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978-1-107-14060-8 - Public Practice, Private Law: An Essay on Love, Marriage, and the State

Gary Chartier

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PUBLIC PRACTICE, PRIVATE LAW

Marriage is ordinarily a public practice, supported by as well as supportive of society. But it need not fall within the purview of the state. *Public Practice, Private Law* articulates a conception of marriage as a morally rich and important institution that ought to be subject to private rather than legislative or judicial ordering. It elaborates a robust understanding of marriage that captures what both different-sex and same-sex couples might see as valuable about their relationships. It explains why sexual ethics won't yield a normative model of marriage, and why the kind of marital love worth wanting can. It goes on to show how an understanding of marriage as rooted in demanding commitments can allow for divorce before arguing that the state should cease to sponsor marriages. It concludes by suggesting that both state and nonstate institutions should acknowledge the marriages of same-sex couples.

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ABOUT THE AUTHOR

Gary Chartier is Professor of Law and Business Ethics and Associate Dean of the Tom and Vi Zapara School of Business at La Sierra University in Riverside, California. He is the author, editor, or co-editor of ten books, including *Radicalizing Rawls* (Palgrave, 2014), *Anarchy and Legal Order* (Cambridge, 2013), *Economic Justice and Natural Law* (Cambridge, 2009), and *The Conscience of an Anarchist* (Cobden, 2011). His byline has appeared over forty times in journals including the *Oxford Journal of Legal Studies*, *Legal Theory*, and *Law and Philosophy*. He is a member of the American Philosophical Association and the Alliance of the Libertarian Left, and a senior fellow and trustee of the Center for a Stateless Society.

Chartier is a proud southern California native who wishes he had attended UC Sunnydale. He received a BA in history and political science from La Sierra (1987, *magna cum laude*); he went on to explore ethics, the philosophy of religion, theology, Christian origins, and political philosophy at the University of Cambridge, from which he earned a PhD (1991) with a dissertation on the idea of friendship. He graduated with a JD (2001, Order of the Coif) from UCLA, where he studied legal philosophy and public law, and earned the Judge Jerry Pacht Memorial Award in Constitutional Law. The University of Cambridge presented him with an earned LLD in 2015 for his work in legal theory. Visit him online at www.garychartier.net.

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For
Donna Carlson and David Larson

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In nurturing concerns that give us more to live for, we develop concerns that can become more important to us than life itself.

—DAVID C. SCHMIDTZ

A faithful person is not one whose heart stays in the same place, since that is not the way hearts operate. They are notoriously given to being vagrant and askew. The faithful person is one who continues to center his or her heart.

—JOHN C. HAUGHEY

That there should exist one other person in the world towards whom all openness of interchange should establish itself, from whom there should be no concealment; whose body should be as dear to one, in every part, as one's own; with whom there should be no sense of Mine or Thine, in property or possession; into whose mind one's thoughts should naturally flow, as it were to know themselves and to receive a new illumination; and between whom and oneself there should be a spontaneous rebound of sympathy in all the joys and sorrows and experiences of life; such is perhaps one of the dearest wishes of the soul. It is obvious however that this state of affairs cannot be reached at a single leap, but must be the gradual result of years of intertwined memory and affection.

—EDWARD CARPENTER

In this world of disposable relationships, when one person doesn't suit another's fancy, or something difficult happens, people may just bail out: 'I don't need this!' Ah, how convenient—to run away from the problems (except, of course, the many problems caused and perpetuated by running away). It's so common to do this, we take it for granted. But it makes rocky ground for the growth of love. As you know, fear of rejection and abandonment tops the list of social fears. In a world of disposable intimacies, how can trust grow? How can we hope that our beloved will feel secure with us, open up to us, and stay with us? Without loyalty, commitment, and strong investment, how can we credibly claim to love someone? We will be committed and loyal, but it takes time, we say... It doesn't work to wait until the relationship is deep and stable before you commit... What creates functionality in love is committing to love someone, and then living that commitment. Only in a committed context can our love relationships thrive, grow, blossom, and bear fruit... Love is not barter, trade. In love it is essential to give what you have in order to be fulfilled. Just as it would be deluded to demand a huge profit from an investment not made, it is unreasonable to expect great love where great love had not been given. One cannot get what one has not been willing to give. We must become willing to give of ourselves the very thing we desire, in the quantity or with the intensity we would like to receive it.

—DAVID TRUMAN

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¹ The relevant publications: *Comment, Natural Law, Same-Sex Marriage, and the Politics of Virtue*, 48 UCLA L. REV. 1593 (2001); *Marriage: A Normative Framework*, 9 FLORIDA COASTAL L. REV. 347 (2008); *Divorce: A Normative Analysis*, 10 FLORIDA COASTAL L. REV. 1 (2008). I have also drawn to a very limited extent on material in one of my own earlier books, *ECONOMIC JUSTICE AND NATURAL LAW* (2009).

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Consistent cheerleaders, my parents, provided me with crucial support during the time I began work on what is now *Public Practice, Private Law*. Their influence on the project was largely indirect, but I should note my appreciation for my mother's confirmation of more than one of my observations about women and marriage, and my father's unwillingness to endorse the myth that men should shun sentimentality.

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² See DAVID SCHMIDTZ, *RATIONAL CHOICE AND MORAL AGENCY* loc. 2068 (2d ed., 2015); JOHN C. HAUGHEY, *SHOULD ANYONE SAY FOREVER?* 154 (1975); EDWARD CARPENTER, *LOVE'S COMING OF AGE* 94 (1911); David Truman, *How to Create Deeper Love*, SOUL PROGRESS, available at: www.soulprogress.com/html/ArticlesFolder/Articles/HowToCreateDeeperLove.shtml (last visited May 29, 2015).

³ I have omitted footnote references within quoted material throughout this book without further notice.