this role. On this picture the romantic relationship is just one species among many that citizens should be free to choose when forming adult caring relationships.

Brake focuses on the value of caring relationships. As such she does not provide us with any reason to think that the romantic relationship is the type of relationship that would lead to systematic material, physical and



psychological vulnerability, in virtue of being a romantic relationship, either.

For these reasons, I think it is reasonable to say that the Romantic Relationship Claim underlies Brake's view.

#### ***7.4.2 The Benefits (for Marriage) of Disestablishing Marriage***

We saw, in Chapter Six, that Metz is concerned with the state being involved with the formal, comprehensive social institution of marriage because it involves the state in regulating its citizens' beliefs and violating the principle of neutrality. She also claims that the social institution of marriage would in fact benefit from being 'disestablished' (being separated from the state).<sup>135</sup>

Marriage, according to Metz, integrates individuals into their community. Acquiring the marital status involves an alteration of self-understanding and an instillation of social norms which is made possible by the public recognition and regulation of these social practices and social narratives by an ethical authority (for example, a religious leader).

When the institution of marriage is also *political* the state plays the role of an ethical authority. This is problematic *for marriage* because the state is an ineffective ethical authority. In order for the marital status to alter self-understanding and instil social norms the ethical authority needs to come from and represent the community of shared belief which gives the status meaning. The political liberal state is not suited to do this.

Whilst Metz is concerned with the ability of the state to play this role in the social institution of marriage, she is clearly unconcerned about the nature of the relationship that the social norms surrounding marriage encourage and determine. Within Western liberal democracies (which have a tradition of marriage) it seems likely that this relationship will look a lot like the paradigmatic marital relationship, i.e. the romantic relationship. This lack of concern suggests that she does not think the romantic relationship, in virtue of being a romantic relationship, will lead to any further systematic material,

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<sup>135</sup> See Metz (2010), p. 119 and pp. 134-150.

physical and psychological vulnerability than other intimate caregiving relationships.

Metz also argues that the value of intimate caregiving does not, in the case of intimate caregiving relationships, give sufficient justification for state recognition (Metz 2010, p. 126). We can safely assume therefore that she does not think that the romantic relationship is a natural primary good with social bases that are social primary goods.

As such, it seems reasonable to infer that she does not regard the romantic relationship as something that warrants direct regulation. It is adequate, on her view, for them to be indirectly regulated by her ICGU status.

### ***7.4.3 Focusing on Practices not Relationships***

In arguing against the political institution of marriage (and alternatives), and in proposing default state directives for separate relationship practices, we can see that Chambers does not consider the romantic relationship to warrant a distinct legal category.

Whilst the focus is on relationship practices, she does suggest that the non-legal (private) marital relationship in the marriage-free state might require direct regulation. As noted above the reasons for this seem particularly marriage-specific, and do not look as though they would be reasons to directly regulate the romantic relationship.

Chambers states that “the marriage-free state is based on the values of liberty *and* equality, and these, especially equality, require the state to take an interest in the content of private marriages” (2017, p. 171). There are three ways in which private marriages might offend against equality. First, private marriages might be “over-inclusive” by allowing “potentially troubling marriages” to occur (Chambers 2017, p. 171). This could provide a reason for the state to still restrict things such as “forced marriage” in order to prevent harm. Second, private marriages might be “under-inclusive” (p. 171) by unfairly discriminating who has access to the non-legal marital institution. Chambers claims there are reasons not to exempt for example, religions, from standard anti-discrimination laws. Third,

private marriages might be “internally inegalitarian” because “a marrying institution, such as a religion, might normatively impose unequal standards within a marriage”, such as gendered norms (p. 171). If these norms are “deeply inegalitarian or oppressive” (p. 187), and powerful, then the state has a reason to take an interest in them and potentially regulate them.

Whilst Chambers appears to think that these reasons will provide justification for the direct regulation of private marital relationships (those that have acquired the non-legal status), they do not seem to be reasons that would extend to romantic relationships *qua* romantic relationships because they are all explicitly concerned with the non-legal institution of marriage.

#### ***7.4.4 Summary: The Romantic Relationship Claim***

The preceding discussion shows that it is not unreasonable to think that Brake, Metz and Chambers all subscribe to the Romantic Relationship Claim. Whilst they all acknowledge that the romantic relationship can be indirectly regulated, none of them think that the state has a compelling reason to directly regulate the romantic relationship, and so it should not create a distinct legal category that corresponds to it.

### **7.5 The Underlying Complaint against the Political Institution of Marriage**

The aim of this chapter has been to determine whether there is an underlying complaint against the political institution of marriage, and to make it clearer what implications the various arguments against marriage have for the question concerning what relation the political liberal state should bear to the paradigmatic marital relationship *qua* romantic relationship (the guiding question for Part Two).

The identification of the Direct Regulation Claim and the Romantic Relationship Claim enables me to identify the underlying complaint against the political institution of marriage.

*The Underlying Complaint against the Political Institution of Marriage: the political institution of marriage directly regulates, and*

creates a distinct legal category corresponding to, the romantic relationship when it has no compelling reason to do so.

The anti-marriage position can therefore be understood to be claiming that the current direct regulatory relation that the state bears to the romantic relationship via the political institution of marriage is inappropriate. Direct regulation is inappropriate when the relationship does not warrant it.

I shall suggest how the political liberal can respond to this underlying complaint in the next chapter.

## Chapter Eight

### Responding to the Underlying Complaint against Marriage

Part Two of this thesis has been concerned with the question of what relation the state should bear to the paradigmatic marital relationship (the romantic relationship). Currently the state directly regulates the romantic relationship (and has a distinct legal category corresponding to the romantic relationship), via the political institution of marriage. In the previous chapter I identified what is thought to be problematic about this: the underlying complaint against the political institution of marriage is that the state has no compelling reason to directly regulate the romantic relationship (which it does through the political institution of marriage). How should the debate move forward in light of this complaint?

If Brake, Metz, and Chambers are correct, and the underlying complaint is right to assert that the romantic relationship should not be directly regulated, then the current relation that the state bears to this relationship is inappropriate. The state should not directly regulate something that does not warrant it. Indirect regulation of the romantic relationship is however appropriate, and particular instances of the romantic relationship would be indirectly regulated by the frameworks proposed by Brake, Metz, and Chambers.

It has not yet been shown, however, that the underlying complaint is true. It has not been shown that the paradigmatic marital relationship, *qua* romantic relationship, does not warrant direct regulation. My aim in this chapter is to argue that the underlying complaint is in fact false. The romantic relationship does warrant direct regulation.

For those who wish to fully defend the state's recognition of marriage, my argument in this chapter would be a first step for a line of defence that has not been fully explored.<sup>136</sup> It would, however, only be a first step. Showing

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<sup>136</sup> The defences in the literature tend to focus on the specific complaints made against the political institution of marriage. For example, Simon May

that direct regulation of the romantic relationship is warranted does not show that this direct regulation should be achieved through the political institution of marriage. Although I have argued, in Chapters Five and Six, that the political liberal concerns about the political institution of marriage can be met, there are other concerns about this institution that need to be addressed,<sup>137</sup> and alternative forms of direct regulation available that might be considered preferable (an alternative ‘status’ and bundle perhaps, or even a state directive that explicitly picks out the romantic relationship). These would need to be explored and evaluated.

In this chapter I argue that there are good reasons to directly regulate the romantic relationship, (contrary to the Romantic Relationship claim identified in Chapter Seven). Drawing on the work of Part One, I suggest that the romantic relationship can be a unique source of systematic physical, material and psychological vulnerability. This gives the state a compelling reason to directly regulate this relationship and create a distinct legal category that corresponds to it.

This provides a strong, direct challenge to Brake, Chambers, and Metz. It demonstrates that the romantic relationship is a species of adult caring relationships and intimate caregiving relationships that warrants its own distinct legal category, contrary to what Brake and Metz claim. It also challenges Chambers’ focus on relationship practices when it comes to regulating adult personal relationships. It shows her proposal misses something that warrants its own distinct legal category.

It is not however clear precisely what type of direct regulation would be best. As will be shown, the romantic relationship warrants direct regulation in virtue of the social norms that constitute the relationship, and in virtue of

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(2016) responds to neutrality arguments, Christopher Bennet (2003) responds to differential treatment arguments and Ralph Wedgwood (2016) responds to public reason arguments. My arguments in Chapters Five and Six, and in Toop (2018), follow a similar pattern.

<sup>137</sup> In particular, egalitarian concerns (for example, that the political institution of marriage treats women, non-heterosexuals and non-married people unequally), such as those highlighted by Chambers (2017), Chapter 1.

the social conditions (including economic and legal conditions) that interact with the relationship. Determining how best to mitigate against the systematic vulnerability caused by these social norms and conditions will be highly complex and demand careful and extensive work that goes beyond the scope of the present work.

However, the key point is that there is a reason for the state to put some type of direct regulation in place, to ensure those who are made vulnerable by the romantic relationship are not significantly disadvantaged by that vulnerability. It might be the case that the political institution of marriage is the most appropriate way of doing this. Or perhaps an alternative that still creates a distinct legal category that corresponds to the romantic relationship but disassociates itself from the term ‘marriage’ will be preferable. It might even be the case that at some point in the future the romantic relationship will cease to lead to systematic material, physical and psychological vulnerability, at which point it will cease to require direct regulation. Social conditions and norms are malleable, and can change over time. As such, any proposal made now, and which is deemed to be appropriate now, is likely to become unsuitable in the future. This means the question of how to directly regulate the romantic relationship (through which precise types of regulation) will be ongoing.

It is in light of this complexity - which I explore further in my concluding chapter - that I do not attempt to make any concrete proposals for an alternative framework that would directly regulate the romantic relationship, nor to provide a full defence of the political institution of marriage.

### **8.1 A Quick Recap: The Romantic Relationship and Direct Regulation**

Part One identified the paradigmatic marital relationship (in our Western society) as the romantic relationship. In Chapter Four I built up an account of the romantic relationship as one in which the participants play the role of a romantic partner for each other. The role of a romantic partner includes certain obligations: to love one another, and act in ways that express that love; to share the experiences that are central to one’s life, and to accommodate those things within a joint life; to take joint responsibility for

the central aspects of one another's well-being; and to trust one another deeply.

I suggested that this relationship-role is akin to social roles, in the sense that they can be understood to be situated within the social world, and as forming a part of a three-tiered structure, sitting within a social institution or category, and specifying appropriate patterns of behaviour. Understanding relationship roles in this way highlights that they are societally and temporally relative. The context of a particular society, at a particular time, will determine what roles exist and what behaviour is expected in order to fulfil those roles. In other words, roles can change. In addition to this, they are interpretive: individuals interpret roles, and what they require, differently (within set parameters).<sup>138</sup> This means that the same role can be played and fulfilled in different ways. This encompasses the insight that whilst we have a general idea about what the romantic relationship entails, the relationships that fall into this category can look remarkably different.

Chapter Seven explained the difference between direct and indirect regulation. Direct regulation occurs when the state creates a distinct legal category for a particular thing, and puts in place regulation (whether it is a law, tax, right, etc.) specifically for that legal category.

The previous chapter also identified the Direct Regulation Claim – that the state does have compelling reasons to directly regulate some personal relationships – and explored what those compelling reasons might be. One such reason, drawn from the work of Metz in particular, is when a personal relationship leads to systematic physical, material and psychological vulnerability.

I will argue that the romantic relationship leads to systematic material, physical and psychological vulnerability – systematic vulnerability that no other species of intimate caregiving relationship leads to. I claim first that it is a uniquely risky intimate caregiving relationship, and then show that there are other features of the romantic relationship that also lead to material,

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<sup>138</sup> See Chapter Three, section 3.4.3, and Hardimon (1994), p. 355, for a discussion of interpretive roles.



physical and psychological vulnerability – in particular the *love* and the expected *relationship maintenance*. I then argue that this vulnerability is systematic, which means that the vulnerability is exacerbated by social and political structures, and so individuals are unable to easily mitigate against it themselves. This enables me to claim that the paradigmatic marital relationship, *qua* romantic relationship, warrants direct regulation.

## **8.2 The Romantic Relationship is a Uniquely Risky Intimate Caregiving Relationship**

In order to show that the romantic relationship warrants direct regulation in virtue of being a uniquely risky intimate caregiving relationship, I first need to show that it is a ‘species’ of intimate caregiving relationship. I then need to show that there is reason to create a distinct legal category for this ‘species’ (rather than allowing it to be merely indirectly regulated). I do this by showing that it is uniquely risky because it is a relationship in which one makes oneself particularly vulnerable to harm, and because it involves a duty to provide intimate care.

### ***8.2.1 The Romantic Relationship is an Intimate Caregiving Relationship***

Metz characterised intimate caregiving relationships as private, as involving a range of non-contractual arrangements, and as containing the unquantifiable exchange of a diverse range of goods and care (2010, pp. 121-122). We can see that the romantic relationship is a species of this sort of relationship because: first, the day-to-day interactions within this relationship are private; second, the role of a romantic partner entails taking joint responsibility for each other’s well-being, and providing care and support in relation to the central aspects of the other person’s life; and third, this relationship involves reciprocal duties, not contracts, which can be fulfilled (and interpreted) in a huge variety of different ways.

Individuals within a romantic relationship will make use of physical, material and psychological resources in order to fulfil the role of a romantic partner, which includes providing intimate care. Taking joint responsibility for the central aspects of each other’s well-being is likely to involve providing physical and material support and care for the other person. It will

certainly involve emotional and psychological care. Each partner has to consider the other person - and not just themselves - when making decisions. They need to be aware of the affect that their actions will have on the other. They are also at risk of being negatively affected by the decisions, actions and emotions of the other person. This involves the use of psychological resources, which are important for autonomy and self-respect. All of these resources are risked because they might not be reciprocated in kind or easily replenished.

Metz has convincingly argued that intimate caregiving relationships lead to *systematic* material, physical and psychological vulnerability, caused by the social and political structures that they exist within.<sup>139</sup> This justifies the state directly regulating (the ‘genus’ of) intimate caregiving relationships. Showing that the romantic relationship is an intimate caregiving relationship therefore proves that it is a ‘species’ of this genus and that it would be indirectly regulated by any regulation put in place in order to directly regulate intimate caregiving relationships (such as Metz’s ICGU status).

I think that we can go one step further and show that the unique nature of the romantic relationship affects the nature of the vulnerability that participants face as a result of intimate caregiving. First, because the caregiving is performed in a relationship in which one makes oneself particularly vulnerable to harm; and second, because providing intimate care within a romantic relationship is a part of a duty – there is a sense in which we are obligated to do it, and to make ourselves vulnerable.<sup>140</sup> For these reasons, I think we can claim that the romantic relationship in itself warrants direct regulation. The state should create a distinct legal category that corresponds to this relationship. Indirect regulation is not adequate.

### ***8.2.2 Vulnerability to Harm***

The role of a romantic partner requires us to share the experiences that are central to our lives, to accommodate these things within a joint life, and to take joint responsibility for the central aspects of each other’s well-being.

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<sup>139</sup> See Chapter Seven, section 7.3.2.

<sup>140</sup> At least for as long as we are in the relationship.

Jointly these features make the romantic relationship into a uniquely risky intimate caregiving relationship.

The duty to share the central aspects of our lives and identities makes romantic partners particularly vulnerable to each other. This intimate knowledge enables the care that is given to be particularly tailored but it also means that our romantic partners know exactly how to hurt us, in a way that attacks the most central parts of our lives and identities – whatever those may be.

The role of a romantic partner also includes the duty to take joint responsibility for one another's central aspects of well-being. This means that a romantic partner should not use the intimate knowledge to harm, but rather to benefit us. However, this is not guaranteed. Romantic partners argue and fight and this intimate knowledge can be used to hurt each other effectively, even if it is later regretted and atoned for. The reality of some romantic relationships is that they do not live up to the ideal – the role is not fully fulfilled. Some people abuse the intimate knowledge they are entrusted with and the position of power this puts them in. Romantic relationships also come to an end, and it is then that the intimate knowledge can be used to create real damage.

Providing intimate care in a relationship in which one is this vulnerable to harm makes that provision even more risky. Not only are material, physical and psychological resources spent, their reciprocation not guaranteed, and the vulnerability this causes hard to mitigate against due to social and political norms and structures, meaning that the caregiver is at risk of not being able to look after themselves; in addition, the caregiver is at risk of significant harm, and of not being able to protect themselves from it.

### ***8.2.3 The Duty to Provide Intimate Care***

Providing intimate care within a romantic relationship is a part of a unique romantic partner role-obligation: to take joint responsibility for the central aspects of each other's well-being which includes comforting, helping and supporting each other within one's joint life. This role obligation, along with the others specified in Chapter Four, make up the unique role of a romantic

partner. This means that people within romantic relationships (playing the role of a romantic partner) have an extra, binding, reason to provide intimate care for their partner and to make themselves vulnerable doing so within a relationship that puts them at an acute risk of harm. This makes it harder for romantic partners to stop providing intimate care when it becomes too burdensome, and this is due to social norms (the role and the associated pattern of required behaviour).

Role obligations are special, as opposed to general, duties. They are owed to specific people, rather than to people in general. There is a fair amount of debate surrounding whether and how they obligate us, but this does not impede the point being made here.<sup>141</sup> It seems that we generally accept the notion of role obligations in our everyday moral life, and take their prescriptions as binding. As Sciaraffa notes: “We are all familiar with the way in which social roles ... confront us with clusters of duties that purport to bind us” (2009, p. 107). We intuitively feel (whether or not it has yet been proven to be the case) that role obligations are morally binding. They provide us with decisive reasons to act in the way that the role specifies.

There are a number of different ways in which we can be thought to become obligated by role-obligations. I do not aim to argue for any particular account, but simply want to point out that it is not only intuitively plausible that there are binding role obligations – there are good reasons for thinking that these role obligations can bind us in some way.

Role obligations, in themselves, are thought to be “normatively inert” (Sciaraffa 2009, p. 108). As described in Chapter Three, “to say that action X is a role-duty is to say that there is a social practice that is sustained by a widespread belief that there is a requirement to conform to the practice” (p. 109). The existence of role obligations does not, on its own, provide “justifying reasons to conform to the practice” (p. 109). Something extra has to happen.

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<sup>141</sup> See Jeske (2014) for an overview of special obligations. See Section 4 in particular. See also Hardimon (1994), Sciaraffa (2009), and Simmons (1996).

There are three options proposed for this ‘something extra’. We become obligated to fulfil our role obligations when: i) we voluntarily undertake to perform the role duty; or ii) the role duty is the best way of discharging a natural duty (for example, the general duty of beneficence); or iii) we identify with the role that we are playing.<sup>142</sup>

All three options plausibly occur in romantic relationships. So whichever account we accept, we can claim that romantic partners are obligated to perform their role-obligations. First, whilst they might not explicitly promise or consent (the paradigm acts of voluntarily undertaking to do something) to perform the role duties, they do perform and engage in actions, by maintaining a relationship, that lead to legitimate expectations that these duties will be fulfilled. These type of expectation-raising actions are thought to be voluntary acts of the relevant kind.<sup>143</sup> Second, natural (or general) duties of beneficence and gratitude owed to our romantic partners plausibly look as though they might be best discharged through the role-duties of a romantic partner – they include duties to promote well-being and to do this in a reciprocal way.

Third, I think it is reasonable to say that if we identify with any role, then we identify with being someone’s romantic partner. Hardimon characterises role identification as occurring when one recognises that one occupies a particular role, and “conceive[s] of oneself as someone for whom the norms of the role function as reasons” (1994, p. 358). Sciaraffa characterises role identification differently:<sup>144</sup>

When an agent identifies with a role, she identifies with a comprehensive goal based on the role - that is, she pursues a

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<sup>142</sup> The “standard view” (Sciaraffa 2009, p. 107) holds that there are two possible grounds of role duties – voluntary actions and natural duties (see e.g. Simmons 1996). The third possible ground – identification - has been proposed by e.g. Hardimon (1994) and Sciaraffa (2009).

<sup>143</sup> See Sciaraffa (2009), p. 108.

<sup>144</sup> Sciaraffa (2009) proposes this alternative in response to an objection, from Simmons, to Hardimon’s role-identification account. Simmons is concerned that Hardimon’s account only provides a *motivating* reason rather than a *justificatory* reason for complying with role obligations. Sciaraffa’s account is meant to be able to provide a justificatory reason.

comprehensive goal that generally requires that she conform to the role's duties. (2009, p. 110)

Whichever view we take, romantic partners are likely to identify with their role as a romantic partner – they will see themselves as someone for whom the norms of the romantic partner role function as reasons and they will have the comprehensive goal of being a romantic partner for X which requires conforming to the role of the romantic partner for X.

The role-obligation to take joint responsibility for the central aspects of your romantic partner's well-being therefore gives romantic partners a decisive reason to provide intimate care, even if it makes them particularly vulnerable. Whilst there isn't a duty to remain in the romantic relationship, releasing themselves from the duty to take joint responsibility, by ending the relationship, isn't commonly a particularly salient or attractive option. Romantic relationships are likely to be important to their participants, and they will have reasons to remain in them, even if they are demanding. In addition, ending the relationship exposes one to the particularly acute potential of harm identified in section 8.2.2.

This means that it is harder for romantic partners to give up intimate caregiving when it becomes too risky, and harder for them to mitigate against the vulnerability that this causes. This is because of a social practice that relates specifically to the romantic relationship (the role and pattern of required behaviour). Whilst someone who provides care outside of a romantic relationship might have a variety of reasons for providing intimate care for someone, they do not necessarily have the additional, binding and motivating reasons that the romantic partner role obligations bring.

It might be objected that there are other relationships and relationship roles that involve the duty of intimate caregiving. However, the romantic relationship is unique in having this obligation as a part of the duty to take joint responsibility for each other's well-being. It is also unique in having this duty combined with the particular level of romantic intimacy - specified by the obligation to be open and honest about the central aspects of each other's lives - which can lead to the acute level of harm already identified in section 8.2.2.

#### ***8.2.4 A Note on the Political Implications***

The preceding two sections aimed to show that there are features of the romantic relationship that make it a uniquely risky type of intimate caregiving relationship. There is a form of vulnerability to harm that romantic partners uniquely open themselves up to, and the relationship role that they are playing makes it harder for them to mitigate against this, and the other risks of intimate caregiving. This suggests that the romantic relationship warrants direct regulation in its own right.

It might be thought that something like Metz's ICGU status would still be appropriate for directly regulating the romantic relationship, as it is still essentially the intimate care that warrants state protection. In order for the romantic relationship to be directly regulated, a distinct legal category would need to be created that corresponds to the romantic relationship. There would need to be specific rights and duties that related to the specific risks of that relationship (as it is defined by the legal category), and a unique status as well – an ICGU-plus status perhaps. This would involve all of the rights and duties that an ICGU status involves (those typically associated with the current marital status) plus those that particularly mitigate against the significant risk of harm found in romantic relationships (so the bundle that attaches to the status for romantic relationships is larger). These might include stricter protections for people 'divorcing' to ensure that the intimate knowledge gained is not used to harm; and rights to financial and other assistance (for example, nurses/counselling) to ensure the 'able' partner is cared for in times of severe need, when the other partner is unable to reciprocate any caring resources at all (for example, if they are severely ill).

This proposal would clearly need to be further worked out in order to be a viable option. There is however an immediate concern – namely that it misses the fact that the romantic relationship warrants direct regulation for reasons other than those specifically relating to intimate care. I turn to this further claim in the next section.

### **8.3 The Romantic Relationship Leads to Non-Care-Based Systematic Vulnerability**

Whilst care is an integral part of the romantic relationship, it is not the only part, and I think there are other ways in which material, physical and psychological resources are used and risked. I will first identify, in this section, how these resources are risked by loving another person, and through the maintenance of the romantic relationship. In section 8.4 I will then show that the vulnerability that these features lead to is systematic – that it is not easily mitigated against by individuals within romantic relationships because of the social and political structures in place within our society. This will then enable me to claim that the romantic relationship warrants direct regulation for non-care-based reasons.

#### ***8.3.1 The Riskiness of Love***

Baier's (1991) account of love - a Complex Emotion Account - highlights how we risk physical and psychological resources (which could also lead to the risking of material resources) simply by loving. She acknowledges the numerous and immense benefits that love can bring, but focuses on the not insignificant risks that it also entails, for both the lover and the beloved.

Baier's account of love highlights the complex way in which lovers are emotionally interconnected and interdependent. This is directly relevant to the way in which love is risky.

Both the relations of interdependency and our responses to them, when we will their continuation, are fraught with risks – risks of mutual maiming, of loss of heartbreak, of domination, of betrayal, of boredom, of strange fashions of forsaking, of special forms of disease, and of disgrace. (1991, p. 448)

There are two types of risk that love can bring: dangerous emotions (including those that affect a person's psychological well-being and autonomy, and those that feed aggression); and physical risks (such as exposure to disease).

Baier first identifies the dangerous emotions that love can bring for the lover:



paralysing grief or reckless despair at the loss or death of loved ones, retreat into a sort of psychic hibernation when cut off from 'news' of them, crippling anxiety when they are in danger, helpless anguish when they are in pain, crushing guilt when one has harmed them, deadly shame when one fails them. (1991, pp. 433-434)

These are dangerous because they can affect the lover's psychological well-being, and her ability to be autonomous. When one is paralysed by grief for instance, one's well-being is detrimentally affected, and one's ability to function as an autonomous human being is severely diminished.

Love can also bring "aggression feeding" emotions such as jealousy, hate and fear, which are dangerous not only for the lover, but for the beloved as well (Baier 1991, p. 433). Such emotions fuel aggression, and so put both the lover and the beloved at risk of physical harm in addition to the detrimental affect these emotions can have on our psychological well-being. The beloved is also at risk of "overprotection, of suffocation, of loss of independence, toughness and self-reliance" (p. 434). These features of love clearly put the beloved's autonomy and self-respect at risk. It seems plausible that this could lead to material loss of independence too, or at least make one more susceptible to it (for example, financial dependence).

It is not only the risk of dangerous and aggression-feeding emotions that Baier is concerned about. The second type of risk that love brings is physical. The loved one's "embrace may maim one, the diseases she carries may kill one, and one may know that they are killing one" (p. 443). She doesn't elaborate on the idea that we are at risk from the embraces of our loved ones, but we can see it is a risk to take into account. We allow our loved ones to physically come much closer to us than others. We put ourselves in a vulnerable position if they are much stronger than us. We trust them not to use this strength, but accidents can happen, especially in the heat of the moment, or when fuelled by jealousy or anger.

Baier does elaborate a little further on the risks of diseases. She has in mind the diseases and health risks that relate to the sexual nature of love - in particular venereal diseases, genetically inherited diseases, and the risks of dying in childbirth. However, the non-sexual physical intimacy of love can

also put us at risk of catching other infectious diseases, and put us at risk of physical harm as noted above.

It might be suggested that these dangerous emotions and physical risks will only appear when the love is somehow non-ideal. Or it might be pointed out that the role of a romantic partner - and the obligations this entails - should be able to go some way towards mitigating against these dangerous emotions and physical risks.

I don't think that this is the case. The dangerous emotions are appropriate to love, and the emotional and physical responses to them are also a part of love. Romantic relationships occur in our everyday social world where there are other people who might be attracted to the beloved, where circumstances may take the beloved away, and where they are subject to the normal risks of harm that everyone is subjected to. The dangerous emotions that the lover is exposed to when the beloved is hurt, in danger, or faraway look like appropriate responses to the pain, fear and unknown emotions of the beloved. They are appropriate because the role involves the joint responsibility for the beloved's well-being. The aggression-feeding emotions of jealousy, hate, and fear also seem appropriate if they are a response to the beloved feeling affection towards another, being hurt by the beloved, or seeing them fearful.

The role of a romantic partner might temper how we react to the dangerous and aggression-feeding emotions that arise, but it won't stop them from arising. Additionally, whilst they tell against acting on these emotions, they will not physically prohibit someone from doing so, especially if the emotions are particularly strong, as they often are in romantic love. The notion of a 'crime of passion' highlights how easy it is to do the worst thing possible to the ones we love, and suggests that it may sometimes be (partly) out of our control.<sup>145</sup>

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<sup>145</sup> This is linked to the point raised in section 8.2.2 – not only do we come to know the other intimately through providing intimate care, we also love them, and this adds to the riskiness of being subject to significant harm.

The physical risks that Baier highlights are also a part of the role of a romantic partner. Physical intimacy (sexual and nonsexual) is seen to be part of the behaviour that fulfils the role of a romantic partner – it helps them to take care of one another, increases the intimacy and knowledge between them, and can foster trust and love.

As with intimate care, romantic love is something valuable that nevertheless brings with it substantial risks: risks that make those in romantic love psychologically, physically, and potentially even (indirectly) materially vulnerable. The question however remains whether this vulnerability is systematic, and therefore whether it gives the state a compelling reason to directly regulate the romantic relationship. I will turn to this question in section 8.4.

### ***8.3.2 The Resources Required for Relationship Maintenance***

All relationships, including the romantic relationship, need to be maintained. Relationship maintenance requires physical, material and psychological resources. Whilst caring for the other will contribute to maintaining the relationship, there are other (non-care-based) aspects of relationship maintenance as well – things that go into fulfilling the role of a romantic partner and ensuring that the relationship continues over time.

Exactly what this entails will differ from romantic relationship to romantic relationship, but it seems reasonable to assume that it will involve physical, material and psychological resources. Consider a day in the life of a longstanding romantic couple. In order for their relationship to be maintained they need to have somewhere to conduct that relationship and so the participants may well do things such as cooking, cleaning, and earning money to maintain a shared home.

In an ideal world, the maintenance of the relationship will be equally shared between participants in it. As such, whatever resources are used by one individual, should be recompensed by another participant taking on a different relationship-maintenance task. If one participant uses up a particular resource in doing one task, the other should have a surplus because they have been completing a different task, requiring different

resources. However, as has been highlighted, romantic relationships and love are often not ideal. It could be the case that one (or both) partners are left physically, materially and psychologically vulnerable because of the resources they have used towards the maintenance of the relationship.

The participants have however voluntarily chosen to be part of this relationship, and reap the benefits of being in such a relationship. There are also other means of replenishing or saving resources, such as through employment, or hiring a cleaner. It might therefore be suggested that having a romantic relationship is a risk that is voluntarily undertaken, that is typically balanced out by the benefits of being in a romantic relationship, and which can be easily mitigated by the individuals involved. If this is the case then relationship maintenance would not provide an (additional) reason for direct regulation. Whether this is the case remains to be seen.

#### **8.4 Are the Identified Vulnerabilities Systematic?**

In Chapter Seven it was argued that we cannot focus on intimate caregiving relationships, and the vulnerability they entail, in isolation from the social world that those relationships occur in. Social and political structures and norms surrounding the intimate caregiving relationship influence and exacerbate the physical, material and psychological vulnerability caused by these relationships. This makes the vulnerability *systematic*, and gives the state a reason to create a distinct legal category for those relationships.

Having identified two additional non-care-based ways in which the romantic relationship can lead to material, physical and psychological vulnerability, it now needs to be seen whether the social and political structures and norms within our society contribute to or enhance this vulnerability. Is there something about our social and political structures and norms that make it hard for individuals to mitigate against the physical, material and psychological vulnerability caused by love and the maintenance of a romantic relationship? If there is, then the vulnerability is systematic, and the romantic relationship warrants direct regulation for non-care-based reasons, in order to mitigate against this systematic vulnerability.

#### ***8.4.1 The Systematic Vulnerability of Love***

As we have seen, love, understood as a complex emotional interdependence, can lead to physical and psychological vulnerability. This is due to the dangerous and aggression feeding emotions and the risk of physical harm (either motivated by the aggressive emotions or from physical contact and infection). The vulnerability is not caused by using up physical and psychological resources which then might not be reciprocated, but rather it is due to the exposure to harm that love can bring.

As such, the concern is not the replenishment of lost resources, and so the means available for an individual to mitigate against this type of vulnerability would not be through things such as employment. What could an individual do to protect themselves against the vulnerability of love? There appear to be two salient options: first, they could try to not have romantic relationships that involve this type of risky love; or second, they could try to eradicate the particular risks that arise. Neither option looks attractive, but more importantly, neither option is readily available to individuals within our society because of social structures and norms that are in place.

The first option is obstructed by the fact that most of us want to have, and maintain, a romantic relationship. This is influenced (at least in part) by the fact that romantic relationships are highly valued in our society, and the fact that there is a social norm of searching for, having, and maintaining a romantic relationship. We are taught this norm through the family structure, through recognised celebrations such as Valentine's Day, through media and literature. It is the norm that Brake identifies and terms as "amatonormativity" – the "disproportionate focus on marital and amorous love relationships as special sites of value" as well as the associated "assumption that romantic love is a universal goal" (2012, p. 88). To not choose to search for, have, or maintain a romantic relationship is to go against a weighty social norm. It would be possible (such norms can be

flouted and rejected), but it would be costly. You would be subject to a certain amount of social pressure and scrutiny.<sup>146</sup>

The second option is obstructed by the fact that we - as a society - have structured the norms of love so that they involve this type of vulnerability. Love is influenced by the relationship it is found in. When that relationship is a romantic relationship, it is influenced by the role of a romantic partner. This role is formed of social practices and norms – it tells us what is required of romantic partners. This role dictates that romantic partners share the central aspects of their lives, and take joint responsibility for the central aspects of each other's well-being. This in turn influences (as noted in Chapter Four) the deep level of emotional interdependence (or love) between romantic partners and what emotional (and physical) responses will be considered appropriate. There are also typical patterns of behaviour that are taken to fulfil this role. As seen in section 8.3.1, the dangerous emotions and physical risks are appropriate responses in love. They are a part of what it is to romantically love someone. We cannot have romantic love without being exposed to these risks, and this is (at least in part) due to the social norms that make up the role of a romantic partner, and which dictate what behaviour is taken to fulfil that role.

This shows that there are social practices and norms within our society - both external (amatonormativity) and internal (the role and required pattern of behaviour) to the romantic relationship - which contribute to the vulnerability that romantic partners face because they romantically love each other. This makes the vulnerability systematic.

There are two potential objections to the claim that the existence of these identified social structures and norms leads to systematic vulnerability.

First, it might be pointed out that the role of a romantic partner is

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<sup>146</sup> Brake claims that amatonormativity is a problematic social norm that contributes to unjustified discrimination against non-amatonormative relationship types. She hopes that her proposed minimal marriage would work to eradicate this particular social norm. I do not take a stand here on whether this social norm is problematic in this way, but merely highlight that it is a salient feature of our social world.

interpretive – particular individuals can interpret and play the role in different ways, and take different patterns of behaviour to fulfil the role. As such, perhaps not all romantic relationships will involve deep emotional and physical intimacy, or the risks that this entails. Individuals will decide what is central to their lives and their relationship, and might view the risks as too high, limiting the intimacy involved.

This is true, but, as seen in Chapter Three, there are restrictions on how far this interpretation can and will be taken – limits placed by the role itself, and by other social norms in place within our society. Taking the role itself first, whilst people can have different interpretations of what behaviour the role requires and find different ways to fulfil a role, their behaviour is still constrained by the role – which requires intimacy and joint responsibility for each other's well-being.

Secondly, there are other social norms within our society that will influence what people typically take to be central to their lives, and how they fulfil the role of a romantic partner. In a society that values the raising of children for instance, this is likely to form the central part of an individual's life, and so sexual intimacy is likely (if the couple want to have biologically related children). There are also social norms about the level of disclosure that occurs in romantic relationships – there is a presumption that you should not keep anything (significant) from your romantic partner. This means that romantic partners will likely know each other intimately and so will be subject to the risks identified. It therefore seems reasonable to expect the risks associated with love to be present in many (although not all) romantic relationships, and this is because of the role of a romantic partner and the social norms at play in our social world.

The second objection suggests that the particular social norms and structures that I have identified are not strictly political. Whilst it is a concern of the state's if basic structure institutions and laws - such as employment structures and laws - contribute to physical, material and psychological vulnerability, this is because these structures are a part of the political sphere, where justice is paramount. The social norms surrounding romantic

love however, it might be argued, are not a part of the basic structure, and so no concern of the state.

The question of whether or not the state should be interested or involved in the social norms and structures relating to romantic relationships - or whether they should be considered a part of the basic structure - is a tricky one. I do not aim to definitively settle the question here, but I suggest that there are good reasons to treat these social structures and norms as political.

The first reason for treating them as political is that they clearly contribute to psychological and physical vulnerability. These things (for example, self-respect and health) are considered to be under the state's purview because they are primary goods. The social bases of these primary goods are the resources that the state (via the basic structure) is meant to distribute according to the principles of justice. Anything that affects the just distribution of these goods becomes political.

The second reason is that the romantic relationship could be considered to be a part of the family – an institution that is often (correctly) considered as a part of the basic structure because of its (now) recognised influence on all aspects of our lives (including political and economic). Usually only spousal roles would be considered to fall under this institution – but seeing as the romantic relationship has been identified as the paradigmatic marital relationship (the relation the institution is meant to be built around) then it seems like a prime candidate for being counted as a part of this institution, and so properly a part of the basic structure. This means that these social norms can be considered to make the vulnerability of romantic love systematic.

#### ***8.4.2 Relationship Maintenance Leads to Systematic Vulnerability***

The maintenance of a romantic relationship requires the use of material, physical and psychological resources. As with intimate caregiving relationships, the reciprocation of these goods is not guaranteed within a romantic relationship, leaving the participants potentially open to material, physical and psychological vulnerability. Is this vulnerability also systematic?



It might be suggested that the maintenance of a romantic relationship doesn't require that many resources and that these resources could be replenished by the individual through the usual means: for example, through employment, and other personal relationships. However, there are ways in which social and political structures and norms within our society make this mitigation of vulnerability more difficult in romantic relationships, and in fact contribute to the vulnerability caused.

For example, consider the fact that the average salary is not enough to support more than one person: this means that all participants in a relationship will need to work, as well as contribute to the day to day running of a household, in order to have somewhere (for example, a home) in which to conduct their relationship. This could (and often does) lead to tensions over whose responsibility it is to do household chores, childcare etc. This means that it is difficult for those in romantic relationships to balance the need to maintain their relationship whilst also mitigating the vulnerabilities they face. Additionally, if one person is left to do the bulk of this type of relationship maintenance work (typically this has been the woman because of social norms relating to gender), whilst also being required to work to gain income, then they are left in a more physically, materially, and psychologically vulnerable position because of these social structures and norms.

Other workplace structures and norms also influence people's ability to maintain relationships and insure against the vulnerability this can lead to. Many relationships, in order to be maintained, require the participants to live near each other. If promotions at work are only available if you are prepared to move to another location, then this will likely threaten the maintenance of a romantic relationship (especially if there isn't provision for a partner to move as well).

These social structures and norms will particularly affect those in romantic relationships, because they will make maintaining the romantic relationship particularly hard. The role of a romantic partner includes the duty to share each other's central experiences and to accommodate them within a joint

life. Fulfilling this duty is likely to require more relationship maintenance, and to be more adversely affected by these social structures and norms, than for example close friendships which require only that friends make space for each other's central experiences.

These social structures and norms that our present within our society look as though they do contribute to and exacerbate the vulnerability caused by the need to maintain a romantic relationship, and so that vulnerability looks systematic.

#### ***8.4.3 The Romantic Relationship Warrants Direct Regulation for Non-Care-Based Reasons***

The love and relationship maintenance that are a part of the role of a romantic partner lead to physical, material and psychological vulnerability, both through a risk to harm and through a potential loss of resources. This vulnerability is exacerbated by social structures and norms that make it hard for individuals to avoid and mitigate against it. This means that the vulnerability is systematic. As identified in Chapter Seven, if a personal relationship leads to systematic physical, material and psychological vulnerability, then this gives the state a compelling reason to directly regulate it. This means that there are compelling non-care-based reasons for the state to directly regulate the romantic relationship in addition to the care-based reasons.

#### ***8.4.4 The State Should Directly Regulate the Romantic Relationship***

The preceding discussion has shown that the state has compelling reasons - both care-based and non-care-based reasons - for directly regulating the paradigmatic marital relationship, *qua* romantic relationship. This means, that contrary to what Chambers, Brake and Metz claim, the state can (and should) create a distinct legal category that corresponds to the romantic relationship. Each of their alternative proposals identify relationships and relationship practices that also warrant direct regulation, but what their proposals miss is that the romantic relationship requires its own distinct corresponding legal category.

Whilst I have shown that direct regulation of the romantic relationship is warranted, I have not shown that the current (or any) political institution of marriage is the best, or most appropriate way for the state to directly regulate this relationship. As highlighted in Chapter Seven, there are a huge variety of types of regulation that the state can make use of (laws, taxes, statuses, etc.). Showing that direct regulation is required, does not in itself say anything about what type of regulation should be used.

I don't aim to answer the question of exactly how the state should directly regulate the romantic relationship in my concluding chapter, rather, I aim to highlight the complexity of working out the answer to such a question in general, and the need to pay attention to various social and political structures in particular.

### **8.5 What About State Recognition?**

As we have seen in the preceding chapters, the anti-marriage theorists phrase their objection to marriage as an objection to the *state recognition* of marriage. I noted in Chapter Seven that it is unclear precisely what state recognition consists in, and so favour understanding the debate in terms of direct and indirect regulation. Nevertheless, in order to make it clear how my argument fits into this debate, it will be helpful to address two further questions. First, does my claim that the romantic relationship warrants direct regulation amount to a claim that it warrants state recognition? Second, if it does amount to a claim that the state should recognise the romantic relationship, then does this mean I have provided a defence of the political institution of marriage? As I will explain in the following two sections, the answer to the first question is that it depends on the definition of state recognition, and the answer to the second, is no, I have not.

#### ***8.5.1 State Recognition as Direct Regulation***

If state recognition just is direct regulation – the creation of a distinct legal category – then showing that the romantic relationship warrants direct regulation amounts to a claim that it warrants state recognition. However, this still does not (in itself) amount to a defence of the political institution of marriage. It does not show that the political institution of marriage is

unproblematic, or that it is the (best) way for the state to provide recognition of the romantic relationship. Just as I said above in Section 8.4.4, there is a further question to settle about what type of regulatory tool should be used. Showing that state recognition (understood as direct regulation) is warranted would not immediately tell us what that recognition should look like – just that it needs to be there. The political institution of marriage would be one option on the table. There could be others: romantic relationship contracts; an ICGU plus status for romantic relationships; or even state directives that pick out the romantic relationship specifically.

There will be advantages and disadvantages for each option which the liberal state would need to consider and weigh up. Relationship contracts provide a good example of this. In response to feminist concerns about a political institution of marriage, thinkers such as Marjorie Maguire Shultz (1982), Lenore Weitzman (1983), and Martha Fineman (1995; 2006) proposed relationship contracts as an alternative.<sup>147</sup> Whilst proponents of the contract model claim that this model will better promote “freedom, equality, neutrality, and diversity” than other options (Chambers 2017, p. 118), their proposals have been met with sharp criticism. Concerning equality for instance, it has been pointed out that contracts don’t necessarily do anything to challenge existing power relations, and so inequality (relating to gender in particular) is likely to persist as those with more power (men) can determine the terms of the contract (see, for example, Pateman 1988).<sup>148</sup>

These are arguments about what type of regulation the state should use in its legitimate task of recognising (understood here as directly regulating) certain personal relationships. The arguments against the political institution of marriage considered in Chapters Five and Six are the same. If they are successful (and I have argued that they are not) then they would not show

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<sup>147</sup> See Chambers 2017, pp. 119-20 for a brief summary of these three authors’ views.

<sup>148</sup> Note that Brake, Metz and Chambers all reject contracts for regulating personal relationships. See Brake (2012) Chapter 7; Metz (2010) Chapter 5; and Chambers (2017) Chapter 4.

that the state should not recognise the romantic relationship via another type of regulatory tool.

### ***8.5.2 State Recognition as Status plus Attached Legal Incidents***

If by state recognition the anti-marriage theorists mean something more specific than the creation of a distinct legal category, then I have not shown that the romantic relationship warrants state recognition. Only that it warrants direct regulation (the creation of a distinct legal category). But then the anti-marriage theorist's arguments against state recognition (in this more specific sense) do not necessarily tell against my claim that direct regulation of the romantic relationship is called for, either.

What could this more 'specific' meaning of state recognition be? One salient option is that state recognition refers to the existence of an opt-in legal 'status' that can be attained (if one is eligible), which has certain rights, duties, and powers etc. that attach to it. The political institution of marriage, minimal marriage and the ICGU status all involve state recognition in this sense (but of different things – the romantic relationship, adult caring relationships, and intimate caregiving relationships respectively). On this understanding, state recognition is one specific type of direct regulation (with other types of direct regulation not providing state recognition).

My argument in this chapter – that there is reason to directly regulate the romantic relationship – does not show that there is reason to directly regulate the romantic relationship *in this specific way* (i.e. in a way that involves state recognition in this more specific sense). In Chapters Five and Six I addressed, and responded to, arguments from Brake, Metz and Chambers which take issue with this specific type of direct regulation for the romantic relationship (in the form of the political institution of marriage). As such, I think that the political institution of marriage is currently still an option on the table for the liberal state to use when it is considering how to directly regulate the romantic relationship. I do not argue that it is the best option. There are still further objections to the

political institution of marriage, and alternative direct regulatory options, to be considered.

### ***8.5.3 A Point in Favour of Statuses***

Whilst I do not purport to provide a full defence of the political institution of marriage, there is a reason to think that some sort of status is a good tool for directly regulating relationships. Both Metz and Brake recognise the benefits of using a status in their alternative proposals. Relationships have certain features that make this type of regulation appropriate: “status – a predetermined bundle of rights and responsibilities – can provide protection from egregious inequality by building equality protections into its terms, without violating privacy or undermining norms of non-contractual reciprocity” (Metz 2010, p. 132). Relationships can be risky, but they are also unpredictable and each one is unique. They are also a matter of personal choice. Requiring individuals to register their relationship in order to acquire the status therefore ensures that “adults’ liberties to choose the terms of their relationships” are protected (Brake 2012, p. 185).

If this is right, then where I think Brake and Metz go wrong, is in their failure to realise that the romantic relationship also requires its own status. Indirect regulation of this relationship (whether that is via minimal marriage or an ICGU status) is not enough. The duties that make up the romantic relationship, and the behaviour that is taken to fulfil these duties, all combine to make this relationship distinctly risky. How romantic partners fulfil these duties will however alter throughout their relationship. It is not something that can be spelled out in advance. The tool that the state uses to directly regulate this relationship needs to be able to accommodate this. A status, with an associated set of legal incidents, allows the state to do this. It doesn’t require romantic partners to explicitly set out how they will fulfil their duties in advance, but it does provide protection from vulnerability (through the attached legal incidents), and it does allow them to determine with whom they are in a romantic relationship (by registering for the status). Once a romantic relationship has acquired this status, certain rights and

duties will then only come into play as and when they are appropriate, but they are there in case they are needed.

Chambers is right to be concerned that there are people who in engage in relationship practices without being in an adult caring relationship, an intimate caregiving relationship, or a romantic relationship. There may therefore be good reason to directly regulate certain relationship practices by default state directives – to ensure that no one engaging in those practices outside of these relationships is left vulnerable. That this is the case does not however show that there is no reason to directly regulate the romantic relationship, nor that it is inappropriate to have (in addition to those state directives) a status and associated legal incidents for the romantic relationship which would address the particular systematic vulnerability that this relationship can lead to. As with Brake's and Metz's proposals, what I have shown is that indirect regulation of the romantic relationship is not enough.

## **Conclusion**

### **The Complex Question of How the State Should Relate to the Paradigmatic Marital Relationship**

#### **1. Final Summary**

I began this thesis by identifying a shift in the way that we think about the marital relationship and the institution of marriage. We have moved away from thinking that the institution of marriage should shape the marital relationship, and now think that the institution should ‘fit’ the marital relationship, as it is understood independently of the institution.

Noticing this shift highlighted the need to focus on the nature of the private relationship that is usually taken to warrant the marital status, and to explore how understanding the nature of this relationship could impact the current political liberal debates surrounding our political institution of marriage. This immediately indicated that this area of investigation could pose a challenge for maintaining a clear public/private divide within society – a traditional liberal tool for maintaining equality, liberty and political stability.

I approached this topic via two guiding questions. First, what is the paradigmatic marital relationship? Second, how should the state relate to the paradigmatic marital relationship? Part One focused on the first question, and Part Two on the second.

Part One identified the paradigmatic marital relationship in our Western liberal society as the romantic relationship. It then explored what the nature of this relationship is, and what makes it distinct from other loving relationships. I argued in Chapters One and Two that we cannot find what makes the romantic relationship distinct by looking in isolation at the love that occurs within this relationship. None of the accounts of love considered (Union Accounts, Robust Concern Accounts, Valuation Accounts and Emotions Accounts) could show that romantic love is distinct without appealing to an aspect of the relationship that the love is found within. This



demonstrated that an account of the relationship itself - the pattern of behaviour and interaction over time - was also needed.

Chapter Three demonstrated why a role-based account (as opposed to a behaviour-based account) of a romantic relationship was required. Only a role-based account would enable us to encompass the vast variety of behaviour that is exhibited in different romantic relationships whilst providing a way to distinguish romantic relationships from other, similar, long-standing loving relationships (in particular close friendships). This highlighted the social nature of the romantic relationship and showed how it is made up of social practices and norms.

Chapter Four took on the task of providing a role-based account of the romantic relationship. A romantic relationship is one in which the participants play the distinctive role of a romantic partner. In this chapter I built up a picture of this role: it is made up of a unique set of constitutive norms, which romantic partners are required to fulfil:

- (1) Romantic partners should love one another, and act in ways that express that love.
- (2) Romantic partners should share the experiences that are central to their lives and accommodate these things within a joint life.
- (3) Romantic partners should take joint responsibility for the central aspects of each other's well-being.
- (4) Romantic partners should trust one another deeply.

Having identified the paradigmatic marital relationship as the romantic relationship, and having provided an account of this relationship, Part Two then took on the question of how the political liberal state should relate to this relationship.

In most Western liberal societies the state relates to the romantic relationship in a direct, regulatory manner, via the political institution of marriage (a legal status with an associated bundle of legal rights and duties). I took, as my starting point, various political liberal arguments that challenge the political nature of this institution. In Chapters Five and Six I identified three levels of concern, and argued that each could be dismissed.

This suggested that the political institution of marriage isn't as problematic for political liberals as claimed. However, my arguments did not show that the political liberal state should relate to the paradigmatic marital relationship via this political institution. This is because it had not been independently shown that the political liberal state should directly regulate or recognise the romantic relationship.

In Chapter Seven I discovered that it is in fact this precise claim - that the state should directly regulate the romantic relationship - which various opponents to the political institution of marriage challenge. In this chapter I showed that we can find two claims underlying the anti-marriage position. First, there is the *Direct Regulation Claim* which states that the liberal state has compelling reasons to directly regulate some personal relationships, and so it is appropriate for the state to create a distinct legal category corresponding to those relationships. Second, there is the *Romantic Relationship Claim* which states that the liberal state does not have compelling reasons to directly regulate the romantic relationship, and so it should not create a distinct legal category that corresponds to it. If these two claims are true, then the underlying complaint against the political institution of marriage is that the state, through this institution, unjustifiably directly regulates – and so creates a distinct legal category corresponding to – the romantic relationship.

In Chapter Eight I responded to this underlying complaint, and argued that the *Romantic Relationship Claim* is false. The romantic relationship does warrant direct regulation. This is because it leads to systematic physical, material and psychological vulnerability in virtue of being a particularly risky intimate caregiving relationship, and in virtue of the romantic love present and relationship maintenance required. Social and political norms and structures contribute to this vulnerability and this highlights how personal relationships (and the romantic relationship in particular) refuse to sit neatly on one side or the other of the public/private divide.

Whilst I have shown that the romantic relationship warrants direct regulation, and that the political institution of marriage is not as problematic

for political liberals as some think, I still have not provided a defence of the current (or reformed) political institution of marriage. In order to do this I would need to show that the political institution of marriage is the best way for the state to mitigate against the systematic vulnerability identified, and that there are no other problems with this institution.

To bring this thesis to a close I want to highlight just how difficult it is to answer the question of how the political liberal state should directly regulate the romantic relationship. I haven't made any concrete proposals for a regulatory framework (although I have mentioned some points in favour of utilising a status and associated legal incidents) for this reason. In order to highlight the complexity I draw on the work of Iris Marion Young (1990; 2006) and present two insights that seem particularly pertinent, and which also make clear just how much this topic challenges the neat liberal public/private divide.

## 2. Two Relevant Insights

The two insights which seem particularly relevant to the question of how the state should relate to the paradigmatic marital relationship (the romantic relationship) are as follows:

*Structural Insight:* when we are considering matters of social justice we need to pay attention to the variety of social structures and institutional contexts that influence a particular issue.

*Distributive Insight:* when we are considering matters of social justice we need to be careful that we do not obscure important issues of justice by over-extending the concept of distribution.

These insights are found within the literature that criticises and challenges a purely distributive notion of social justice – one that restricts the concept of social justice “to the morally proper distribution of benefits and burdens among society’s members” (Young 1990, p. 15).<sup>149</sup> The two insights

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<sup>149</sup> This literature favours a concept of social justice that focuses on eliminating “institutionalised domination and oppression” (Young 1990, p. 15).

correspond to two criticisms that Young makes against the “distributive paradigm” (p. 15). First, that it focuses on the distribution of resources and social positions and so fails to evaluate the “social structure and institutional context that often help determine distributive patterns” (p. 15); and second, that it has a tendency to inappropriately widen the “concept of distribution” so that it encompasses “nonmaterial goods [such] as power, opportunity, and self-respect” which misrepresents these goods “as though they were static things, instead of a function of social relations and processes” (p. 16).<sup>150</sup>

I do not aim to comment on whether the criticisms and challenges are warranted, nor on how well proponents of this distributive view do, or could, incorporate these insights.<sup>151</sup> Rather, my aim is simply to demonstrate that these two insights look particularly relevant to the question at hand. Whilst it has been shown that direct regulation of the romantic relationship is warranted, it has not been shown what type of regulatory tool should be used to achieve this direct regulation. These insights highlight just how complex a task this really is.

### ***2.1 The Structural Insight***

The first problem that Young identifies with the distributive paradigm is that its exclusive focus on distributive matters causes it to miss other non-distributive matters of justice that require equal attention: namely social structures and institutional contexts. These are “any structures or practices, the rules and norms that guide them, and the language and symbols that mediate social interactions within them, in institutions of state, family, and civil society, as well as the workplace” (1990, p. 22). We can immediately see that the traditional liberal public/private divide is being challenged by

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<sup>150</sup> The second concern arises in response to the fact that some distributive theorists do recognise the structural issues Young highlights in the first concern, but attempt to address these via the distributive method.

<sup>151</sup> Young acknowledges that Rawls treats the basic structure as the subject of justice, but still thinks that he has too strong an emphasis on distribution - an emphasis that cannot capture *all* of the structural concerns of justice (2006, p. 91).

Young. She highlights that the reality is much more messy – something which the case of personal relationships highlights even further.

These institutional contexts and social structures (which cross the public/private divide) are all relevant to questions of justice because they are the “background conditions” (Young 1990, p. 22) under which people live. They affect what people are able to do, and they affect how resources are distributed – “what there is to distribute, how it gets distributed, who distributes, and what the distributive outcome is” (p. 22). We therefore need to pay attention to them when considering matters of social justice.<sup>152</sup>

Take, for example, the “division of labour” (Young 1990, p.23; 2006, p. 93) within our society. We might notice that there is a pattern whereby, for example, menial labour is primarily done by ethnic minorities and highly paid professionals tend to be white, and ask whether this pattern is unjust. An answer to this question might focus solely on how jobs are allocated, and on determining whether everyone has an equal opportunity to access high paid jobs. If everyone has fair equality of opportunity, then the pattern is just, on this picture. The concern is that this focus could miss key issues of injustice. It doesn’t question, for example, “the structure of the occupational distinctions, the definition of tasks within them, and the relationship among people occupying differing positions within a production, distribution, or service enterprise” (2006, p. 93). Ensuring everyone has equal access to all positions is all well and good, but if there is something unjust about the structure of occupational distinctions, for example, then we need to make sure they are addressed as well. The distributive focus on equality of opportunity has a tendency to miss these concerns.

Another familiar example highlights this point: the division of labour whereby women tend to take on the majority of caregiving labour (of

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<sup>152</sup> Elizabeth Anderson is someone else who also highlights that “social relations and norms, and the structure of opportunities, public goods, and public spaces” (1999, p. 319) affect what people are able to do and achieve within society, and so need to be evaluated when questions of (egalitarian) social justice arise.

children and other dependents), whilst men tend to be the primary income earners. This is a pattern that tends to limit “women’s opportunities to develop other capacities and achieve public recognition, and often makes them vulnerable to poverty” (Young 2006, p. 93). Young is critical of the Rawlsian approach that would attempt to either make caregiving more equally shared (by both genders), or unequal caregiving compensated for. She is critical of this approach because it doesn’t question “the structural division between private domestic care work and public wage and salaried work” (p. 93): a structural division that has “far-reaching implications for the worth of different kinds of labour, employer and labour market expectations of the shape and length of the working day, and the form and status of sex segregation and gender stereotyping in more public paid occupations” (p. 93). This example highlights how just one structural feature can have far-reaching effects in a variety of areas – all of which can lead to issues of justice.

Another key area of justice that Young claims cannot be properly accommodated by the distributive paradigm is that of “normalisation” (2006, p. 95).<sup>153</sup> Normalisation concerns the social processes by which certain persons and behaviours come to be viewed and treated within society as ‘normal’ and valuable, leading to the devaluation, stigmatisation and discrimination of those who do not conform to these norms.

These social processes can be found in the various “institutions, discourses, and practices” within society (Young 2006, p. 95). They consist of things like social conventions, and the way people and behaviours are portrayed in literature and the media. These social processes “elevate the experience and capacities of some social segments into standards used to judge everyone” (p. 95). They distinguish what persons and behaviours should be regarded as ‘normal’ and ‘abnormal’. What is considered ‘normal’ as a result of these processes is also seen to be the most valuable.

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<sup>153</sup> Young has previously referred to this particular issue as an issue of “culture” (1990, p. 23).

In addition to this, the stigmatisation and disadvantage of the ‘abnormal’ is often enforced and reinforced by “institutional rules and practices” (Young 2006, p. 95). For example, within the workplace there are traditional male lifestyle norms at play which means that employers assume that their employees do not juggle both paid work and caring duties for their families. This has the consequence of often putting “workers at a disadvantage for taking time off due to family illness” (p. 96). Another example is of ethnic and racial minorities who can “find themselves regarded as deviant in relation to convention or politeness, articulateness, or the appearance of honesty and trustworthiness” (p. 96). Appearing to be polite, articulate, honest and trustworthy are important when it comes to securing jobs and positions that involve a certain level of authority and responsibility. Being perceived as ‘deviant’ in relation to these things therefore adversely affects these peoples’ chances of securing such positions.

## ***2.2 How the Structural Insight relates to Regulating the Romantic Relationship***

In her examples Young highlights a number of social structures, processes and norms that contribute to social injustice. This highlights the huge variety of social structures and norms that can influence social justice in many, far-reaching, ways. Some of these structures, processes and norms are directly relevant to the question of how to directly regulate the romantic relationship because they also contribute to the vulnerability faced by those within this type of relationship.

The structure that divides caregiving and paid employment, and the masculine norms of the workplace, for instance, are structures and norms that contribute to the systematic vulnerability of intimate caregiving.<sup>154</sup>

They exacerbate and cause physical, material and psychological vulnerability for anyone in an intimate caregiving relationship because they cause or contribute to care-work being underpaid, undervalued, and viewed as not producing marketable skills, which in turn makes it harder for those

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<sup>154</sup> See Chapter Seven, section 7.3.2.

providing this care to make up any physical, material or psychological resources lost through intimate caregiving.

The discussion in section 8.4 highlighted other structures and norms that also contribute to the systematic vulnerability that occurs within the romantic relationship. For example, those that determine average salaries (so that they only support one individual), and those that influence what people will take to be central to their lives. The reason that child rearing, care work and careers are often part of a romantic joint life is because they are viewed as important and valuable within our society. It is the norm for them to be viewed in this way and for them to feature in romantic relationships.

The point of highlighting the impact of these various structures and norms is to show that the question of how to directly regulate the romantic relationship is highly complex (and to explain why it has not been addressed further). When we come to build a proposal for how the romantic relationship should be directly regulated we need to pay attention to the social structures and institutional contexts that contribute to the vulnerability that arises within the relationship. This will require evaluating, and potentially altering social structures and norms, as well as institutional contexts across the whole of society (and not just those that neatly fit into the political sphere). It seems unlikely that a single, dedicated political institution (or alternative regulatory framework) will be enough to fully combat the systematic vulnerability that has been identified.

This point stands for the question of how to directly regulate other personal relationships and relationship practices as well. Consider Metz's and Chambers' proposals which recognise the structural causes of vulnerability in relation to intimate care and other relationship practices, and highlight the need for concern in this area. They both argue for a structural change – an abolition of the current political institution of marriage, and the formation of a new regulatory framework (an ICGU status or default state directives for particular relationship practices) for certain personal relationships. These proposals need to be evaluated in terms of how well they address the issue



identified with the structural division of care and paid labour. It seems (intuitively at least) that there is reason for the state to attempt to do more to directly address this identified structural problem.

Brake also highlights structural issues of justice. She identifies an issue of normalisation when she draws attention to amatonormativity. Having a romantic, dyadic relationship is viewed as the norm in our society. Brake claims that those who conform to this norm are privileged, and those who do not conform are stigmatised and disadvantaged. They face “systematic discrimination” (2012, p. 89) because they are ineligible to receive marital rights and benefits, and their relationships are regarded as socially unimportant and judged negatively (because they don’t live up to the valued norm).

Brake is concerned about the disproportionate focus on the romantic relationship, and the discrimination that non-romantic relationships receive. There are various social processes that contribute to this: the numerous love stories within our culture that valorise the search and attainment of romantic love; the media reporting on marriages and divorces in positive and negative lights respectively; workplace norms; and (according to Brake) having a political institution of marriage that is only available to romantic, dyadic relationships. Brake focuses on this final structural feature and attempts to address the problem by proposing that we alter this (and only this) institution. Her aim is to stop the institution of marriage from contributing to amatonormativity by opening it up to all adult caring relationships. The problem with her proposal (in addition to missing the fact that the romantic relationship warrants some form of direct regulation) is that it does not do enough to address amatonormativity. It does not address the other social processes that contribute to the norm that she sees as problematic, at least not directly. If we radically alter the political institution of marriage in the way she envisions, so that all adult caring relationships can receive minimal marriage rights, this will not eradicate the social and workplace norms that also contribute to amatonormativity. If amatonormativity contributes to social injustice then more needs to be done to combat it.

### 2.3 *The Distributive Insight*

The Distributive Insight stems from the second problem that Young identifies with the distributive paradigm: it overextends the concept of distribution.

In response to the charge that the distributive paradigm ignores certain structural issues of social justice, proponents have claimed that they can (and do) both notice and address these issues. In order to do this they apply the concept of distribution to non-material goods. The thought is that any structural issue can be addressed by ensuring that there is a just distribution of, for example, rights, opportunities, and power. Rawls for instance is concerned with the just distribution of “rights and duties related to decision making, social positions, power, and so on” (Young 1990, p. 24).

Portraying social goods like rights, opportunities and power, in this way is problematic for two initial reasons. First, it misrepresents these goods as *things* that can be distributed and quantified, when they are better understood, claims Young, as “a function of rules and relations” (1990, p. 25). Second, Young is worried that it encourages us to think about social justice solely in terms of “end-state patterns” when “social processes” are also relevant (p. 25).

As a result this over-extension of the concept of distribution risks obscuring important issues of justice. We should not only be concerned about what and how much people have (individually, and in comparison to others). We should also be concerned about

what people are doing, according to what institutionalised rules, how their doings and havings are structured by institutionalised relations that constitute their positions, and how the combined effect of their doings has recursive effects on their lives. (Young 1990, p. 25)

These are not things that can be captured by a concept of distribution – they are social *processes*.

These concerns are highlighted well by considering particular social goods like opportunities and self-respect. Opportunities to do things (in this context) are “states of affairs that combine the absence of insuperable

obstacles with presence of means - internal or external - that give one a chance of overcoming the obstacles that remain” (Young 1990, p. 26). A just distribution of material goods will be important for ensuring people have opportunities (they are a particular type of means), but that is not the only important thing. Being able to do things is also affected by the “rules and practices that govern one’s action, the way other people treat one in the context of specific social relations, and the broader structural possibilities produced by the confluence of a multitude of actions and practices” (p. 26). Opportunities are therefore not (wholly) distributable nor quantifiable.

Self-respect, which we have seen Rawls includes on his list of primary goods, is another social good that Young thinks it is wrong to characterise as a distributable thing. This is because it “is not an entity or measurable aggregate, it cannot be parcelled out of some stash, and above all it cannot be detached from persons as a separable attribute adhering to an otherwise unchanged substance” (1990, p. 27). Instead, it is an “attitude” that one has towards one’s own “entire situation and life prospects” (p. 27).

Young recognises that it is the social conditions of self-respect that Rawls treats as distributable (rather than the attitude of self-respect in general). She concedes that some of the conditions of self-respect may be distributable material goods, but claims that there are also “many nonmaterial conditions that cannot be reduced to distributive arrangements” (1990, p. 27) because they are relations and processes rather than things. For example, the social conditions for a person to have self-respect will include “how they define themselves and how others regard them ... how they spend their time ... [as well as] the amount of autonomy and decision making power they have in their activities” (p. 27). These things cannot be distributed, and so they cannot be properly addressed by the distributive paradigm.

#### ***2.4 How the Distributive Insight Relates to Regulating the Romantic Relationship***

The Distributive Insight cautions us that it is possible to obscure important issues of justice by construing matters of justice in a solely distributive manner. Here I want to highlight how this insight is particularly relevant to

the question of how to directly regulate the romantic relationship (and other personal relationships). This is because the issues of social justice that the paradigmatic marital relationship can lead to clearly concern social goods – precisely the kinds of goods that Young is concerned about extending the concept of distribution to cover.

The romantic relationship has been shown to lead to systematic material, physical and psychological vulnerability. It does this in virtue of being a particularly risky intimate caregiving relationship, involving romantic love, and requiring relationship maintenance. Whilst it is clear that the concept of distribution can apply to material goods, it is less clear that it can be appropriately applied to physical and psychological goods. These goods will include things like physical health as well as psychological well-being and self-respect. None of these are straightforwardly *things* that can be distributed and quantified. Whilst it might be claimed that the social bases of these things can be distributed and quantified, the example of self-respect above should make us cautious about claiming this without careful investigation.

The point is that we need to be careful about applying the concept of distribution to these goods when we are considering how to directly regulate this relationship. When we build proposals for new (or reformed) regulatory frameworks we need to make sure that we do not obscure important issues of justice that need to be addressed by characterising the goods that they will be concerned with as distributable things. So far as other personal relationships that need to be directly regulated involve similar systematic physical and psychological vulnerability, the same cautionary note will apply.

The case of self-respect above highlights this point well, and is directly relevant to the question of directly regulating the romantic relationship. If we want to ensure that individuals within a romantic relationship can maintain their self-respect then we need to consider, in addition to whether they have a just amount of relevant material goods, how they define themselves and how others regard them, how they spend their time, and the

amount of autonomy and decision making power they have in their activities. These things will not necessarily be secured solely via the regulatory framework for the romantic relationship – they are affected by other social and political structures as well. This again highlights the need for a complex and holistic approach to the question of how these relationships should be regulated by the state.

The Distributive Insight is not only relevant to the question of directly regulating personal relationships that are construed as leading to systematic physical and psychological vulnerability. It also directly challenges Brake's proposal of minimal marriage which views the social bases of adult caring relationships as (distributable) social primary goods. Brake views adult caring relationships in a way that is analogous to how Rawls views self-respect. Young's criticism of extending the concept of distribution to self-respect looks likely therefore to apply directly to extending it to the social bases of adult caring relationships as well.

Like self-respect, adult caring relationships are not entities or measurable aggregates, and they cannot be parcelled out of some stash, or detached from persons as a separable attribute adhering to an otherwise unchanged substance. For self-respect, this is because it is an *attitude*. For adult caring relationships, it is because they are *relationships* (a pattern of behaviour and interaction over time). Attitudes and relationships are not things.

Brake clearly recognises this, yet (analogously with Rawls and self-respect) thinks that the social conditions of adult caring relationships are distributable things. Whilst some distributable material goods might be a condition of being able to form adult caring relationships (having a place to conduct the relationship, economic security to focus on maintaining the relationship etc.), there are also many nonmaterial conditions that cannot be reduced to distributive arrangements, as was the case with self-respect. These include many of the things Brake views as minimal marriage rights – such as next of kin and visitation rights.

Brake could argue that we can understand things like next of kin rights as distributable entities. Young highlights why it is problematic to view these

type of rights (akin to the right of free speech rather than rights to a fair distribution of material things) in this way. If there is a situation where some people have this type of right when others don't then this does not mean that "some people have a certain 'amount' or 'portion' of a good while others have less" and extending the right to everyone does "not entail that the formally privileged group gives over some of its right" (1990, p. 25). This highlights the disanalogy between rights and material goods. Rights are not things, they are relationships: "they are institutionally defined rules specifying what people can do in relation to one another" (p. 25). Construing them as distributable things risks distorting this important fact.

To summarise, in an analogous way to self-respect, no adult caring relationships, and not all of the social bases of adult caring relationships can meaningfully be conceived as goods that individuals possess; they are rather relations and processes in which the actions of individuals are embedded. This suggests that it may not be helpful to think about adult caring relationships as primary goods with distributable social conditions. It's more complex than that.

### ***2.5 Concluding Remarks***

The aim of this final section has been to show that when we come to consider how the state should directly regulate the paradigmatic marital relationship (the romantic relationship) we will need to look at a much bigger picture than just the relationship itself - we will need to pay attention to the variety of social and political structures and norms that contribute to making this relationship one that warrants direct regulation - and this might mean crossing the traditional public/private divide. The social and political structures and norms that cause this relationship to lead to systematic material, physical and psychological vulnerability are various and far-reaching. This might well mean that we will need to consider the whole variety of regulatory tools that the state can utilise, and not necessarily just legal statuses, rights and benefits.

One final point that I want to make is that it has been the focus on the nature of the paradigmatic marital relationship that has enabled me to show this. If

the institution of marriage is meant to fit the romantic relationship, then we need to spend more time thinking about what this relationship needs.

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