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# How should marriage be theorised?

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**Abstract**
Feminists have noted the injustice of the institution of marriage and the asymmetric power dynamics within gender-structured marriages. Recently, feminists have found an unexpected supporter of this struggle against marriage in some liberal political theorists. I argue that this new wave of interest in the wrongness of marriage within liberalism reveals shortcomings from a feminist perspective. While some liberals fail to realise that instead of being disestablished, the institution of marriage should be radically reformed, others do not recognise that such a reform should be theorised by starting from our non-idealised conditions of gender inequality and from an analysis of how the institution of marriage intersects with other spheres of gender injustice. This article provides recommendations for the radical reform of marriage by following some methodological premises of feminist theory. To illustrate how the reform of marriage should be theorised, it focuses on the intersection between the sphere of gender injustice represented by immigration and that of marriage.

**Keywords**
Feminist methodology, gender inequality, immigration, liberalism, marriage, non-ideal theory

Feminism and marriage have never experienced connubial bliss. Feminist scholars have highlighted the vulnerability and oppression suffered by women *within* gender-structured marriages, while also challenging the justice *of* the institution of marriage. Some have noted that marriage has historically been 'the vehicle through which the apparatus of state can shape the gender order' (Cott, 2000: 3). Marriage has represented a fundamental institution whereby the sexual subordination of women, heteronormativity and inequality between genders has been

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formally regulated.[1] Those feminist scholars who worked to change the institution of marriage have recently found supporters in certain liberal political and legal philosophers who, by offering both feminist and liberal rationales, argue in favour of either a radical reform or the disestablishment of the institution of marriage.[2] This article focuses on these recent liberal attempts to theorise the institution of marriage. These attempts seem to disagree with liberals' traditional silence regarding the profound injustice and oppression suffered by women within the family and as a result of marital ties.[3] This substantial shift in liberal theory is worthy of scrutiny as it brings new insights into the feminist debate over marriage.

The purpose of my argument is twofold. First, it aims to show, from a feminist perspective, that these liberal attempts reveal serious shortcomings. While some observers fail to understand that the institution of marriage should be radically reformed instead of disestablished, others do not recognise that such reform should be theorised by starting from our non-ideal conditions of gender inequality and from an analysis of how the institution of marriage intersects with other spheres of gender injustice. Second, the article provides positive normative recommendations for the radical reform of marriage. Before proceeding, one preliminary observation must be made. The (feminist) angle from which I criticise the discussed liberal proposals to change the institution of marriage can seem inappropriate. It could be argued that such liberal attempts respond to the need to determine how a *liberal* state should regulate adult relationships rather than assess how this can be performed in a *feminist* way. For these authors, gender equality is not the only value at stake. However, it is this objection that undervalues the intellectual enterprise of much of this work. Not only do some of these authors incorporate feminist insights into their arguments, they are also declared feminist liberals whose proposals depict liberalism and feminism as a sort of 'tautology'.[4] In other words, for some of these scholars, the aim is to explain how adult relationships should be regulated according to liberal *and* feminist values, thus asking whether such proposals advancing feminist goals are legitimate.[5]

In the first section of this article, I argue that disestablishing marriage through private contracts or the substitution of civil unions for civil marriage is likely to render women more vulnerable because the process misses the opportunity to shape adult relationships in a more egalitarian fashion. In the second section, I show how the radical reform of the institution of marriage should be theorised according to feminist methodology: starting from non-idealised circumstances and focusing on the intersection of marriage with various spheres of gender injustice. This means that marriage law is not the sole factor that must be tailored to the actual conditions of gender inequality and the intersection of the spheres of gender injustice. Many spheres of gender injustice, which may not appear immediately connected to that of marriage, do greatly affect intimate relationships. In the final section, I discuss how the radical reform of marriage should be theorised by using the example of the intersections between marriage and immigration law.

## Marriage and gender inequality: Disestablishment or radical reform?

Liberalism has generally remained silent about the profound injustice and oppression suffered by women within the family and as a result of marital ties. One of the first and few liberals to examine the family as a locus of injustice was Susan Moller Okin. As I elaborate later, some of the insights provided by Okin are fundamental to theorising the radical reform of the institution of marriage.[6] Okin famously argues that the vulnerability experienced by women through marriage is interwoven with the discrimination they face in other social and political domains (1989: 134–169). I note that the new group of liberal scholars questioning the institution of marriage neglects or does not fully follow Okin's invaluable insights. The majority of these recent liberal accounts of marriage tend to argue in favour of disestablishing marriage through private contracts or by substituting civil unions for civil marriage, open to everyone, independently of their sexual orientation. For instance, Cass Sunstein and Richard Thaler envision an ideal world in which the meaning of marriage is entirely defined by religious and private institutions. By merely signing private contracts, individuals are allowed to enter into relationships at will (2008: 377).[7] For Sunstein and Thaler, this imaginary scenario could be easily realised even in real societies and may solve the dilemma concerning the recognition of same-sex relationships in a way that can be appealing to both progressives and conservatives. The separation between contractual unions – regulated and available to everyone regardless of sexuality – by means of ordinary law, and marriage – regulated and restricted by private institutions – would be approved by a diverse array of perspectives rather than on the basis of a shared rationale.

Similarly, Tamara Metz argues in favour of the disestablishment of the institution of marriage. For Metz, marriage in pluralistic societies requires the formal involvement of a public authority, and the marital union should be primarily understood as a tie binding individuals to an ethical authority. Metz contends that to maintain its neutrality towards different conceptions of the good, the (liberal) state cannot perform 'the role of ethical authority' (2010: 115). By granting marriage licenses, the state *establishes* a particular form of intimate and communal existence. Thus, it interferes with individuals' freedom to pursue their personal beliefs. Instead, the state should protect persons in dependent relationships by creating an 'intimate care giving union status' that expands on the idea of civil unions, including all caring relationships (Metz, 2010: 113).[8] The proposal to privatise marriage[9] overlooks the important role the state can play in constructing adult relationships that improve gender equality.[10] Such neglect has both practical and expressive deleterious effects. Practically, a great deal of vulnerability between partners would be allowed. Sunstein and Thaler, like many supporters of the regulation of adult ties through private contracts, note that one of the appeals of the disestablishment of marriage is that individuals can freely choose the terms of their unions (2008: 379–180). In other words, private contracts are appreciated for their flexibility.

Consequently, although violations of persons' integrity, such as sexual assaults, battering and minor marriages, can still be banned (Sunstein and Thaler, 2008: 379), other unequal terms must be permitted to maintain the flexibility such contracts are claimed to possess. Therefore, under a regime of private contracts, a woman with a low source of income who decides to enter into an intimate contract with a wealthier partner can agree to disadvantageous financial terms, such as renouncing economic compensation if the contract is terminated. Such an arrangement is likely to reinforce the already unequal power dynamics between the partners and to place the woman in a vulnerable position during and after the relationship. While this pitfall seems inevitable when adult intimate relationships are regulated only through private contracts, one may suppose that the substitution of civil unions for civil marriage, such as the type proposed by Metz, can offer women more protection. Nevertheless, as Laurie Shrage observes, for such unions to encompass the variety of caring and familiar ties between adults present in society – as Metz suggests – they must 'be flexible to the point that they will be indistinguishable from privately negotiated contracts' (2013: 12). Thus, it is likely that even civil unions will be unable to guarantee women adequate protection.[11] Similarly, Metz's proposal reveals the same flaw that Sunstein and Thaler's private contracts revealed. Not only would disestablishing marriage fail to protect enough individuals from the uncertainty and complexity that characterise intimate ties, but it would also allow women, who are generally already the more vulnerable party, to enter into profoundly unequal relationships.

For the state, the refusal to establish a public understanding of marriage would also have important *expressive* losses. Arguably, marriage has traditionally represented the way in which adults can publicly state the importance of their long-term commitments. When the state decides who can marry it also passes judgement on which kinds of relationships are worthy of state protection and recognition. This entails making a judgement on the individuals who have such commitments by implicitly confirming or negating their equal status as citizens through the provision or denial of the right to build a family. Leaving the role of deciding the understanding and purpose of such an expressive institution to private associations – particularly religious ones – would mean offering them a significant opportunity to shape adult relationships through their potentially unequal and sexist values.[12] Conversely, by maintaining control of the institution of civil marriage and radically reforming it, the state can change the traditional public perception of this powerful institution from chauvinist to egalitarian. The long-standing idea that marriage should be based on reproduction and (legitimate) sexual intercourse, whereby women's bodies have been historically controlled, can be rejected. Instead, as Linda McClain argues, civil marriage can recognise the importance of adult long-term commitments for promoting important values within a society, such as care and responsibility, and protect the ones in these relationships from potential abuses (2006: 191–222). In this manner, the state can gradually transform personal and intimate ties in a more (gender) egalitarian fashion by, for example, insisting on and encouraging a more equal domestic division of labour. Moreover, the state

would have an invaluable opportunity to publicly recognise the equal status of adult ties that have been traditionally decried and of the citizens who have them.

The crucial expressive role that marriage plays in societies is confirmed by the heated debate over same-sex marriage. One of the most significant aspects of this discussion is the symbolic importance that both conservative associations, such as churches, and some LGBT organisations place on the word 'marriage', even when it is used to define publicly-recognised personal arrangements. Even a large number of progressive members of the clergy who acknowledge the necessity of same-sex couples having their civil rights protected disagree that such a public recognition should take the form of civil marriage.[13] Yet, even in countries with legal systems that recognise same-sex civil unions, the fight to extend the right to marry to same-sex couples continues.[14] This may suggest that, within societies with a history of sexual discrimination, formally extending the term 'marriage' to previously discriminated couples would symbolically publicly recognise the equal status of non-heteronormative families – a symbolic potential that other public arrangements, such as civil unions, may not have. This is because the term 'marriage' still significantly matters, precisely to those parts of civil societies denying the equal value of non-heterosexual unions. In other words, giving same-sex couples the right to marry would, for the state, convey a public message of status-equality that may transform civil society. Although combating heterosexism within society does not stop at guaranteeing same-sex marriage (Ferguson, 2007: 41), same-sex marriage may be a necessary and initial step towards affirming the equality of same-sex relationships and their familiar ties. Radically reforming the institution of marriage rather than disestablishing it is the best way to gradually transform adult relationships according to the public value of gender equality.[15] But how should such a radical reform be theorised?[16]

## Theorising the radical reform of marriage

Elizabeth Brake proposes reforming marriage in a manner attuned to feminist (and liberal) values (2012: 5): 'minimal marriage' (hereafter MM). She acknowledges the significance of radically reforming marriage instead of simply disestablishing it. Brake's proposal is worthy of scrutiny because it represents the most recent and considered liberal account of how marriage should be reformed. According to Brake, the state can impose restrictions on citizens' private lives insofar as these restrictions are justifiable in terms of 'public reasons'. Drawing on Rawls's political liberalism, Brake claims that decisions concerning the basic structure of society, which includes marriage and family, must be justifiable by means of political arguments that do not rely on particular comprehensive religious and moral doctrines (2012: 135–136). Brake contends that public reason requires a system of MM that favours and supports the social bases of adult caring relationships – social bases that the state is obliged to secure. Specifically, MM would support every caring relationship between two (or more) *nondependent* adults (Brake, 2012: 156). For Brake, all persons involved in caring relationships, regardless of the sex

or sexuality of, or the existence of sexual intimacy between the parties, may be granted *only* the rights and entitlements supporting their particular relationship (2012: 160–161). To be in a caring relationship, the parties must 'know and [be] known to each other, have ongoing direct contact and share a history' (Brake, 2012: 160). Nevertheless, their exchange of marital rights could be non-mutual, and all of the legitimate entitlements could be undistributed altogether. Thus, among the fixed list of the rights and benefits that MM grants, adults can choose those they consider fit for their relationship. They may also decide to exchange some entitlements with one partner and some with another, without any of the partners in question being required to reciprocate.

Drawing on (even radical) feminist critiques of the injustice of marriage and injustices within marriage, Brake begins her analysis by expressing deep concern about how marriage is largely an unjust institution in our societies, which sustains heteronormativity. Brake also claims that radical reform is necessary. Nevertheless, Brake theorises such a reform by envisioning 'an ideal, liberal egalitarian society' (2012: 160). The bundles of non-mutual and non-exclusive rights and obligations that the reformed institution of marriage would grant are decided by starting from certain *idealised conditions*. Brake explicitly assumes that the society within which MM is theorised is constituted by egalitarian institutions and that equality is guaranteed. Moreover, she imagines adults entering MM as nondependent persons, particularly in financial matters (Brake, 2012: 156). Finally, she implicitly brackets the fact that adults belong to different structural groups within society that inevitably condition their expectations and opportunities.[17] She does not consider the extent to which being a member of groups formed along the lines of, for instance, gender, sexuality, race, ability and class may affect the power dynamics within personal intimate relationships. Brake believes that constructing marriage in such an idealised world is not a mere speculative enterprise. Conversely, because it is unconstrained by unfavourable factors, this model can guide the reform of the institution of marriage in our non-ideal circumstances. In addition to representing a device for social criticism, MM is regarded as a powerful tool for change, although it requires some adjustments to be able 'to respond to actual injustices' (Brake, 2012: 190). In other words, for Brake, theorising the reform of marriage in two stages (i.e. starting from idealised conditions and then moving to real non-ideal circumstance) does not diminish the egalitarian potential of MM.

To identify the problems that Brake's approach to marriage creates, I propose some fundamental methodological premises of feminist theorising. These premises are crucial to thinking positively about how an effective reform of marriage should be performed. Feminism is undoubtedly a heterogeneous tradition. However, despite discrepancies in theories and approaches, the majority of feminist scholars agree that feminism is also a 'particular mode of questioning, an orientation and set of commitments' that guides normative theorising (Young, 1997: 5). Feminist theorising is driven by the particular ideal and goal of gender equality.[18] Many feminists highlight that institutional change should be proposed by analysing how various public and private spheres of gender inequality *intersect* with and mutually

reinforce one another to maintain gender injustice and by starting from women's actual conditions.[19] Let me start by discussing how the intersection of spheres of gender inequality works. As an example of how feminist insight into the intersection between spheres of gender inequality is grounded, consider how health inequality and poverty spill over into one another. On the one hand, even where there is universal access to healthcare, women in poverty are more vulnerable to health problems, including mental health problems such as depression, PTSD and mental illnesses (Rogers, 2006: 352; American Psychological Association, 2013). On the other hand, poor reproductive health outcomes, such as early childbearing, maternal morbidity and unintended or mistimed pregnancy, can increase women's poverty or prevent women from escaping it (Green, 2008). Gendered inequalities in health are reinforced by gendered poverty, while gendered poverty is entrenched by gendered health issues.

Marriage lies at the heart of the intersection between various spheres of gender injustice. Gender inequalities that persist within marital relationships, such as the unequal division of domestic and caring labour, hinder the opportunities women may have elsewhere by preventing them from being equal competitors in the job market (Pateman, 1989: 119). Thus, gender inequality at home reinforces gender inequality in the workplace. Consequently, the lack of substantively equal opportunities between women and men in diverse areas of public existence ensures the unequal distribution of power among persons in the domestic realm and seriously affects decisions regarding the personal regulation of private life (Okin, 1989: 128–129; Fineman, 2004: 57–59). The pernicious idea that women and men occupy different positions within society – based on which power asymmetry within personal relations is justified – may be reinforced by the limited presence of women in politics and managerial roles. Any radical reform of civil marriage should carefully consider how the different spheres of gender inequality spill over into one another in a determinate society. Such a reform should also modify the legal construct of marriage and the bundles of rights and duties it grants, such as by countering the effects of gender injustice, protecting women and fostering equal adult relationships. It is worth stressing that the particular intersections of the spheres of gender injustice affecting marriage may vary within different societies. Thus, the theorisation of the radical reform of marriage should be sensitive to its particular context of implementation.

A further methodological premise of feminist normative theorising is that theory should be grounded in women's *actual* conditions. Women's particular experiences and the ways in which they address their conditions are not simply an important source of knowledge; they represent the ineluctable starting point of (feminist) normative theorising.[20] This does not mean that there is no place for ideal theory in feminist theory. Envisioning a world in which the ideal of gender equality is realised constitutes an important device of social criticism that enables us to see how far our societies are from that world (Abbey, 2011: 223). Nevertheless, a completely different question is how to move from our current society to a society where gender equality has been realised (Mills, 2005: 181–182). This question can

only be approached and answered by examining women's actual conditions. In brief, when institutional reform is not theorised by starting from the non-idealised conditions of women, such reform may be counterproductive because it may increase women's vulnerability or, at best, leave gender inequality largely intact. Marriage is no exception. Its radical reform should be theorised by starting from the actual conditions in which women enter and remain in marital unions. When marriage reform is carried out, idealising the conditions in which women live and abstracting from important dimensions of gender inequality is a deleterious starting point. This is because such reform is likely to neglect the actual experience of many women, and miss whether and how the dimensions of gender inequality it has abstracted from affect the position of women within marital ties.

As mentioned, Brake theorises the radical reform of marriage by starting from an idealised society and, *at a subsequent stage*, deploying the proposal to guide reform in actual societies. As Brake would certainly recognise, such an idealised society is arguably different from our reality. The idealised conditions assumed by Brake (i.e. egalitarian institutions, adult economic non-dependency and equal structural membership) must be considered and analysed to propose a reform of marriage that reduces gender vulnerability and promotes gender equality. In other words, the assumptions made by Brake can be defined as particularly 'bad idealisations' because they refer to injustices that cannot be bracketed while theorising about justice.[21] Although contemporary liberal and democratic societies are still unequal, many women enter intimate relationships as financially dependent on their partners, and membership in disadvantaged structural groups, such as that of women, still affects individual expectations and opportunities. These facts are arguably injustices that are relevant to marriage. If the regulation of marriage is theorised in an idealised world, where these injustices have been abstracted, the normative proposal will be blind to these problems of gender justice. Alternatively, when used to guide a reform of marriage in a non-idealised society, this proposal would face a problematic alternative: either maintaining its original tenets, thereby compounding gender vulnerability, or losing its distinctiveness.

Non-idealised theorising is also necessary to understanding how marriage intersects with various economic, social and symbolic spheres of gender injustice. First, in an idealised egalitarian world, it can be assumed that many spheres of gender injustice that do spill over into marriage are *just*. Envisioning these spheres as just means, *a fortiori*, that their intersection with marriage can be considered just. Nevertheless, it is exactly this intersection that must be analysed to radically reform marriage according to the value of gender equality. Conversely, focusing on actual non-idealised conditions is likely to point to some particularly unequal spheres of gender injustice that spill over into marriage. Second, it is fair to assume that in different societies, the different spheres that spill over into marriage may intersect in a contextual fashion. Thus, a non-idealised theorisation of marriage is more likely to be sensitive to important context specificities than an idealised theorisation.

The *way* the bundle of rights and benefits granted by marriage should be exchanged by partners must be sensitive to the power dynamics present within societies. Take the phenomenon of internalised oppression as an example. In societies where expectations, roles and status are still distributed according to structural membership, persons may have internalised some inferior images of themselves. Such a factor, which, arguably, contemporary liberal and democratic states have not eradicated by endorsing anti-discriminatory laws and formal equality of opportunity, does affect how individuals establish intimate relationships. This factor may undermine the possibility of them entering into marriage on an equal footing. Therefore, under these circumstances, leaving individuals to decide how to exchange the bundles of rights and duties that marriage grants, as MM does, is likely to increase interpersonal inequality and vulnerability because decisions may be the reflection of oppressive attitudes. Conversely, persons would be more protected and equality would be better promoted if some fixed directives on how parties should exchange benefits and burdens were implemented to counter social phenomena that can place parties in unequal positions. For example, the less egalitarian a society is, the more symmetrical the exchange of benefits and burdens between partners should be.

Moreover, the *specific rights and duties* that marriage should grant depend on certain conditions of inequality within a society and how the various spheres of gender inequality and vulnerability intersect with one another to sustain gender injustice. Brake claims that to avoid compounding gender vulnerability, some of the rights and duties that would not be granted by MM in an ideal society (e.g. alimony) should be retained in a transitional stage (2012: 194). Although this caveat shows how Brake is not unaware of the significance of the context, it does note a tension in her position. As previously argued, because our societies are substantially different from the idealised context in which the original proposal of MM is theorised, the range of rights and duties that MM would have to grant in the 'transitional' stage is bound to be more extensive than Brake recognises. In other words, in our non-idealised societies, MM would not be minimal. This means that the application of MM to non-idealised contexts is likely to create tension between the need to maintain the distinctiveness of the proposal of MM by conceding *some* rights and obligations that would not normally be conferred and the endeavour to protect and empower women, which would result in granting so large a bundle of rights and duties that MM would be extremely directive and 'extensive'. In non-ideal societies, there is a tension between the consistency of MM (i.e. being minimal) and the desire to promote gender equality. Therefore, MM would either retain its distinctiveness with serious costs in terms of gender equality or become unclear about why the idealised theorisation of MM would be a necessary step towards changing the existing institution of marriage.

Conversely, when marriage reform is theorised under non-idealised ideal conditions and by following the recommendations I have proposed, we do not face such tension, and the goal of advancing gender equality does not risk being sacrificed. Indeed, such a goal would drive the very reform of marriage by dictating which

particular rights and duties marriage should grant and how parties should exchange them. However, one may be concerned that the theorisation of marriage under non-idealised conditions may not be a very powerful tool for change. It is commonly argued that the problem with non-ideal theory lies in its being overly conservative and complicit with the status quo.[22] Nevertheless, this concern does not apply to the non-idealised theorisation of marriage I am proposing. In fact, if we are concerned with the justice of marriage, we should also devote our time to *radically changing those spheres of gender injustice that intersect with marriage*. First, the relevant spheres of gender injustice must be identified. Second, we should attempt to tailor marriage law to minimise the spillover of these spheres into marriage. Third, we need to require joint work on the part of different areas of law and policymaking to directly change those spheres whose injustice impacts marriage. Thus, we may need to enhance women's economic independence and address other spheres of gender injustice that impact marriage to promote its justice. In other words, owing to the profound impact that various spheres of gender injustice have on marriage, measures reducing these injustices should be carefully theorised as central and integral components of the transformation of personal adult relationships. To illustrate this fundamental yet under-theorised recommendation and show the great potential of the non-idealised theorisation of marriage, I will consider how immigration, as one sphere of gender injustice intersecting with marriage, should be radically changed if we want to render marriage more just.[23]

## Gendered immigration and marriage

In a world in which states' borders are strictly regulated, being married to someone of the opposite sex who is a citizen of a foreign country considerably increases one's chances to enter and settle in that country. This is because an alien spouse of a citizen of a foreign country has (usually) the right to reunite with her partner. Thus, she can more easily move permanently to the place where her partner lives. The privilege accorded to (heterosexual) marriage by immigration laws leads to three immediate consequences. First, persons who are in unorthodox forms of adult relationships are unjustly prevented from joining their partners. Second, faced with the reasonable prospect of obtaining residence in another country, persons are tempted to enter into exploitative marriages and expose themselves to extreme dangers, as illustrated by the infamous phenomenon of 'mail-order brides'. Third, after having been accepted in a country under a spouse visa, women are likely to remain in oppressive relationships due to the fear of forced deportation. According to Brake, eligibility for spousal immigration would be retained as one of the few entitlements obtainable under MM (2012: 161). Therefore, MM would extend the right to immigrate to a broad array of adult caring relationships, thus offering individuals more viable options. Most importantly, Brake accepts the legitimacy of borders by claiming that states have the right to investigate whether a marriage is a sham and whether an applicant should be allowed to enter a country based

on family reunification (2012: 165). Therefore, it becomes crucial to see how the vulnerability that persons experience in intimate relationships, when they are so tied to immigration status, can be reduced. In other words, if we are concerned with the justice of marriage and how to render women less vulnerable in this respect – as Brake is (2012: 205) – immigration law must be considered one of the spheres of gender injustice that impacts marriage. Thus, changes in immigration law must be theorised as an integral component of the project of regulating adults' intimate relationships in a just fashion. I here explore the sphere of gender injustice yielded by immigration law under non-idealised conditions.

According to most of the immigration systems implemented by Western countries, three categories of immigration applicants are regarded as particularly eligible for immigration status: political refugees, highly qualified professionals and spouses of current citizens (Abrams, 2009: 41). Excluding the first subgroup, whose exceptionality is nearly unanimously accepted, the other two classes of claimants are worthy of consideration because they are extremely gendered categories. Although these categories are defined in a neutral gendered language, they affect women and men differently (Yuval-Davis, 1997: 24). A person's status as a highly skilled worker for immigration purposes depends on having previously acquired the abilities and qualifications that are judged significant by the host country. Globally, women tend to have more limited access to education and are less likely to have gained a documentable professional experience. Thus, it is not surprising that, statistically, women compose the majority of individuals entering into a foreign state by means of their personal relationships with citizens (Abrams, 2009: 41). In other words, as a result of the global structural gendered inequalities that put women and men in different positions, the privilege accorded to skilled workers and family ties within immigration law is inexorably gendered in its impact. To decrease the vulnerability of women in entering into oppressive relationships to immigrate, states should undertake certain actions. They should broaden the categories of acceptance of immigrants so that women may have a better chance of entering a country without relying on a relationship with a citizen or settled immigrant. For example, states can introduce gender quotas on immigration particularly directed at women from developing countries who are unlikely to qualify as skilled workers.

In addition to offering women more substantial opportunities to enter other countries, governments should address immigrant women's vulnerability in marriage once they have been accepted into a country. Because many states, such as the UK, require immigrants to have a high annual salary to settle within their borders, and women – owing to their likely disadvantaged conditions that induced them to immigrate – often do not have this, states can incentivise companies to hire women from developing countries by granting tax allowances or offering subsidies to those companies sponsoring such women.[24] More opportunities for immigrant women in the workplace of the host society would give them less incentive to enter or stay in abusive marriages because they would have other routes to apply for a residence permit. Additionally, states should protect immigrant women who have applied

to remain in a country through spousal sponsorship. States should particularly counter the widespread phenomenon of domestic violence within adult relationships. This is particularly pressing in the case of immigrant women attempting to settle in a new country via spousal sponsorship. Indeed, the fact that the immigration status of these women is completely dependent on their partner's will puts them in a particularly vulnerable position. Thus, states should facilitate exit options for immigrant women in such situations. For instance, in the case of the UK, the state should decrease, rather than increase, the length of time that individuals on a spousal visa must wait before they can apply to live in the UK permanently so that immigrant women are not encouraged to remain in unequal relationships without recourse for protection for several years.[25] Second, to give women more substantial exit options, the UK should strengthen the economic power of immigrant women by improving the mechanisms through which survivors of domestic violence can apply for welfare benefits and ensuring that access to benefits is not limited for those women who do not speak English.

These changes are compatible with both a two-stage theorisation of marriage, such as the one proposed by Brake, and with the non-idealised theorisation that I have advanced. In line with MM, one can claim that although in an idealised society women presumably are not disadvantaged vis-a-vis immigration, under conditions of gender inequality MM would most likely entail making some changes to immigration law. Nevertheless, where the two theorisations of marriage differ is the radicality of the changes prescribed. When the intersection between marriage and immigration is theorised starting from non-idealised conditions, it becomes evident that the changes demanded above are necessary but insufficient for tackling gender injustice in immigration and the full extent of the interplay between immigration law and the regulation of adults' personal ties. For instance, the introduction of gender quotas on immigration would provide only to some women the opportunity to enter a country without marrying a citizen. Only those who have entered the country under a student visa and those who are highly skilled and seeking an employment sponsor can effectively take advantage of the state's creation of incentives for companies to hire immigrant women from developing countries. Such changes would only mitigate, rather than eradicate, the unjust ways in which immigration law intersects with marriage.

Changing the sphere of gender immigration to avoid the injustices caused by its spillover into marriage would entail additional radical actions. It seems that the very assumption that Brake makes in her theorisation of marriage, which she does not challenge at a second stage, i.e. the legitimacy of border control, should be questioned. In other words, to achieve marriage justice, states should move towards an *open-borders regime*.[26] This can be argued by starting from non-idealised conditions. In our non-idealised world, the constraints that women face on entering a foreign country, as well as once they are in that country, depend on the conditions under which they *can* enter and be admitted in the first place. Although many immigration regimes in principle extend eligibility for immigration status not just to those who aim to reunite with their families, women de facto tend

to be admitted under spousal visas, thereby becoming particularly vulnerable. Only a policy of open borders would successfully tackle gender injustice in immigration and, most importantly, effectively address the worrying intersection between gender vulnerability in immigration and gender oppression in marriage. It is only when would-be immigrant women are allowed to freely enter and settle in the prospective receiving state that they can have more substantial opportunities to negotiate the terms of the eventual personal relationships they establish there.[27]

Obviously, one can make an intrinsic argument for open borders, i.e. an argument independent of achieving gender equality under non-idealised conditions.[28] Nevertheless, the point is that even when such an argument is unavailable, we have strong reasons to strive for an open-borders regime by considering the great extent to which immigration influences the vulnerability women experience in marriage. Therefore, compared to Brake's 'two-stage' theorisation, theorising marriage and its intersection with the gender sphere of immigration by starting from non-idealised conditions would entail more radical changes to immigration than the ones MM acknowledges. This is because, through this methodology, the advancement of gender would not be constrained by those assumptions or idealisations made under a prior idealised context.[29] According to the non-idealised theorisation of marriage, conceiving of changes in immigration law as an integral component of the project of regulating adult intimate relationships in a just fashion entails moving beyond the understandable concern for family reunification.[30] It implies questioning the very existence of borders on the grounds of gender equality, or better, on the basis of how existing immigration regimes worsen gender vulnerability and oppression in marriage.

## Conclusion

In this article, I have argued that feminist accounts of the institutional reform of marriage should start from non-idealised conditions. I criticised recent liberal accounts of marriage and challenged the ways in which these accounts theorise the institution of marriage. I have shown that to promote gender equality and reduce gender vulnerability, (civil) marriage cannot be disestablished for practical and expressive reasons. I have argued that for such reform to be successful, it should be theorised by following feminist methodological premises, particularly by starting from the non-idealised conditions in which women live and focusing on the intersection of marriage and various spheres of gender injustice. From this methodology, I have proposed some important recommendations on how marriage should be reformed. In particular, I have considered how immigration law spills over into the issue of marriage justice and argued that, precisely on the basis of the actual conditions of gender inequality and vulnerability, marriage justice entails open borders. I have shown how such a theorisation of marriage is potentially more promising than the one recently proposed by Brake, who starts from idealised conditions and only at a second stage focuses on non-ideal constraints. The former is less likely to sacrifice gender equality for other goals pursued under

idealised conditions, and it notes the necessity of more radical changes in those institutions intersecting with marriage. This is a significant conclusion to reach because, as I have already mentioned, non-ideal theory is potentially complicit with the status quo, whereas ideal theory is considered a more effective tool for criticism. Nevertheless, as I have shown, non-ideal, feminist-driven theorising is a powerful normative vehicle for change.

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## Notes

1. For seminal feminist critiques of the institution of marriage, see: Pateman (1988: 184–185); Fineman (1995: 5); Card (1996).
2. For example, see: Sadler (2008); Sunstein and Thaler (2008); Metz (2010); March (2011); Brake (2012).
3. For feminist critiques of the liberal traditional tendency to leave the chauvinism of marriage unquestioned, see: Pateman (1988: 154–188); Brown (1995: 135–165); Okin (1989: 134–169). Within the liberal tradition, there are obviously some exceptions – famously, John Stuart Mill (2006 [1869]).
4. As an example of this way of interpreting feminist liberalism, see: Abbey (2011: 8).
5. Metz (2010: 156–159) and Brake (2012: 109–206) clearly state that their accounts of marriage are meant to be appealing to liberals and feminists.
6. Some have criticised Okin for not paying attention to how the institution of marriage should be modified to render it less heteronormative and more egalitarian (Young, 1997: 101; Jaggar, 2009a: 172). I argue that her insight into the interconnection between various spheres of gender injustice should be one of the methodological starting points for a feminist theorisation of marriage.
7. For a contractual model of the disestablishment of marriage, see: Ristroph and Murray (2010).
8. Similarly, see: March (2011: 11).
9. I use the term 'privatisation' synonymously with 'disestablishment'. In such proposals, both the disestablishment and the privatisation of marriage mean that the word 'marriage' would be deployed only for unions ratified by private and, in particular, religious associations.
10. For an account of how the state can change adult relationships through the institution of marriage, see: Shanley (2004: 6).
11. Metz argues that parenting should also be conferred with such 'intimate care giving union status' (2010: 121). Owing to the different agency of the subjects involved,

endorsing the same legal framework to regulate both parenting and adult relationships is troubling (Brake, 2012: 145–151; Shrage, 2013: 11–12).

12. On the shortcomings resulting from giving to private associations full control over what marriage means, see: Brake (2012: 145–151); Shrage (2013: 11–12).
13. See, for example, the comments made by the Italian progressive Bishop Giuseppe Fiorini Morosini (Gessa, 2012).
14. In the UK, although civil partnerships granting same-sex couples the majority of the same rights and responsibilities of marriage were legalised in 2004, major campaigns, such as the Coalition for Equal Marriage and Out4Marriage, organised by LGBT and other associations, took place until the Marriage (Same Sex Couples) Act 2013 was passed.
15. Note that this does not mean that the state should regulate adult personal relationships *only* through civil marriage. The state should also offer alternative arrangements to those adults who do not want to enter into marriage. The theorisation of the types of arrangements is beyond the scope of this article. Here, I simply assume that, as for marriage, such theorisation should proceed by starting from non-ideal circumstances and consider the intersection of the various spheres of gender injustice with these arrangements.
16. At least two further important liberal contributions on marriage – i.e., Clare Chamber's account of the 'marriage-free State' (2013) and Stephen Macedo's defense of the institution of marriage (2015) – have come out by the time this paper was finalized. Therefore, I am unfortunately unable to discuss them in detail. I will just limit myself to point out that (i) Chamber's argument for the abolition of marriage misses the progressive expressive significance that marriage would have in certain contexts, while (ii) Macedo's defense of the institution of marriage, based on the alleged value of monogamy for liberal stability, seems to sit uncomfortably with feminist tenets.
17. For an influential account of structural groups, see: Young (2000: 92–93).
18. On the centrality of gender equality in feminist theorising, see e.g.: Young (1997: 5); Schwartzman (2006: 165); Zerilli (2009: 295).
19. On the importance of reflecting upon how different spheres of gender inequality intersect when analysing women's condition, see: Okin (1989: 134–170); Jaggar (2009b: 38–45); Young (2009).
20. On how feminist theory should start from women's actual conditions, see, for example: MacKinnon (1989: 120); Young (1997: 5); Nussbaum (1999: 6); Hirschmann (2003: 222); Schwartzman (2006: 167).
21. Here I follow Ingrid Robeyns's definition of what counts as a bad idealisation in normative theory (2008: 358).
22. Some scholars contend that if we include too many factual constraints while elaborating normative principles, we are likely to come up with principles that support (rather than challenge) the status quo (see, e.g., Valentini, 2012: 659). Recently, Lisa Tessman has moved a different type of criticism to non-ideal theory; she argues that, because of their focus on action-guidance, many supporters of non-ideal theory end up neglecting that there are wrongs that cannot be rectified and that there are situations in which right choices are simply unavailable to moral agents (2010: 809). I will not deal with Tessman's criticism here.
23. I do not contend that theorising the justice of marriage requires that a fully-fledged proposal be put forward on all the changes needed in those spheres of gender injustice

affecting marriage. Here, and through the example of the intersection between marriage and immigration law, I argue that theorising marriage justice entails indicating *how* such changes should be normatively theorised. I thank an anonymous referee for pressing me on this point.

24. A UK sponsorship is also usually required to apply for an entering visa from abroad.
25. Rather than reducing the number of years required for spouses (or legally recognised partners) to apply for the indefinite right to remain, the UK government has recently extended the period from two to five years (UK Border Agency, 2013).
26. I thank an anonymous referee for comments here.
27. One may stretch this argument to contend that because other groups of persons, along with women, suffer from serious vulnerabilities in immigration, states should open their borders to them. In a liberal vein, one can argue that to respect neutrality, the open borders regime should be universal. Although I am sympathetic to these two claims, a full defence of them cannot be pursued in this article.
28. For a highly influential intrinsic case for open borders, see: Carens (1987).
29. One can theorise marriage in an idealised society and assume the eradication of borders in the theorisation. However, a feminist theorisation of marriage under non-idealised conditions allows conceiving its reform and the changes to other institutions intersecting with it only on the basis of gender equality. In other words, it avoids having to weigh this goal against other assumptions and/or commitments made under idealised conditions.
30. Revoking the privilege accorded to legally recognised relationships within immigration, as a solution to the discussed problems, would create further injustices, preventing individuals from reunifying with their significant others (Abrams, 2009: 59).

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