

The Logic of Professional Marriage*

I. Introduction

In this essay I shall try to appraise the rationality of what I shall call 'professional marriage.' By this I mean the still rare variety of marriage in which husband and wife are financial and professional equals. They make roughly the same amount of money, and they have approximately equal professional status. I shall also assume that the marriage is childless. Though the rarity of such professional marriage undercuts any attempt to generalize my conclusions to all marriages, it is of interest for two reasons. First, there is the selfish reason that the readers of this essay are likely to be among those few for whom professional marriage is a real possibility. Secondly and more importantly, it is for professional marriage that the inequity that underlies many traditional criticisms of marriage fails to hold. Women are no longer domestic slaves, and men are no longer compulsory bread winners. The question I wish to pursue is whether in a condition of professional equality, marriage is rational and its institution socially just. From time to time in the argument, I shall make some assumptions about human psychology that a utopian would judge rather bleak, but which I would call realistic. In particular, I do not minimize the psychological difficulty of

casting off old sexual attitudes and emotions. On the other hand, while I do not accept the utopian vision of universal sexual liberation, I do grant that traditional marriage is far from perfect, even under conditions of professional equality. I shall, in fact, attempt to be as pessimistic as possible in estimating the joys of marriage. My method will consist in part of conceptual analysis and in part of game theory. I shall use the first in the early sections of the essay to provide a definition of 'marriage.' In the last part of the paper I shall apply game theory to some of the problem areas of marriage, particularly adultery and divorce.

II. The Question

Obviously the most important question is whether to marry, but it is the wrong strategy to approach the general question head on. Rather, I shall begin by limiting the question, breaking it down into smaller ones. First of all, is there sufficient reason for marriage independent of the question of children? Should two people ever marry, for example, in the significant period of years prior to actually having children? Another major issue is the desirability of adultery or what is now being called co-marital sex. I shall also focus on the effect of sexual stereotyping and on the right approach from the point of view of psychological happiness to sex itself. Additional topics I would like to touch on include the equality of man and woman in marriage, the distribution of labor, the pursuit of careers, the contribution of support and the upbringing of children. But before attacking any of these

questions which are all relevant to deciding whether to be married, I would like to take up a prior question of definition or of conceptual analysis, the question of what is marriage. Broadly speaking marriage is always defined as a social institution of certain purposes. What I would like to do is to pursue exactly what kind of institution it is and what sort of purposes it should have. An example of the kind of definition I have in mind is given by Jeremy Bentham who defines marriage as a legal contract undertaken by a couple for 'the purpose of their living together and, in particular, for the purpose of a sexual intercourse to be carried out between them.'¹ Unfortunately Bentham's definition is unhelpful to most of us living today because it is possible to enjoy sex without getting married. But Bentham's analysis is instructive in two ways. First of all, the definition is not so much irrelevant to modern life as it is wrong. I shall be operating on the assumption that human nature is on the whole consistent enough that the primary purposes for getting married that hold today, held fifty, a hundred, even five hundred years ago. On the whole I think that people who desire to be married today do so for essentially the same psychological reasons that they did five hundred years ago and that Bentham is therefore wrong if he thinks that the main reason for being married is to enjoy sex. What I am seeking, then, is the human universal, if it exists, motivating marriage. As we shall see, the failure to identify the correct purposes of marriage vitiates past attempts at its definition. Secondly, the kind of partners that I shall be discussing

are quite different from those in the day of Bentham and in the days of other popular definitions of marriage. I shall be discussing marriage between so called liberated men and women, with equal earning power, equal social prestige and equal dedication to career. This equality is rare even today. Past and present inequities have lent plausibility to previous definitions of marriage. The inequities of Bentham's time lent plausibility to his claim that a husband was in part teacher and in part master of his wife. He based this claim on the principle of utility. If a husband was treated part as a master and part as a teacher everyone's happiness would have been increased, both husband and wife. His calculation was probably correct for nineteenth century England, but the question I shall focus on is what marriage could be between social equals. To summarize, then, I am inquiring whether the ageless purposes of marriage can be achieved by a modern professional couple by our present institution of marriage. Before proceeding to my own positive views on the definition of marriage I would like to consider in this section three traditional views, what I shall call the catholic, marxist and liberal conceptions of marriage.

The Catholic Church has traditionally defined marriage as a sacrament with two ends, the procreation and education of children. For the moment, let us set aside what could be meant by the word 'sacrament.' I shall return to that later. Let us focus instead on the ends of marriage as advanced by the Church. I think the most important and most interesting feature of this definition is

its implication for society. It is socially an extremely conservative definition. In order to have sex, which is limited to marriage, a couple must marry, and in marriage to be truly participating in the estate, one must have children. The having of children entails their support. Their support requires work and participation in society, and thus everyone, every normal member of society, is married and working. Thus the cost of sexual pleasure is active participation in economic production. Here we have evidence to support the thesis of many cultural anthropologists that the primary purpose of religion in society is to support the existing social structure. An unrelated but interesting immediate corollary of the catholic definition of marriage is that a couple which either intends to have no children or is incapable of having children should not marry. But it is patently obvious that many couples of this sort have desired to marry and have led happy lives in marriage. We should not say of them that they were conceptually confused. Rather we should say that they are evidence that the catholic definition has missed the point. There is something else, something psychologically deeper and more rewarding than the mere having of children, that is part of the substance of marriage. So we can be sure from the start that the catholic definition is incorrect. Further, if we supplement the catholic definition with the principle that sex outside of marriage is wrong or sinful, the catholic conception reduces to the incoherent, almost to babbling. For by limiting sex to marriage, the Church seems to be

supplementing the goals of marriage to include sex or at least to be so intimately involved with sex as to be indistinguishable from it. But to identify sex and children is a blunder surprising even for the Fathers of the Church. Either the true end of marriage is children, their upbringing and education which implies that there should be no condemnation of sex outside of marriage, or the purpose of marriage is sex in which case children are an accidental consequence. The error follows from an additional premise of natural law theology that the purpose of sex is children. Sex and children go together, as do marriage and children, therefore so do sex and marriage. But the idea of natural ends dropped out of serious science and philosophy with the four elements. Quite apart from this activism, the identifying of the purpose of marriage with either having sex or having children or both seems to miss the mark and to reflect a naive and simplistic view of human nature.

The marxist conception of marriage is at once more arresting and more ludicrous. It is powerful because it points out and criticises the evils of marriage, particularly the nuclear family in a capitalist society. For example, Barbara Balogun (Jackson) in "Marriage as an Oppressive Institution - Collectives as Solution" writes,

For economic reasons, marriage is oppressive to both parties, especially to women. As long as the man has sole, or major, responsibility for the financial support of his family, the women and children, because of their non-contributory roles, are kept dependant and powerless.... The man is oppressed just by being forced to bear the sole or major responsibility for the financial support of his family. In addition, the burden is increased because of the exploitative, mind² destroying, nature of the jobs in a capitalist society.

Here are decried both the subordination of women and the unequal labor of men. Both with some justice are attributed to capitalism, but in what follows I shall leave the question open whether such evils are the consequence of marriage or society. Instead I shall argue that for those lucky few who are equal, the sorts of evils condemned in the marxist analysis of marriage need not arise. I grant here, however, and use as a premise of the rest of this discussion, that such inequities for both women and men are wrong and should be corrected. The worth of the marxist analysis consists in pointing these out. But what is unconvincing in the account is the way in which the subordination and inequity are tied necessarily to capitalism as an economic system. Frederick Engles writes, for example,

[Monogomy] was not in any way the fruit of individual sex love, with which it had absolutely nothing in common, for marriages remained marriages of convenience as before. It was the first form of the family based not on natural but on economic conditions, namely, on the victory of private property over original, naturally developed, common ownership.³

It is the marxist thesis that marriage as we know it is a direct consequence of the existence of private property in capitalist society. As a slogan and an idea, such a thesis is intriguing, but it becomes silly when the details of analysis, the actual explanation of the tie of marriage with private property, is filled out. Engles maintains that monogomy arose because the male, who was in a dominant position economically, wished to be absolutely certain who were his male heirs. For some reason which Engle does not explain, it seems that men wished to leave their property only to their sons. Hence women were put in what amounted to bondage; their sexual access to other men was completely limited;

and therefore knowledge of offspring's parent was secured. But the details of this account are both false historically and unconvincing conceptually. Since the first statement of the marxist theory in the nineteenth century, immense amounts of anthropological data have shown that there is no significant correlation between mode of economic production and monogomy. There have been dictatorial, centralized, warlike societies, called paramountcies in the literature, that have been both matrolineal (e.g. Iroquois) and patrilineal (e.g. Aztec) in which both the female and the male have ruled respectively. Monogomy is not necessarily associated with highly developed, centralized societies. It is present also among very primitive nomads (e.g. the Eskimo). Conceptually the marxist analysis fares no better, for on this analysis the purpose of marriage seems to be knowledge of one's sons. It is perfectly clear that in this day and age such knowledge need not necessarily be tied to marriage. First of all, due to the existence of birth control devices, there is no need for a woman to be isolated in the confines of marriage, if that was ever really possible, in order to be sure that she will not beget another man's child. If she is prudent she may have many sexual partners without pregnancy. Thus, it would seem that there is no longer any purpose to marriage. But, contrary to this marxist conclusion, lots of people want to get married, and I think that it is a reasonable assumption that they are not confused or silly. What is it exactly that they are trying to achieve? Whatever it is, it is certainly not knowledge of paternity.

The third conception of marriage I would like to discuss views marriage as a contract between two people to live together for the purpose of promoting their mutual happiness. On this view, people in general act so as to maximize what is variously called their happiness, pleasure or utility. Sometimes these actions involve arrangements to live with other people for various periods of time. Some such arrangements may properly be called a marriage, but they are just one of many kinds. This view is self-consciously utopian. It focuses on the voluntary aspect of marriage and postulates a single vague purpose, the achievement of happiness. Characteristically, it also includes other utopian ideals. For example, it is frequently associated with the view that people should develop as much sexual freedom as possible. This conception of marriage is not meant to entail that adultery is wrong. On the contrary, it is frequently argued that extramarital sex promotes the pleasure of everyone. This idealistic conception of marriage also goes on to point out the logical distinction between sex and love. Sex, on the one hand, is viewed as a rather intense bodily pleasure on the order of eating or sleeping. Love, on the other hand, is a deep emotional attachment to the welfare of another person and is something quite different from mere sex. In the best of all possible worlds, people would be educated and trained so that they understood and lived by this distinction, and therefore in the ideal marriage love and sex could be distinguished. A marriage could be pursued for love, and sexual behavior need not coincide exactly with marital behaviour. Both the distinction between love

and sex and also the view of marriage as just one of many possible arrangements for living together, tend to undermine the traditional monogamous life-long marriage and replace the traditional conception with what may be called an open or liberal conception of marriage. A true liberal would go on, I think, to argue that this conception of marriage is not at all inconsistent with an industrial, mixed-market economy. He would hold that, on the contrary, it furthers the goals of the liberal society which, theoretically at least, is supposed to maximize individual freedom and happiness. They would point out, and I think rightly, that the nuclear family with its exploitation of women and sexual repression is characteristic not of capitalism alone but of any industrial society.. If women were in fact made equal by transfer payments or other devices of the welfare state, they could participate along with men as economic peers, and make marriages or contracts of any sort so that they would further their own utility and that of the whole society. This view is rather powerful and contains a core of truth that is very compelling. Let us set aside the rather contentious claim that this utopian ideal can be achieved by a mixed-market society and focus instead on the ideal. It rings true that there is a logical difference between sex and love and also that the possibilities of different kinds of human relationships should be as varied as there are different personalities. It is very implausible that one kind of personal relationship, traditional, life-long, monogamous marriage is well suited to everybody. Surely there should be more variety; surely individual capacities and personalities could be developed in a fuller and more creative

manner if people were allowed to experiment with different styles of marriage, with different levels of commitment, different numbers of partners, different lengths of time, different styles of lovemaking. Though the image is attractive, it is one which I shall reject in the rest of the essay. I reject it on the basis of the empirical argument that psychologically in our era and culture individuals are just not up to this degree of freedom. Our emotional backgrounds will not admit it. I am speaking personally, but I think most people would agree. Evidence consists of the fact that more people than ever are marrying and, more importantly, eighty percent of those who divorce marry again into the traditional monogamous life-long marriage, and these latter marriages are vastly more successful.⁴ That is, people prefer the old form, the traditional marriage. Further evidence consists of the failure of celebrated experiments in communal, open living like the Harrad experiment.⁵ My position on marriage will have a structure commonly found in other areas of moral thinking. There is a difference between what we should do in the best of all possible worlds and what we should do in our less than perfect world. In the best of all possible worlds, for example, many people think there would be no abortion. But in our less than perfect world, in our world of scarcity, they find abortion to be morally acceptable. Likewise, in the best of all possible worlds, marriages might be open, sex might be divorced from love, and there might be as many different kinds of marriages and of social relationships in general as there were personalities. But in our

less than perfect world, in our world of emotional hangups, of victorian sexual upbringing, such emotional freedom is not consistent with individual happiness. It is not obvious that we should accept our psychological hangups as givens, not to be amended, not to be changed, not to be struggled with, but merely to be accepted without struggle. Indeed there are lots of psychological problems that it would be wrong just to accept. One inclined to murder or steal, even in our less than perfect world, should try to stop. I shall take up later in the essay why I think that the psychological problems associated with marriage, those for example that beget sexual jealousy or possessiveness, are the sorts we should accept rather than try to change. But I do not wish to reject the liberal conception of marriage entirely. I think that it identifies correctly how the goal of marriage should be formulated. Marriage is an institution directed toward the mutual happiness of husband and wife, vague as this formulation is. The virtue of the liberal conception of marriage over the catholic and the marxist is that, even though vague, it is true. Further, it is possible to argue even from this vaguely stated goal that in our society the traditional marriage is the arrangement most likely to produce mutual happiness. Before turning to these questions of the goals of marriage, however, I would like to spend some time discussing what sort of thing marriage is. Only with an answer to this question can we understand how it can achieve any goal, whether it be happiness or some other.

III. On the Addition of One and One

Those mystically inclined, endowed with the logical acumen of Athanasius, might argue that the logic of marriage was correctly captured by the equation: $1+1=1$. For some reason marriage differs from the Trinity in that the products of the love of two persons are not identical to their progenitors. (This last absurdity is apparently prevented by the existence of the incest taboo.) On the other hand, there are liberals who rhapsodize on the benefits of marriage, hectic mothers and fathers who do a million things at once. They may think that marriage produced not two personalities but many, say eight or nine, corresponding to all the various roles typical of married life: $1+1=9$. Philosophers, I think, are slightly better at equations, and Plato in particular just about captures the right idea when he compares people to hemispheres rushing through the world madly seeking the other unique hemisphere which when joined to themselves makes a perfect sphere: $\frac{1}{2}+\frac{1}{2}=1$. But it is not really such formulas as these that I wish to investigate under the title of logic of marriage. Rather what I am seeking is the general form of the definition of 'marriage.' Previously, I said marriage was an institution directed towards certain purposes. Here I want to pursue just what could be meant by 'institution.' Clearly in the earlier formulation the term is at best a place holder, a promise for a better explanation later. What sort of thing is marriage? What kind of thing is it that is directed toward purposes? The answer I would like to advance is that marriage is an action. It

is, in fact, two actions performed at once. It is, first of all, an assertion and secondly a promise. Roughly I assert that I presently and in the past have loved my marital partner and that I intend to do things in the future to maintain that love, and secondly I promise to behave in certain ways which will perpetuate that love. I would like now to go into some detail about both these aspects of the marital act, the assertion and the promise, and to explain just what is involved in asserting and promising.

Assertion is an act of speech, a verbal utterance, that is traditionally viewed as having as its object a proposition: I assert some fact or other. In asserting it, I am also usually understood to believe it and to be sincere in saying I believe it. This sincere assertion of beliefs is very important to the nature of the marital act. (By 'marital act' here I do not mean that action so called in traditional confused religious conceptions of marriage; an interest in consummation and its clinical details seems to result less from clear logic than ecclesiastical celibacy.) Without touching yet on the content of what it is that is asserted in marriage, we can be sure that whatever it is, it is something that one knows, that one is in a position to have beliefs about. Hence, what you are asserting must be either about the past or the present, or about things in the future, like your intentions, that you can be reasonably sure about. A most interesting question, of course, is exactly what it is that is asserted in marriage. Philosophers have a nice technical term for positive feelings they are called 'pro-attitudes.' Without going into the sentimental details about exactly what is asserted in marriage, I will limit

myself to saying that it is a very strong pro-attitude or, more precisely, one conveys in the assertion that in the past one has had these attitudes, that one presently has them, and that one intends in the future to have them. Since strictly speaking one cannot intend to have attitudes which are largely involuntary, one intends, more precisely, to do those actions necessary to encourage these attitudes in the future. Thus, we assert that we were, are, and will do our best to see that we continue to be 'pro' our future spouse.

Secondly, marriage involves a promise. Promises in general are a very interesting sort of linguistic act because by their means we can significantly change the world. Ordinarily, when we speak and succeed in making an assertion, nothing changes in the world except the fact that we have talked a little bit. But by making a promise we significantly alter the geography of our moral universe because by uttering the words 'I promise' we create a moral obligation to do what we promised. If I promise, for example, to be faithful and true, even though I had no obligation to be faithful and true before the promise, once I have uttered the words of the promise it becomes my duty to be faithful and true. And promising has exactly this role in marriage. In the marriage ceremony we make certain promises and these create obligations and duties. I do not want now to go into the precise content of these promises. I am interested for the moment in the form of the marriage act and not in its content. To a large extent, exactly what is promised may well be a matter of individual choice, and we may roughly summarize it as a promise to do what

is necessary to maintain the positive attitudes characteristic of marriage. Again without going into details, we can be sure that what we promise is not the doing of simple actions. For example, we would not promise simply to be kind to one another. More likely, what we promise is a sustained and complex effort to develop certain long term habits and attitudes. What we promised to do is roughly what in the assertion aspect of marriage we assert we intend to do.

One feature of the moral aspect of promise making that deserves special mention is the fact that though promises create moral obligations, these moral obligations should not be viewed as absolute. In each of our ethical worlds, values are arranged in a hierarchy. Some things are more important than others, some actions better than others, some worse than others. Frequently there are conflicts in our moral intuitions about what is right, and we must decide which intuition has priority. These conflicts may arise with promises. Though promises create moral obligations, though we may feel duty bound to do what we promised, this duty may conflict with what we consider to be a higher obligation. Thus, though I may promise never to lie, circumstances may arise in which I might serve a higher law, like that of charity or kindness, by bending the truth. In such a case, I would be morally justified, and sometimes even duty bound, to break my promise. Thus, though the promise making in marriage genuinely alters the moral universe and creates values and obligations, it does so in a way that is not absolute. Depending on the place one assigns to marital promises in one's moral hierarchy, we can be relatively

certain that these promises could come into conflict with other values and in some cases be legitimately broken. We may, for example, promise to do everything reasonably possible to maintain the positive attitudes characteristic of marriage. This promise may come into conflict with a higher value, for example, the duty to be true to ourselves. There is a sense in which we have an obligation to develop our personalities and potentials, to seek new experiences and knowledge, to meet new people, to make new friends, to develop a full and rich life. This value quite frequently, I think, comes into conflict with marital promises. A marriage can stagnate. Two people can find that they no longer contribute to one another's self development and that they would be better off apart. In such circumstances, it is reasonable, and perhaps even right, to break the marital promises. Of course how much stagnation one would endure depends on how high in the moral hierarchy one places obedience to marital promises. It is conceivable, for example, that these promises might be placed so high that marital doldrums never justify the termination of marriage. Thus, just as it is important to be clear on what one is asserting in marriage and on what one is promising, it is important to be clear about and to convey to one's spouse, the moral importance one attaches to these promises, to make explicit their place in one's moral hierarchy. It is this calculation, roughly, that determines whether a marriage is indissoluble. Such considerations underlie the proposals for temporary and trial marriages. One marries on this plan for five years at a

time and renews one's vows periodically after that. But these plans obscure the reason for divorce and the termination of marriage. One ends a marriage not merely because the term is up but because though one tries one's best, there are sometimes higher values one has allegiance to. These sometimes dictate that a marriage should stop.

One interesting consequence of the fact that marriage involves promise making is the fact that it is the promise that justifies talking of marriage as a 'state' as in expressions like 'the marital state.' The abstract concept of state employed in such locutions derives from Aristotle, and it is defined in terms of the relative permanence of properties or qualities. Properties inhere in individuals and they may inhere for varying periods of time, briefly or for a very long time indeed. For example, the property of being under water is one which hopefully holds of me only fleetingly at any one time, whereas other properties, for example, breathing, is one I hope holds for somewhat longer. Properties which fall on the latter end of the continuum of permanence, Aristotle calls states. Breath corresponds to the state of being alive. Thus, marriage is a state in the sense that by making promises we alter the moral universe permanently, creating obligations and these obligations, because of their permanence, color our moral lives ever after.

The promise making aspect of marriage also underlies the application of the term 'contract' to marriage. Although there may be a technical legal sense in which marriage is a contract, I

think it is highly misleading, on the whole, to view marriage as a contract in the commonly understood sense. I assume that the ordinary language sense of contract can be made precise in something like the following terms. A contract is a set of conditional promises made by two or more parties. I morally bind myself to do something on the condition that you do something. If you do not satisfy the condition, I have no obligation to do my part of the contract, and likewise on your side. Frequently the condition involves the transfer of ownership. I transfer to you property rights over my money on condition you transfer to me the rights over your car. From your point of view the condition would be my payment of a certain amount of money and your obligation is to give the car into my possession. There are of course contractual purposes that do not involve the transfer of money, as in barter; and there are contracts that do not involve the transfer of property at all, as when I agree to sweep my side of the street if you sweep yours. On the whole I think it very crude to view marriage as a set of such conditional promises. For what is it exactly that is being promised conditionally? Does a man promise to be a breadwinner, to support his wife and children, to provide house and sustenance in exchange for his wife's sexual favours, for her housekeeping and emotional support? Then if the man was unable to work, a condition of the marriage would be broken and the contract null. Equally, if a woman proves to be barren the marriage might prove null. Clearly, neither is the case. It may be objected, however, that this is a very crude view of the exchange in marriage. On a more precise level, what is being

promised is an exchange of love and emotional support, of affection and companionship. But these are not the sorts of things that one can promise to do. One cannot promise to love or give emotional support. To a large extent one's inclination, one's ability to do these things is involuntary. At best, one can promise to pursue the habits and the situations which will perpetuate love and affection. If so inclined, I suppose one could view marriage as a conditional promise to do everything possible to perpetuate love and affection on the condition that one's partner does so. But this very abstract conception of a contract is very different indeed from the crude exchange of labor and support on the earlier picture. Further, the phenomenon being described in terms of this conditional promise seems to be captured equally well on the model of absolute promises with the qualification that promises sometimes come into conflict with other higher values. For my part I do not care which of these descriptions one chooses in describing marriage so long as one is clear that if one chooses the concept of contract to describe marriage, one has in mind the latter sort and not the primitive selling into slavery of the wife. Legally, of course, marriage alters one's duties and obligations. In the state of Ohio, for example, a man becomes obliged to support his wife and children, and the wife is obliged to sleep with the husband and to follow him around. Interestingly, in those states of the United States in which English common law prevails rather than Roman, marriage alone does not alter any of the property relations of the husband or wife, nor does it change any of their

competence to buy and sell property. But the increase in voluntary divorce tends to undermine the contractual nature of marriage in that one can if one chooses just opt out of the assumed obligations of marriage. The whole point of contracts and promises is that one just cannot decide to be no longer obliged by them.

Another interesting aspect of the promise making in marriage is that it is closely tied to the idea that marriage is a sacrament. From the point of view of maintaining pious traditions it would be very nice if one could argue on a completely secular basis that marriage is in fact a sacrament, and it is precisely this marvelous thesis which I shall argue for here. There is a good, but ancient and pre-religious sense of sacrament based on a notion of promise in terms of which marriage can fairly be said to be a sacrament. The concept of sacrament I shall be working with should not be confused with the traditional christian one in which a sacrament is held to be the outward sign of an inward bestowal of grace, which significantly increases one's chance of reaching heaven. It is roughly this concept applied to marriage underlying St. Paul's idea that you are more likely to burn if you are unmarried. Interesting enough, however, even in the christian tradition, there has been great debate over whether marriage is a sacrament. After suitably long mediaeval argument on the matter, in which the more orthodox decided marriage was a sacrament, the Council of Trent declared anyone anathema who denied that marriage was a sacrament or that Christ instituted it. On the other hand, no lesser authorities than Luther and

Calvin denied its sacramentality.⁶ Calvin, for example, says

Lastly there is matrimony, which all admit was instituted by God, though no-one before the time of Gregory regarded it as a sacrament. What man in his sober senses could so regard it. God's ordinance is good and holy; so also are agriculture, architecture, shoe-making, haircutting legitimate ordinances of God, but they are not sacraments.⁷

In the high middle ages the leader of the opposition against the holiness of marriage was Durandus of St. Pourcain, later Bishop of Meaux.⁸ Evidently worrying about God's social justice, Durandus argued that the rich, because they had more money, should not have more access to Heaven. But marriage as it was in those days was a function of one's dowry. The richer you were, the easier it was to marry. Hence the easier it was to purchase sanctifying grace and get to Heaven. Fortunately I will not try to resolve these theological squabbles here but will instead eschew entirely the religious conception of marriage. On the whole I think it is safer to build our understanding of marriage on what the medievals called natural reason, unaided by the tenets of the revealed truths. Fortunately it is possible to construct a secular conception of marriage as a sacrament, and I shall attempt to do so by means of the original Roman conception. Ironically according to this idea of sacrament, what makes marriage sacred is precisely that which on the religious conception makes it profane, namely, the dowry.⁹ In Latin usage sacramentum is defined as anything which binds or obliges a person. It has both legal and military technical senses. In the law it is a sum of money which is deposited with the court by the parties in a suit and which the defeated party forfeits. In the military it is the formal

oath or act of engagement by which a new soldier enlists in the army. What is common to both these uses is the fact that someone puts himself at a significant risk in order to show that what he is saying is true. In the first a party risks losing his money, and in the second by making an oath, the party risks the wrath of the gods. Now, it is perfectly possible in theory to associate some such risk taking with the exchange of promises in marriage. The idea I rather favor involves promising to forfeit a significant sum of money, say five thousand dollars, if it can be shown that one partner has broken the marital promises. Unfortunately, given the ordinary law of marriage, such contracts involving forfeitures would not be binding. Whenever there is a dispute involving property in marriage, regardless of any individual agreements made between the partners, it is the law of the land that decides the distribution of property. Thus, so called marital agreements are not really binding in law. Something else one might do to show how serious one was in marriage is to participate in the legal institution of marriage. So far nothing I have said about the nature of marriage, either as an assertion or a promise, or as an act having purposes, implies that marriage should be part of any legal institution. But one reason I can think of for actually regularizing a marriage in law is the great deluge of formalities and customs that overwhelms one in a legal marriage. It is a pain in the neck to get married in the first place, and a much greater one to get divorced. Surely no-one would ever get involved in the tangle of formal confusions unless

one was deadly serious. I do not mean to imply, however, that I have established the unquestionable desirability of a legal marriage. All I have shown is that by making a marriage legal one might thereby make a gesture showing how seriously one intended ones marital promises. But there are many reasons why a legal marriage might be undesirable. Legal marriages bring with them special obligations and duties which may well be inconsistent with the promises one wants to make in marriage or the purposes one hopes to achieve. It is only by inspecting one's individual case that one can decide. Also legal marriages have great benefit for children. Legitimacy carries with it a host of legal benefits. But since I am interested here only in the question of whether it makes sense to marry irregardless of children, I shall not pursue the question of the advantages in a legal marriage from the point of view of the child. Let me merely conclude that any fanfare or hullabaloo that one associates with the marriage ceremony can be viewed as making marriage a sacrament. Ideally, this noise should actually place the participants at some personal risk.

In this section I have attempted to lay bare the formal structure of the marriage concept. We have seen that it consists, in general, of a linguistic act to achieve certain purposes. The action involves two parts. It is first of all an assertion and secondly a promise. The assertion consists roughly of the statement that in the past and in the present one has very strong pro-attitudes towards one's marital partner and that in the future one intends to do one's best to perpetuate these attitudes. The

promise consists likewise of the assumption of certain moral obligations to take those steps necessary to perpetuating the attitudes, to develop those habits and dispositions that will foster and nurture one's positive feelings for one's partner. We have seen that it is fair to call marriage a state because it attaches to both participants lifelong moral duties. Further, we have seen some reason for calling marriage a sacrament, for it is possible, during the exchange of marital promises, to voluntarily assume some sort of personal risk to show that one is serious. This risk might take the form of making the marriage both public and legal, but we also observed that any advantage derived from making the marriage public and legal would have to be balanced against the purposes one hoped to achieve in marriage and against the content of the marital promise and assertion. I would like to turn now to what one hopes to achieve in marriage, or to the purposes for marrying.

IV. Adultery and the Goals of Marriage

I do not propose to list here in a serious way all the reasons why people marry. But without being accused of being overly precise, I think we can fairly say that the main goal of marriage is happiness, or the particular kind of love appropriate to husband and wife. Now, I shall leave to others the attempt to define love, but for the purposes of discussion we must develop a rough and ready idea of what it is all about. Let us start by saying what love is not. Clearly it is not the romantic idea of love that

derives from the courts of Provence and which is reflected in many popular songs. I hope none of you at least want to be knights and ladies. Role playing and the separation of the sexes has little to do with the modern ideal of the perfect relationship. An approach which does not fare much better is the traditional, christian classification of love into its three species Philia, Eros and Agape. I have no objection to the first two which are essentially friendship and sex respectively. It is the third, christian charity, that has no real place in marriage. What I object to in christian charity is the idea that we should be kind to others, not because we wish their good but because it is God's commandment, or because we are motivated by the love of God, or because of some other religious motivation which does not apply to any individual uniquely but applies to everyone across the board. I would not want my spouse smiling at me because she sees in me the universalized image of her creator. Aristotle has a more interesting analysis of love when he divides it into three kinds: friendship of use, friendship of pleasure, and friendship of the mind. Friendship of use is any desire to associate with another in order to pursue some end outside the relationship. One example would be the buttering-up of Huckleberry Finn by Tom Sawyer so that Huck would paint the fence. Friendship of pleasure is slightly more earthy, namely the desire to associate with another in order to derive pleasure from the contact. Friendship of the mind is the most exalted; it is the desire to associate with another so that together you might both pursue the

truth. Aristotle points out that any friendship of pleasure is also a friendship of use and any friendship of the mind is also both a friendship of pleasure and of use, but that the converses do not hold. Not dwelling on Aristotle's three varieties of love I shall abstract what is common to all of them and recast it in modern terms. Certainly a necessary condition for love is that it be an association that gives utility to its participants. Fortunately this vague idea is all that I will need to pursue our discussion. I will not need to specify exactly what sort of useful association love is because I shall not be concerned primarily with the definition of love so much as with investigating its consequences for narrower ideas, primarily adultery and divorce, and to a lesser extent sex and the division of labor.

The first subject I would like to discuss connected with the pursuit of marital happiness is co-operation in marriage. Marriage is essentially a joint enterprise involving at least two people. The possibility arises, therefore, that the desires and values of the participants may differ, even conflict. The major problem of marriage is how to resolve these conflicts and achieve marital bliss. Fortunately for an understanding of marriage, but unfortunately for mankind, conflict is not limited to matrimony. Perhaps the most powerful ethical theory providing for a resolution of conflict is utilitarianism. Utilitarianism prescribes that we should act so as to maximize the sum total of happiness in a community. Thus, if you and I disagree over what to do, we should inspect each alternative, subtracting my displeasure from your pleasure, or vice versa, and opt for that choice which

produces in sum total the greater happiness. For example we may each have opinions about what color suit I wear. I may in fact be indifferent and not care whether I wear the red or the green suit, but you have a distinct preference that I wear the red suit. Then, according to utilitarianism, we should maximize social happiness and I should wear the red suit. There are also cases in which our preferences are reversed. Suppose I am very rich. Then we shall each have preferences about how I allot my money. I prefer to spend it on myself and you prefer that I spend it on you. But I am a utilitarian, and when I consider my next pay check and decided on which of us to spend it, I should calculate the social utility. In fact, by spending it on you who are very poor I would produce more pleasure than if I spend it on myself who is already numb from delight. Applying this model to marital situations then we should try to determine in any situation of conflict which alternative would produce the greatest total happiness and opt for it. But, unfortunately, utilitarianism has some well known difficulties, and these concern the concept of justice. Sometimes it is morally repulsive to pursue total social happiness because sometimes such policies violate strong ethical intuitions about what is fair. For example, suppose that both you and I have preferences about how I cut my hair. You want it short and I want it long. Suppose in fact you would gain greater pleasure from my hair being short than I would from it being long. Utilitarianism would dictate that I cut my hair. But you will agree, I think, that it is (slightly) morally repulsive that someone else's preferences should determine my bodily deportment.

Such situations arise in marriage and in sexual relations in general all the time, since one partner may have special preferences about clothes, cosmetics, or public behaviour. Consider, for example, high heeled shoes, which are reminiscent of the style for clubbed feet in infant girls of medieval China. High heels and clubbed feet are not in the self interest of the woman who have them. Consider now a more serious example of the clash between intuitions about justice and utilitarianism in conflict situations: the case of war. Suppose, for example, I do not want to go to war but you want me to and that you are such a fascist war monger that you would derive more pleasure out of my being in war than I would pain. Utilitarianism dictates I should go to war - any war, just or unjust. Clearly, then, maximizing total marital happiness must be balanced against intuitions about fairness. The practical difficulty of actually thinking through such judgments would make the achievement of marital happiness difficult enough, but the situation is really much worse. So far I have simplified matters and omitted an important complicating feature. I have been discussing situations which arise frequently enough in marriage, ones in which you and I have conflicting preferences over what I do. But so far I have ignored the fact that you might act too and that by your actions alter my preference, my pleasure, and my happiness. I have ignored reprisal, counter attack, and revenge. You not only have preferences about what I do; you can, to some extent, influence what I do by what you do. Thus, strictly speaking, the sort of alternatives to which I may attach pleasure and which I may

prefer over other alternatives should really be described as including not just what I do but what you do too. We must distinguish, for example, the alternative in which I wash the dishes and you dry, from the alternative in which I wash the dishes and you read the newspaper. The complexity of such situations justifies the import of some technical theory. These situations, typical of marriage, are not unlike those of international diplomacy, and I think it only fitting that the same theory of games used by Kissinger to handle the Russians should be applied to the resolution of marital conflicts. Indeed the Chinese idiograph symbolizing war is a combination of the idiograph for house with that of woman: two women are placed inside the same house. The result is not much different, I think, if you substitute a man for one of the women.

The sort of games I will make use of here consists of two actions which either one of us may or may not do. Thus there are four alternatives: we both do it, you do it and I do not, I do it and you do not, or neither of us do it. To each of these alternatives we each attach certain degrees of pleasure. These degrees of pleasure reflect our preferences: I prefer one alternative to another if the former has a higher degree of pleasure for me than the latter. Such situations may be illustrated by a matrix consisting of a square divided into four smaller squares. Consider a situation for washing the dishes in which we may either wash or dry:

		You	
		wash	dry
Me	wash	1 1	5 3
	dry	3 5	-8 -8

Figure 1

The top row represents those alternatives in which I wash, and the bottom row those in which I dry. The left column represents those alternatives in which you wash, and the right column those in which you dry. The degree of pleasure attached by me to any alternative is represented in the bottom right of the square, and the degree of pleasure attached by you in the upper left. Let us suppose that we each prefer ideally that one of us washes and one of us dries. Neither one of us wants very much to dry the dishes without them having been washed, and both of us would rather have them dried than not. Then the utilities may be fairly represented by the numbers in the above figure. Clearly, in this situation, one of us should wash and one of us dry. In some situations, however, what we should do is not so clear. Even this situation leaves us open to bargaining because each of us would prefer to dry than to wash up. One of us may throw a tantrum for example if he does not get to dry. Or one of us might threaten to dry no matter what thus compelling the other to wash. If what we are trying to do is maximize our individual pleasure, such devices are

clearly rational. But so much for an example. Let me try now to apply game theory to some of the important situations of marriage. I shall begin with perhaps the most important, extra marital sex, or as it was known in olden times, adultery.

Let me first describe the situation in plain terms. I shall assume categorically that we are not sexually liberated, that we retain in fact all the hangups that society educates us to and that are notoriously difficult to cast off. In particular, I shall assume that a marriage which results with both partners engaged in extra marital sex would be extremely unstable and cause each participant a tremendous amount of pain. But before considering the effect of adultery on one's total marital happiness, let us consider first its effect on sexual pleasure alone. Now, it is not obvious that an adulterer would experience more sexual pleasure than a faithfully married person, but such is the conventional wisdom. I would like here to assume the bleakest possible picture of the situation in adultery. Let us assume in fact that the adulterer is highly successful and scores a great deal outside of marriage, and likewise for his partner. The situation then, could be fairly reflected in the following game:

		You	
		faithful	adulterous
Me	faithful	1	3
	adulterous	-5	-4

Figure 2

My assumption of conventional attitudes towards sex and of the fact that we would be sorely hurt if our partners played around is reflected in the low pleasure attached to those alternatives in which one's partner is unfaithful. On this picture the most desirable alternative for me is that of the adulterer, for it is here that I reap the greatest sexual pleasure. Faithful married life is, by comparison, dull, and the situation in which I am cuckolded is the most painful of all. If we both play around, it is painful but not quite as painful as in the case in which I have no compensation myself. I would like to suggest that this picture captures a great deal of the conventional conception of marriage. I would like to contrast it with the version of marriage proposed by the utopians who would like us all to reform our psychological makeup, to liberate ourselves from our hangups, and to become capable of living happily with sexual freedom within marriage. The picture above captures this idea except for its depiction of liberality. On the utopian view it is this alternative that is preferred above all:

		You	
		one partner	sexual freedom
Me	one partner	1	5
	sexual freedom	1	20
		1	20

Figure 3

I am making this idealistic picture explicit just so I can reject it. None of my acquaintances who have tried to reform their psyches to meet this image have succeeded and published accounts like that of The Harrad Experiment do not leave much room for optimism.¹⁰ Later I shall discuss the interesting question of whether we are not morally obliged to try to develop such psyches. Right now, however, I would like to return to Figure 2, conventional wisdom. The first point I would like to make is that it is perfectly clear on this conception of marriage exactly what the double standard is and why it is rational. The ordinary idea of the double standard is that I would like my one true love to be faithful to me alone whereas I would like other women to be unfaithful to their true loves and to dally with me. This idea is captured in the game by the fact that for each of us we prefer the other to be faithful while we play around. It must be admitted that from the point of view of maximizing one's own individual happiness, maintaining the double standard appears at first glance to be rational. It does not, however, maximize total social happiness. From a crude egoistic perspective, however, it is the most rational alternative in that it gives the greatest pleasure. Unfortunately, your partner can reason this way too, and if this were the proper line of reasoning, you would both be unfaithful, forcing upon yourselves the worst possible alternative. Crude egoism here entails unhappiness, and the compromise solution of mutual faithfulness is clearly the best that can be expected. On the basis then of both total and individual utility, the proper behaviour for both participants is for us both to be faithful.

There is a version of crude egoism that is frequently taken as the paradigm of rational action under the principle: minimize your losses. Though it too dictates mutual adultery and must be rejected as counterintuitive, it is plausible enough to deserve discussion. On this model it is reasoned that it is best to minimize your losses rather than chance on a great killing. The reasoning justifying this point of view goes something like the following. If we both know the general situation and if we both stand to derive great pleasure from the other suffering, we shall see that it does not make sense to presume that the other will opt for an alternative that would give me the incentive to inflict on him great suffering by choosing for myself that alternative which gives me a great deal of pleasure. We assume, then, that we are each capable of this line of reasoning and that I will choose an action on the assumption that my opponent will choose his action in such a way as to maximize his pleasure. Further, in pure conflict situations it happens that whatever is pleasure for me is pain for my opponent and vice versa. From these two propositions it follows that I should try to minimize my losses and so should my opponent. Thus, on the conventional view of marriage it follows that it is reasonable to be mutually unfaithful. But this conclusion reflects more on the model of reasoning than on the truth of the conclusion. It is supposed to explicate utilitarianism in game situations. Here it clearly fails. (It does so in a similar way in the famous case of "Prisoner's Dilemma" usually cited as a counter-example to the model.)

We have arrived then at the somewhat surprising conclusion that the conventional monogamous marriage is the best possible arrangement, and we have done so on what must be considered some of the weakest possible assumptions. For the view of marriage captured in the traditional conception is very bleak indeed. It is bleak in two ways. First, it denies the vision of the sexually liberated that the situation in which both partners are sexually free is one of great mutual happiness, and secondly, it does not assign a great deal of pleasure to the situation of mutual faithfulness. Indeed, if your partner were assured to be faithful, it would be more rational for an individual to philander. So without assuming either that we are capable of the psychological reform necessary for accepting sexual liberality or that there is a great deal of happiness in the life of faithful monogomy, we have shown that adultery is irrational.

Another point I would like to make about the traditional conception of marriage is that it is possible in terms of the game outlined in Figure 2 to explain the role of deceit and dishonesty in marriage. In ordinary game theory we assume that both partners have full knowledge of the total situation and that if your opponent chooses to perform a certain action, you will have knowledge of the fact. But such knowledge is not always forthcoming in the real world. In particular, in the case of adultery it is best to make your partner think you are faithful, for then you can choose to philander and increase your happiness. If, on the other hand, your partner discovers your unfaithfulness, he will play around also in order to decrease his pain. Hence you would end up at the

situation in which you both suffer. It is, therefore, in your self interest to be deceitful. If you could keep your partner in ignorance, the assumption of the previous line of reasoning, that both partners would know which action the other did, would not be fulfilled, and the line of reasoning which led to the conclusion that the life of mutual faithfulness was best would not be established. But the possibility of deceit is itself not very plausible and this for two reasons. First of all, deceit itself is very difficult to maintain. Suppose you are successful for a time, and even that your partner indulges in willful self deception. But self deception is unreliable; certain evidence when presented to the mind immediately produces certain conclusions quite independently of the will. Certain tell-tale signs of playing around cannot be ignored. A second reason undermining the possibility of deceit is the intrinsic displeasure of being deceitful: the ugliness of lying and dissimulating, and the loss of spontaneity and openness. We may summarize the situation as a dilemma. On the one hand, there is the life of deceit. This deceit itself is tenuous and undependable, and if your partner sees through it, you will both plummet into the situation of mutual unfaithfulness and great unhappiness. The deceit itself is also intrinsically unpleasant. If the deceit works, however, one may reap the joys of unfaithfulness. On the other hand, there is life of honesty and of mutual faithfulness.

The last point I would like to make with reference to the traditional vision of marriage concerns the concepts of trust and vulnerability. You frequently hear the prescription: trust your loved ones. This advice has always seemed to me a bit conceptually

confused. The concept of trust applies, characteristically, to the situation in which I may suffer as the result of another's actions. I put myself, in a sense, within someone's power. My welfare depends on what somebody else does. If I accept that situation without trying to obtain control over my welfare, I may be said to trust the person in question. Trust entails vulnerability. It is perfectly clear that there could not be any kind of intimate relationship without trust. For, it follows from the fact that two people are intimate that they are mutually vulnerable. The prescription then to trust someone is wasted breath for people who are already deeply involved. They are already stuck with a situation in which their welfare is mutually dependent. They have no choice but to trust one another.

So far I have been discussing a very weak and dismal conception of marriage, and have established, even on this weak basis, the irrationality of adultery. I would like now to consider whether we cannot be slightly optimistic about traditional monogomy. It just might be true that the result of life-long successful marriage was very great happiness indeed. In this case the game capturing marriage should be written as follows:

	faithful	unfaithful
faithful	10 10	3 -10
unfaithful	-10 3	-8 -8

Figure 4

In this picture the marital enterprise is truly one of co-operation, and it is clear to both parties that mutual faithfulness is the best alternative. While in the previous picture (Figure 2) the numbers representing pleasure stood mainly for sexual pleasure, not so in the new version. In the earlier view it was only for the case of mutual unfaithfulness that questions of total happiness, as distinct from mere sexual pleasure, entered the picture. But on the new picture it is total happiness that is measured in every case. Included here are the joys of companionship, intimacy, spontaneity, emotional support, or, in short, all the benefits of life together - which I am not seriously going to list here. Indeed some go so far as to maintain that there is a kind of mystical transcendence that results from lifelong monogomy. I would like now to discuss this idea of mystical union in some detail, but first a remark on uncertainty.

I suppose a fully adequate account of the alternatives in marriage would attach not just degrees of pleasure to each alternative but also probabilities. On such a version I think the likelihood of transcendent happiness in monogomy is certainly not assured. For the poor, the uneducated, and the immature, the probability is quite low, at least to judge from divorce rates. Exactly what the probability is for the more affluent, the more educated, and the older, I do not have the slightest idea.

I would like to conclude this section with some remarks on the possibility of transcendent union between husband and wife. The idea that by a lifelong marriage one can reach a special state of consciousness, a level of mystical existence if you like, is highly

relevant to the prospect of adultery in a sense that such union may be prevented by infidelity and it may even entail divorce. The idea has a long history in western culture, and its first clear statement I think is found in the seventh book of Aristotle's Ethics. There Aristotle argues that in the highest kind of friendship, friendship of the intellect, the two friends become literally identical. The idea here seems to be something like the following. In the realm of pure intellect nothing exists but ideas, and if two people arrive at the same truths, their minds consist of exactly the same ideas and are hence identical. Aristotle is not as explicit as this on his precise meaning, but I think this gloss is fair to the text and makes some sense out of what he has to say. Now you have to be some kind of intellectual fanatic, and a naive one at that, to think that you are ever going to have exactly the same ideas as your spouse. Aristotle, I think, may well have qualified for such fanaticism. The story is told that in order that he might think more and not waste time sleeping, he would hold an iron ball in his hand over the edge of his bed with a tin plate beneath so that when he began to nod, his grip would relax, the ball would crash into the plate, and he would wake up and be able to think some more. Unfortunately, my personal ideal of marital bliss does not involve iron spheres with matching plates marked respectively 'His' and 'Hers.' So I do not think that it is through intellectual agreement that mystical union is to be achieved. A little bit of agreement is reassuring, but I personally cannot imagine a life more boring than one shared with my exact

image. Now the christian mystics have even more elaborate ideas about the transcendence of marriage, but unfortunately their idea of a spouse is no mere mortal; they would marry God himself.¹¹ According to St. John of the Cross, at a certain stage in mystical development one reached a 'consummate union' with God. This stage, according to St. Theresa, is the 'seventh resting place of the interior castle' and amounts to (1) a continual sense of God's presence, (2) a transcendent union of intellect and will with God's and (3) an habitual vision of the blessed Trinity. Unfortunately, I find it very difficult to milk this tradition of any relevant ideas on the ultimate lifelong happiness of human marriage.

I have already tapped one modern school in an attempt to explain the cooperative venture of marriage, namely game theory.¹² But a more profound approach is provided by continental philosophy and especially the existentialism of Sartre.¹³ One of his ideas that has been developed by Thomas Nagel is that sexual attraction involves higher order reasoning as follows. Sexual attraction is increased by the fact that you are aware that your partner is aware that you are aware that the partner finds you attractive, and so forth through as many elaborations of higher order reasoning as one is capable. In sartrian terminology what this means is that it is essential to a personal relationship that one is constantly viewing the other, both as an object and a mind. Sartre himself thinks that this process is doomed to failure and that every personal encounter is undermined by the impossible task of viewing a person both as a thing and a thinker. A more important aspect of Sartre's thinking is that, as minds, each of us

projects onto the world a certain system of values and that this value system organizes the data of perception and experience. A great deal of one's personal value system is articulated within marriage and in term of another person. What is important to me may well depend on what you think, or on past experiences we have shared. Your actions and habits may organize and give meaning to my own. My love as well as my hate may require you as object. Removing you from my world may undermine it. Now, this system of individual values can be called an identity. What is important to marriage, then, is that much of one's identity can involve another. It is interesting to view the effects of divorce given this metaphysical description of marriage. If the other decides to go away and to reject their part in your value system, then in a sense your universe crumbles. A pillar of the organizing framework of perception and reality is pulled away. I think this way of talking about marriage and values is a little fanciful and unnecessarily metaphysical, but there is some truth to it, enough to make this line of thought productive and rewarding. I shall not pursue it any further here than to observe that there is something very plausible and compelling in the idea that your life's mate may become part of your identity. There is this much that is true in the idea of mystical union in marriage.

IV. Justice, Sex, and Divorce

Previously I have discussed how to maximize utility within the conflict situations that arise in marriage and have taken adultery

as an example. But just as there are problems which arise from justice for utilitarianism in its simple forms, there are also problems for utilitarianism within conflict situations. I have in effect applied the utilitarianism of game theory to marital conflict. We have seen earlier that in actions involving a single agent, sometimes social utility conflicts with social justice. Similar moral conflicts arise in conflict situations involving several agents, and these cases dictate qualifications on the utilitarian maxim. The particular moral qualification that I would like to discuss return us to the problem of whether we should be content with our preferences as they stand. In particular I want to investigate whether we should not in fact try to achieve the psychological outlook reflected in the utopian conception of marriage reflected in Figure 3. Should we, in fact, try to change ourselves so that we could be truly sexually liberal? Should we not open to ourselves a full range of personal and sexual relationships even within marriage? As a first step in the discussion I would like to advance a premise. I will assume, for the sake of argument, that the utopian picture is in fact a praiseworthy ideal. I am even willing to admit that in the best possible world people are sexually free as the ideal proposes. The question I want to ask on this assumption is whether we should try to achieve that ideal ourselves in our less than perfect world. Unfortunately, from the fact that a given behavior is morally utopian, it does not follow straight forwardly that we should pursue it in our actual circumstances. I think a plausible description of the abortion

situation is a good example. We may all admit that in the best of all possible worlds, in a world free from scarcity and want, in which sexual reproduction was a matter of volition, there would be no abortion. But in our own world, limited in resources and in technology, the lesser of two evils in many situations seems to be the legalization of abortion as a means of birth control. Likewise, though sexual liberality may be morally ideal, it may be morally inappropriate to our imperfect world.

There are a number of points I would like to make in a partial answer to the question of whether we should revamp our preferences about sexual freedom. The first is that there are conflicting moral intuitions on the subject. Some people have very strong moral intuitions, which are basically political in nature, that we should try to reform society and, in particular, the institution of marriage. For those people truly committed to political reform, I think there is a very strong case to be made for at least trying to broaden one's sexual outlook. A radical should act. Not that it will make much difference. The likelihood of any single individual's actions making a significant contribution to the reform of modern capitalist society is virtually nil. Here, the high degree of commitment seems to offset the low probability of effectiveness. But not everyone is a political reformer. Most people devote their lives to other pursuits, to values other than political reform. How compelled by the image of sexual utopia should these people be? Suppose they do not want to change their values, do not want to be politicized, do not want to help

bring about utopia. Well, I do not know any better than anybody else how to resolve this moral dilemma or to convince you of a particular moral position. The best we can do is consult our own moral intuitions. But I would like to point out that there are some considerations against sexual reform. There is, in particular, the venerable tradition of transcendence which holds that lifelong marriage produces a special kind of relation, categorically different from the more transitory friendships of youth. Also, in appraising the political argument for liberality against monogomy I personally find that the general radical critique of marriage in capitalist society tends to be based on hosts of assumptions (e.g. Marxist theory), each of which is difficult to swallow. The result is that for me the particular maxim that sexual liberality is better than a monogomous marriage does not carry much moral force.

A second point I would like to make is that the reform of sexual values may come into conflict with other basic values like kindness. Much of the force behind the idea that we should be more liberal rests in the claim that by being so we will increase our pleasure. But given the current hung-up psyches of most people, the mind expansion is going to be very painful, if it is even possible. Why should we inflict on our personal relationships, difficult enough as they are, the additional growth pangs of this ethical change? Consider what I take to be the normal situation. A typical couple that is conventionally raised, experiences jealousy, and for the emotional sustenance available

in personal relationships requires the uniqueness bond provided by monogamy. Why should two happy, conventional people try to become sexual libertines, especially when it will mean causing pain to each other? At this point I would like to advance a principle which I shall call the principle of kindness. If there is ever any conflict between real live pain, on the one hand, and the dictates of a dubious intellectual theory, on the other, then choose kindness. I am just not persuaded that one should go through all the trouble of becoming a libertine.

Finally, my last point is that we must distinguish between trying to change our values, on the one hand, and, on the other, acting as if we had managed to change them. There is a big difference between actually changing our preferences, so that we are in fact sexual libertines, and merely trying to change them. This transformation is, presumably, what radicals would have us achieve, but it is quite different from going around pretending we have in fact changed our preferences. It is just confused for people who emotionally are monogamous to behave as if they were accomplished sexual revolutionaries. Instead of running around with many sex partners one should be going through psychological therapy or the conversion necessary to convince yourself that that is exactly what you want to do. Do not play around unless you want to. Many of us do not want to but think we should. Hence the focus of reform should be our attitudes and desires. How to reform is a big problem. It is patently obvious that whatever the right therapy would be, it is not extra marital sex. Practicing being free causes pain; it does not change attitudes. On the whole, then,

unless one is extremely committed to political reform, there does not seem to be very strong moral reason for complicating one's life by becoming a libertine. Of course, this conclusion is very comfortable, but that is not to say it is any less true.

Before leaving the topic of possible moral restraint on marital behavior, I would like to discuss briefly the relationship of the concept of right to that of kindness in close personal relationships. Ordinarily one's moral obligations to others can be expressed in terms of the concept of right. I have a right to sit in my house. It is a property right, and you have an obligation to let me do it.¹⁴ Corresponding to every right there is supposed to be an obligation: if I have a right to do action A you have an obligation to let me do A. In terms of these two ideas, those of right and obligation, the geography of social morality is usually charted. It is sometimes alleged, however, that the moral situation changes in close personal relationships, and that the concepts of right and obligation are not enough to describe the proper moral situation. There are lots of little things that I might ordinarily expect to have a right about, for example, the right to a little peace and quiet, the right not to be interrupted, the right to read in the evening if I want, the right to spend an evening out, the right to go to bed and get up when I want, the right to spend my money on what I want. But if I insist on exercising these rights within a close relationship like marriage, then I am wrong. The idea is that in the intimacy of marriage I cannot help but be unkind if I insist on exercising my rights. The behavior in which two people demand all their rights belongs to a court of law, and not to the environment of

understanding and compassion that is supposed to typify a close relationship. In thinking about how you should relate to your spouse, you should employ not the concept of right but that of kindness. I must admit I find this point of view rather powerful, but I also cannot accept it without qualification. The qualifications which I want to advance show, in a sense, that even in intimate relationships there is some concept of right that should be employed. Suppose I always make breakfast, make the bed, do the housework, cook the dinner, buy the groceries, take care of the children, bear with your bad temper, all because I am kind to you, but that you, on the other hand, are kind to me only rarely, once in a blue moon. But since you are kind to me sometimes (though not often), you cannot be said strictly to act toward me in terms of demanding rights. Clearly there is something inequitable and unfair about this situation. But where is the inequity, where is the unfairness? Neither of us has violated the rights of the other. There are various ways in which one can try to account for this intuition of inequity. One way would be to say that marriage recharts the geography of rights and obligations. In a marriage I may be said to have a right to expect you to go a little further for me than for others, e.g. to put up with a little of my bad temper and some of my emotional insecurity. These are special rights and obligations one has just to one's spouse, not to anybody else. We might capture the idea roughly by saying that in marriage we reach a new equilibrium of rights and obligations in which each is expected to take more from the other and to give more. But there is nevertheless a concept of fairness that can be

appealed to. The most important of these rights and obligations would presumably be those one actually has in mind in marrying, those that one promises to uphold in the marriage ceremony.

Before leaving the concepts of liberality and adultery, I would like to say something special about sex, both in and out of marriage. We have already seen by application of the concepts of game theory that adultery is irrational behavior. I would now like to apply the concepts of game theory to the sexual act itself and in particular to the stereotypical role of man and woman as active and passive, respectively. If any behavior is a cooperative game, it is that of sex. The situation can be fairly captured by the following game matrix:

	active	passive
active	10 10	4 8
passive	8 4	0 0

Figure 5

Contrary to the victorian image, it is just not true that women, or men for that matter, should remain passive. But the passive role of women is deeply ingrained in our culture. Consider, for example, the words of Friar Luis De Leon, who writes in The Perfect Wife, 1583:

Here, a story of St. Basil, and his comments thereon, are very much to the point. The viper, he relates, the most deadly of all serpents, goes forward lovingly to espouse the sea-lamprey, and having arrived at the seashore, begins

to hiss, thus betokening its presence, in order to draw the lamprey from the waters, and to mate with it. The lamprey obeys, and joins herself fearlessly unto the venomous animal. Now you ask me what I mean by citing this example? What I mean? Clearly this, that no matter how harsh, no matter what the ferocity of the husband's disposition may be, it is the wife's duty to bear with him, and under no pretext consent to a breaking of the peace. You tell me that he is an unfeeling wretch? Nevertheless he is your husband. He is a drunken sot? Granted, but wedlock made of you twain one flesh. He is a churl, and quarrelsome? Yes, but bone of your bone, and flesh of your flesh; the most important part of your being.¹⁵

Clearly such notions should be left behind with the Black Death. The discarding of passive/active role assignments to the various sexes can be generalized beyond sex to all manner of different sorts of behavior. (Highly recommended is Masters' and Johnson's The Pleasure Bond which consists of sensible applications to the marital situation of their researches on sexual physiology and psychology. Their conclusions concur with mine and are somewhat conservative in the sense that they extol the virtues of monogomy and point out the pitfalls of sexual liberality.)¹⁶



I would now like to conclude this essay with a few remarks on another serious problem of marriage, divorce. By applying to it concepts of game theory I hope to make clear how its structure is quite different from that of adultery and to argue that at least in some cases it is a rational alternative. On an intuitive level I think the distinction between adultery and divorce is clear. In the marriage contract it is one thing to make arrangements about sexual relations both inside and outside marriage and quite another, logically unrelated, to decide how long the marriage should last. But we shall see on a deeper level how the structural properties of these two problem areas differ fundamentally. As

in the case of adultery, I would like to begin the discussion by making a somewhat pessimistic assumption about our conventional, emotional tolerance. Due mostly, I suppose, to our educations and cultural backgrounds, the vast majority of us find the idea of divorce terribly threatening emotionally. The loss of a loved one, the rejection by him, and the drastic change involved in divorce are almost unbearable prospects. On a rational level one can often appreciate that in many cases such eventualities are probable and sensible. But emotionally the idea generates great turbulence. Again we can raise the ethical question of whether we should be satisfied with our psychological weakness; whether we do not in fact have a moral obligation to overcome our hangups. My reply to such calls for reform is essentially the same as in the case of adultery, and I shall not rehearse those ideas again here. On the whole, I do not find such prescriptions to psychological reform very convincing when they involve pain and suffering. I will accept, then, as an ethical given, that the prospect of divorce is severely threatening emotionally. An immediate consequence of this fact is, I think, that it is only rational at the time of marriage to promise to make the relationship as long lasting as possible, i.e. to promise to do whatever is necessary to perpetuate those attitudes and affections which are essential to a happy marriage. I am not saying that one should promise never to divorce, merely that we should do an awful lot to see that divorce does not happen. The situation at the time of marriage can be captured fairly in the following game:

	promise	not promise
promise	10 10	10 -10
not promise	-10 10	-8 -8

Figure 6

Here the alternatives are whether we should each promise the other to do our bests to keep the marriage lifelong. Clearly the ideal situation is that in which we both so promise. But a much more interesting situation is that which arises when one of the marriage partners decides that he wants divorce. What should happen then? Such situations may vary greatly in the amount of pleasure and pain involved. The person wanting the divorce may actually be suffering in the marriage or be merely indifferent, and the relative pleasure and pain consequent to the divorce for both participants may differ greatly. Here are two games, the first of which captures the situation in which one of the partners actually suffers in the marriage and the second the situation in which one of partners is indifferent to the marriage. I assume that it is not possible for one person to stay married to the other while the other is divorced from them:

	married	divorced
married	10 -10	
divorced		-10 10



	married	divorced
married	10 0	
divorced		-20 10

Figure 7

What is interesting is that both situations are games of pure conflict. Every alternative which is good for you makes me suffer and vice versa. There is, unfortunately, no rational solution that we may both agree upon. In these particular cases utilitarianism provides no answer because the sum total of pleasure in each case is the same. Even if the games were redrawn so that, say, the situation of married life provided the overall greater pleasure, it is not obvious that the couple should remain married. Moral considerations enter here. I think the traditional moral intuition that used to be brought to bear is that the marital promise, the promise to stay married until death, alters the moral situation in such a way that people had an obligation to stay married. But I have not described the situation this way. All that has been promised in my scenario is that one will try to do one's best not to develop the attitudes which would lead to divorce, but once these attitudes have developed the marital promise is irrelevant. But there is another moral intuition which comes down on the side in favour of divorce when one of the partners wish it, a principle of freedom to the effect that one has a right to leave a relationship if one wants to. It is even possible that one's obligation to self development may in some marriages tilt the scale in favour of divorce. Of course the situation may be more complicated when children are involved, and then utilitarian calculation requires that their happiness be calculated along with their parents. With the emergence of voluntary divorce in law, the right of one individual to terminate a marriage is becoming absolute without any consideration

for total utility. The monetary compensation provided in child support is only a tiny step toward true compensation for the true utility lost, and so far the law does not require any monetary compensation from the woman. In summary, then, we may conclude that though we should promise to do our best at making a go of marriage, sometimes attitudes develop which favor divorce. If that happens, then total utility should be considered. I think sometimes that unhappiness caused by divorce overbalances the right of an individual to terminate a relationship. Such a course is just common sense and underlies why many marriages last until children are raised.

John Martin

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Notes

*I would like to thank Calvin Normore and Arnold Wilson for the benefit of their wisdom and stimulating argument on marriage, and especially Jenefer Robinson who must bear some responsibility for these meditations, at least causally, but who would, I am afraid, repudiate them, likening the effort to the sailor who prepared to cross the raging sea by studying fluid dynamics.

¹Principles of Morals and Legislation, p. 278. (Oxford, 1908).

²Barbara Balogun (Jackson), "Marriage as an Oppressive Institution/Collectives as Solutions" in Voices from Women's Liberation, ed. by Leslie B. Tanner, Signet Book, (New York, 1970) pp. 292-296.

³Origins of Family, Private Property, and State, p. 502 (New York: Int. Publishers).

⁴William H. Masters and Virginia E. Johnson, The Pleasure Bond, p. 181. (Little Brown, 1974).

⁵Robert H. Rimmer, Harrod Experiment. (Bantam, 1973).

⁶Canon i, Sess. xxiv.

⁷Institutes, IV, xix 31.

⁸cf. De Matrimonio Christiano.

⁹I am indebted to Havelock Ellis, Little Essays on Love and Virtue (London: A.C. Black, 1930) for putting me on the scent of the Roman definition.

¹⁰Robert H. Rimmer, op. cit.

¹¹cf. St. John of the Cross, Cantico Espiritual, and St. Teresa, El Castillo Interior.

¹²Jean-Paul Sartre, Being and Nothingness.

¹³Thomas Nagel, "Sexual Perversion," Journal of Philosophy, 65(1969).

¹⁴This point of view has been advanced to me by Jenefer Robinson and Calvin Normore.

¹⁵Alice P. Hubbard, trans. (Denton, Texas: Texas State College for Women, 1943).

¹⁶Masters and Johnson, op. cit.