

MARRIAGE: A NORMATIVE FRAMEWORK

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I. INTRODUCTION

At her older daughter's wedding, family sociologist Constance Ahrons and her daughter's father—from whom Ahrons had been divorced for a quarter-century—walked their daughter down the aisle together politely, even joyously. One would never have guessed that such cooperation would be possible at the time of their divorce in 1965: for two years, they “battled constantly over custody, visitation, and child support,” and their relationship was—to say the least—strained by a kidnapping and the involvement of private detectives and “several lawyers.”¹ Prevalent perceptions only made things worse; Ahrons's decision to divorce, she says, seemed to make no sense to the people who could observe her relationship with her husband “from the outside.” She was miserable, but she found it difficult to explain that to others:

[M]y husband happened to be nice. He wasn't a wife-beater, a gambler, an alcoholic, or a drug addict. We had a pleasant home and from the outside, at least, we looked fairly happy. Therefore, the only conclusion to be drawn

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¹ See CONSTANCE R. AHRONS, *THE GOOD DIVORCE: KEEPING YOUR FAMILY TOGETHER WHEN YOUR MARRIAGE COMES APART* 1-2 (1994).

by society was that I was crazy. My discontent was seen as pathological.²

When she ultimately found herself in court, the problems she faced in her relationship with her husband could not be introduced as grounds for divorce; the relevant legal standards identified acceptable reasons for divorce, and hers were not among them. Thus, she “stood before a judge and stretched and molded the truth”³ in order to establish that she was warranted in divorcing under the law.⁴ “It was a mortifying experience,” she writes.⁵ “My lawyer, the judge, and I all knew I was magnifying petty incidents into major abuses, in order to concoct sufficient evidence for that type of case.”⁶

The emergence of civil marriage, during the French Revolution, as an alternative to ecclesial marriage, led to the uneasy coexistence of two regimes governing marital dissolution. Increasingly buffeted by economic pressures and corroded by individualistic attitudes, marriages in many western countries were dissolved with growing regularity by the state, even if ecclesial authorities were inclined to regard them as still valid. Divorces multiplied as the “sexual revolution” got underway in the 1960s, and the 1970s witnessed the emergence of what recent observers have termed a “divorce culture.”⁷

Thus, divorce law has changed in the years since the dissolution of Ahrons’s first marriage. And, of course it has changed in significant degree precisely because of experiences like hers, ones that suggested that no-fault divorce legislation could reduce the trauma associated with divorce, help people avoid the need to air their dirty laundry in public, and unclog the courts. It is obvious that, in many ways, the institution of no-fault divorce has been a success. But critics have sought to undermine its moral validity by suggesting that it has encouraged a con-

² *Id.* at 12.

³ *Id.* at 39.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ See Karla Brent Hackstaff, *Divorce Culture: A Breach in Gender Relations* (Ph.D. dissertation, University of California—Berkeley 1994); see also BARBARA DAFOE WHITEHEAD, *THE DIVORCE CULTURE: RETHINKING OUR COMMITMENTS TO MARRIAGE AND FAMILY* (1997).

sumerist mentality toward intimate relationships that has made commitments more tenuous and marriages more likely to dissolve. The claim, in short, is that support for no-fault divorce lacks moral seriousness.

However, if we are to affirm permanence and fidelity, we cannot do so simply by repeating conventional natural law arguments or appealing to what seem like arbitrary divine commands. We must link a commitment to another with the notions of sexuality and love that have developed over the past two millennia. And we cannot articulate that commitment without taking into account the problem posed for any defense of traditional marriage by the persistence of patriarchy (which I will address in a companion article).

In this article, laying the groundwork for a subsequent discussion of divorce, I offer a normative framework for marriage. That is, I seek to advance good reasons for understanding the purpose and function of marriage in our culture in a particular way. In light of these reasons, I suggest, we can see that particular obligations help to make marriage a specific kind of relationship. Thus, to grant that marriage has a particular purpose and function in our society will be to grant as well that to marry is to accept these obligations.

Two features of my argument may be of particular interest:

1. The “personalist” tradition has understood sexuality as bearing an inherent meaning that has led ineluctably to norms for sexual relationships and, implicitly, for marriage as an institution. While sympathetic with the personalist rejection of the “physicalist” focus of much traditional argumentation in this area in favor of a focus on the development toward wholeness of persons-in-relation, I suggest that popular personalist arguments (offered by, e.g., Karol Wojtyła—later Pope John Paul II—and Paul Ramsey) are unsuccessful.

Because I do not believe that the moral structure of marriage follows from the moral limits on sexual conduct, I do not believe it is possible to argue that everyone who makes a moral choice to enter a sexual relationship thereby acquires a predefined status. The normative model I offer thus provides little support for the view that a sexual relationship should be seen as a status relationship which the parties are free

to enter but whose terms they are not free to alter. Thus, too, it provides no support for the view that all legally recognized civil partnerships must be expected or required to exhibit the characteristics of marriage as I delineate them (or, indeed, for the view that marriages ought to be recognized by law at all in a way that other contractual relationships are not). At the same time, my analysis is quite compatible with the view that people might opt contractually for partnerships that were expected to exhibit these characteristics, provided these were not given a specially favored or disfavored legal character.

2. It is possible and desirable to reject the myth of “romantic” love as an appropriate goal for marriage—because of its excessive focus on the superficial and on transitory satisfactions and because of its characteristic association with inequality and with the eroticization of distance and dominance—while valuing rich personal intimacy and ecstatic and erotic bonding as central to the marital norm. We can say no to “romance” (of the wrong sort) while affirming the discovery of individuality that helps to make the modern pattern of romantic relation appealing, and without accepting group marriage, arranged marriage, or similar strategies as acceptable alternatives to marriage-as-friendship.

In Part II, I develop an understanding of marriage as the natural outgrowth and fulfillment of love. In Part III, I consider the possible relationship between this model and the moral limits on sexual conduct. In Part IV, this model is used to offer a detailed proposal regarding the contours of specifically marital obligation. In Part V, I conclude, setting the state for my discussion of divorce in a companion article.

II. LOVE AND MARRIAGE

Marriage creates the possibility for a deeper communion, a richer intimacy, a more expansive self-gift, than would otherwise be realizable; this distinctiveness can thus be seen as one source of the normative structure of marriage. My approach to understanding the normative structure of marriage will thus begin with an examination of love—love as *shared identity*,⁸ the deepest and closest kind of friend-

⁸ I am not at all sure that this is the right term for what an intimate, passionate, egalitarian relationship founded in the freely given promises of the partners seeks. Carole Pateman, *The Shame of the Marriage Contract*, in *WOMEN'S VIEWS OF THE*

ship.⁹ Marriage represents the full actualization of authentic love. It completes, fulfills, and expresses love.¹⁰

Intimacy matters; delight matters; care matters; and, all other things being equal, a life marked by deep intimacy, warm and nurturant care, and ecstatic delight is a fuller, better life than one without these goods. A marital commitment, in which these goods can be realized, is an unrivaled expression of the partners' care and desire for and delight in each other. It establishes a relationship with the potential to serve as

POLITICAL WORLD OF MEN 92 (Judith Hicks Stiehm ed., 1984) suggests "personal association" as a label for this kind of relationship.

⁹ Interestingly, a prominent feature of the relationships of couples with long-lived happy marriages is precisely that they enjoy intimate friendships with each other—a factor considerably more important than their genital sex lives, narrowly considered. According to HOWARD CLINEBELL, *WELL BEING: A PERSONAL PLAN FOR EXPLORING AND ENRICHING THE SEVEN DIMENSIONS OF LIFE: MIND, BODY, SPIRIT, LOVE, WORK, PLAY, THE EARTH* 114 (1992), when long-term marriage partners were asked in a recent survey about the reasons for their marital success, the most common response was: "My spouse is my best friend"; "I like my spouse as a person" was the second most common. By contrast, "'We agree about our sex life' was twelfth for men and fourteenth for women . . ." Thus, Clinebell posits, spousal friendship is the "best long-term cement for sustaining an intimate relationship (and also for keeping the fires of romance glowing) . . ." *Id.* (citing Jeannette Lauer & Robert Lauer, *Marriages Made to Last*, *PSYCHOLOGY TODAY*, June 1985, at 22. *Cf.* MARY DALY, *GYN/ECOLOGY: THE METAETHICS OF RADICAL FEMINISM* 373 (1978) ("female-identified erotic love is not dichotomized from radical female friendship, but rather is one important expression/manifestation of friendship"). One might conclude from Daly's comments that she regards transitions out of partner-love relationships as acceptable. *Id.* at 463 n.38. And, if so, I disagree (unless dissolution is *desired*, and not merely accepted, by both partners). But it seems to me that her general observations regarding the connection between love and friendship are very apt. She writes: "Male-defined erotic love involves loss of identity and is inherently transitory. It involves hierarchies, ranking roles—like the military—on the model of S and M. While male erotic love is seen as similar to comradeship in these respects, it is experienced as weaker in intensity and depth. Woman-loving Spinsters/Lesbians who are finding integrity of gynaesthetic experience know that such splitting of erotic love from friendship and likening it to warrior-comradeship is symptomatic of the disease of fragmentation." *Id.* at 372.

¹⁰ On the dynamics of successful love, see HENRY FAIRLIE, *THE SEVEN DEADLY SINS TODAY* 193-214 (1979). More than a little wisdom—if not all of the insight that one would like regarding the healing and transforming and liberating power of unconditional love—is to be found in WALTER LIPPMANN, *A PREFACE TO MORALS* 284-313 (1929).

a uniquely rich soil in which their friendship, care, and passion can grow. Commitment allows one to consolidate the connection and intimacy with the other that come into being at the beginning of one's love for her or him.¹¹ Commitment enables the self to define a coherent identity, one that is not simply the plaything of feeling or circumstance.¹² Ongoing engagement with the other offers opportunities for more profound exploration, greater knowledge of the self and the other, more growth-inducing struggles with oneself, and deeper and more exhilarating challenges to give truly and sensitively.

To know that there is "somebody to care for me alone in the world,"¹³ to be "fully known, in all one's imperfections and vulnerabilities, and still to be loved with absolute dependability, is deeply humanizing."¹⁴ People "need to be reconfirmed by one another in their basic claims of self-assertion. But the only confirmation that really counts is the one freely given by a person who is herself a rich, original, unrepeatable instance of humanity."¹⁵ Thus, despite the profound problems that attend the social institution of marriage, the idea of marriage still holds out the *hope*, the *promise* of the greatest intimacy and trust, the deepest human relationship possible. There *is* no other such institution; we are drawn to the hope, the promise, that there is an intimacy possible in life which includes connecting physically, holding someone inside you in the deepest recesses of your body, having that person know you and be accepting of you—close and in touch, verbally, emotionally, physically. It is a physical and spiritual craving at

¹¹ My view here is influenced by—but is more positive vis-a-vis romantic love than—that of M. SCOTT PECK, *THE ROAD LESS TRAVELED: A NEW PSYCHOLOGY OF LOVE, TRADITIONAL VALUES AND SPIRITUAL GROWTH* 81-97, 106-20 (1978). I agree with Peck that there is an irreducible element of will in love (I do not think I would accept Peck's definition of will, however), that love is active rather than passive. But I am not persuaded by his negative evaluation of passionate love or his positing of an extrinsic goal—spiritual growth—for love rather than suggesting that union with or care for the other is love's objective.

¹² Cf. LEWIS B. SMEDES, *CARING AND COMMITMENT: LEARNING TO LIVE THE LOVE WE PROMISE* (1986).

¹³ Jane Shapiro, *This Is What You Need for a Happy Life*, in *WOMEN ON DIVORCE: A BEDSIDE COMPANION* 59 (Penny Kaganoff & Susan Spano eds., 1995).

¹⁴ J. PHILIP WOGAMAN, *CHRISTIAN MORAL JUDGMENT* 156 (1980). Note the gender neutrality of Wogaman's language. What he says is, of course, true of both women and men, but it is far more often that women offer men security than vice versa.

¹⁵ ROBERTO MANGABEIRA UNGER, *PASSION: AN ESSAY ON PERSONALITY* 207 (1984).

the same time—not to be alone in one’s most personal ecstatic moments.¹⁶

Because marriage is a great good, there is good reason for persons to marry and to safeguard their primary marital commitments with secondary commitments that help them maintain and nourish their relationships with each other. There is also, therefore, reason for communities to support married couples and the institution of marriage.

A. *Beginning with Love*

For all the distortions it has suffered and to which it has contributed, love remains important and valuable.¹⁷ It offers liberation from isolation, fear, insecurity and loneliness; validation, self-knowledge,

¹⁶ SHERE HITE, *WOMEN AND LOVE: A CULTURAL REVOLUTION IN PROGRESS* 329-30 (1989).

¹⁷ In making the broad phenomenological claims that mark my observations about love in this section, I realize that I am flying in the face of the account of love’s genesis and nature offered by such figures as C. S. Lewis, Denis de Rougemont, and Philippe Aries. On their view, romantic love is a contingent historical construct quite specific to western culture during the second millennium A.D. This claim is increasingly being challenged on a variety of grounds. For useful cross-cultural evidence that romantic love flourishes in diverse non-western settings, see WILLIAM JANKOWIAK, *ROMANTIC PASSION: A UNIVERSAL EXPERIENCE?* (1995). A somewhat more idiosyncratic analysis that focuses on western, and particularly English texts, drawing on the work of Peter Laslett and others, is FERDINAND MOUNT, *THE SUBVERSIVE FAMILY: AN ALTERNATIVE HISTORY OF LOVE AND MARRIAGE* (1992). Anthony Giddens argues that “[p]assionate love is a more or less universal phenomenon,” but suggests that “[i]t should be differentiated . . . from romantic love, which is much more culturally specific.” ANTHONY GIDDENS, *THE TRANSFORMATION OF INTIMACY: SEXUALITY, LOVE AND EROTICISM IN MODERN SOCIETIES* 38 (1992). For Giddens, the distinctiveness of romantic love is a function of, among other things, a moralization which resulted from a fusion of passionate love with Christian ideals of love; opportunities for the exercise of at least some social power by women; and a sense of love as a purely individual matter between the partners, a sense dependent on social and economic changes that disconnected persons from families and other traditional structures of order and meaning. There is also a sense, Giddens suggests, of romantic love as infusing the narrative of a life with meaning, absent from earlier conceptions no doubt in part because passionate love was not seen as capable of being combined with marriage. *See id.* at 38-48. On the genesis of romantic love, see, e.g., ROBERT C. SOLOMON, *ABOUT LOVE: REINVENTING ROMANCE FOR OUR TIMES* 50-61 (1988).

and self-esteem; dignity, security, trust, self-respect, and self-acceptance; the possibility of discerning more clearly the beauty, vulnerability, and value of all things; and the opportunity for delight, challenge, stimulation, and self-transcendence.¹⁸ Committed love “is transformative”¹⁹—liberating, empowering, ennobling.

To say this is not to say, however, that the same kind of love is right for everyone. Fitness for marriage is not an automatic accompaniment to humanness. Some may be better suited for close relationships with all the members of a small group rather than for focused intimacy with a single partner. And the love of others finds expression in service to a wider community or communities—though such people still need friends, still need authentically *personal* love. And of course those who do have vocations to marriage may be overlooked by others for one reason or another. So singleness is no cause for shame.²⁰

Nonetheless, marriage embodies what we want when we love. Delighting in the other, love seeks the opportunity to contemplate her or him and bask in her or his presence. Desiring the other, love seeks ever-more-intimate communion with her or him. Caring for the other, love seeks ongoing opportunities to give to her or him. Thus, love involves the aspiration for a relationship with the other that is not transitory or punctiliar, but extended over time.

¹⁸ JUDITH S. WALLERSTEIN & SANDRA BLAKESLEE, *THE GOOD MARRIAGE: HOW AND WHY LOVE LASTS* 5 (1995) (“We want and need erotic love, sympathetic love, passionate love, tender, nurturing love all of our adult lives. We desire friendship, compassion, encouragement, a sense of being understood and appreciated . . . We want a partner who sees us as unique and irreplaceable.”) Wallerstein and Blakeslee maintain that “[a] good marriage can offset the loneliness of life in crowded cities and provide a refuge from the hammering pressures of the competitive workplace. It can counter the anomie of an increasingly impersonal world, where so many people interact with machines rather than fellow workers . . . Marriage provides an oasis where sex, humor, and play can flourish.” *Id.* at 5. *Cf. id.* at 239-47.

¹⁹ WALLERSTEIN & BLAKESLEE, *supra* note 18, at 334 (“A good marriage . . . is transformative . . . [M]en and women come to adulthood unfinished, and over the course of a marriage they change each other profoundly.”).

²⁰ The potentially destructive consequences of endorsing the Aristophanic myth in unqualified terms has become clear to me in conversation with Eva Pascal. Solomon is a qualified defense of the Aristophanic perspective.

Love seeks to secure this ongoing relationship by grounding it in commitment. Commitment enables each partner to experience the ongoing presence of the other and the intensity and richness that comes with her or his continued availability. Commitment also reflects each partner's self-gift to the other and for her or his good, because it offers her or him a profoundly reassuring and liberating security. The promise that constitutes a marriage is thus a fitting capstone to a developing love relationship.²¹

B. *The Dynamics of Love*

Love is an orientation of the self, marked by an intention to form a "we," grounded in an initial decision, characteristically marked and often prompted by—but neither identical with nor dependent on the continued conscious presence of—feelings of delight, desire, and care. Love is an intentional state of orientation on the other, a state of being, acting, risking, and relating. Supported, enriched, and expressed by feelings, it is not itself a feeling.²²

²¹ Cf. DIOGENES ALLEN, *LOVE: CHRISTIAN ROMANCE, MARRIAGE, FRIENDSHIP* (1987).

²² See SOLOMON, *supra* note 17, at 76-81. An emotion is a judgment of value, see MARTHA C. NUSSBAUM, *UPHEAVALS OF THOUGHT: THE INTELLIGENCE OF EMOTIONS* 19-88 (2001), that characteristically combines thought and feeling. Cognition is essential: a reaction to something that does not include a cognitive component is not an emotion—it is a pure sensation. If I feel a fiery sensation in my gastrointestinal tract when I see you, but no thought, no judgment, is associated with this sensation, I will do well to treat this feeling, not as a meaningful disclosure of something—what?—about you or about our relationship, but simply as a minor annoyance to be treated with bismuth or ibuprofen. Referring to emotions as judgments highlights their cognitive component; what distinguishes a judgment from a reaction is precisely that it involves a cognitively meaningful claim about its object. The relationship between thought and feeling in emotion can take more than one form. An evaluative thought can *give rise* to a feeling. Alternatively, when I have a feeling, like the gastrointestinal disturbance I mentioned above, I may *assume* that it discloses something of significance about myself or my environment, and go to work in search of a thought that will make sense of it. In this case, I may be completely mistaken about the source of the initial feeling; but I may nonetheless come to associate the (incorrect) thought with the feeling. While it is possible to have the thought without the feeling, it is not possible to have the feeling without the thought. Judgments necessarily involve thoughts; particular sensations may mediate or prompt those thoughts, but need not do so. Cf. NUSSBAUM at 34-36, 56-64. Often, of course, we will have relatively little control over our evaluative judgments. Most of the time,

something posing a serious threat to my life will lead me to evaluate it as worthy of fear, and perhaps anger. In other cases, however, I *will* be in a position appropriately to influence such a judgment. For I may make some person, event, relationship, institution, or object central to one or more of my projects. I can *choose* to organize some substantial aspect of my life around it. In this case, I am making it *important-for-me*. Love as I define it here would be a classic instance of a relationship accorded this kind of status. For in love I intend to form a “we,” and this will mean, among other things, integrating the other into my sense of who I am. If the “we” develops as I intend, my identity and the other’s will overlap. I have made the other, and my relationship with the other, part of who I am. By committing myself to the project of uniting with the other (again, of forming a “we”), by committing myself to the other (choosing to care for and about the other), by investing in the other, I have made the other important-for-me. The judgment, “*This other is important for me*,” will follow naturally, supervening on the state of affairs I have created volitionally. Thus, we may reasonably speak of love as an emotion (albeit not a feeling, even if accompanied and supported by feeling) *and*, at the same time, as a matter of choice. Cf. BARBARA DE ANGELIS, *PASSION* 15-19 (1998) (emphasizing that not only love as judgment, but actual *sensations* of passion, can be fostered by commitment (“Passion is born of commitment. When you are committed to . . . a relationship, you feel passionate about it. . . . [T]he actual, inner experience of committing yourself to something you believe in . . . unleashes your natural passion The commitment itself acts like a key that unlocks the door to your secret storehouse of passion.”)). It will certainly be possible “to have an emotion whose content does not actually reflect my real scheme of ends,” NUSSBAUM at 47 n.43, but at least in connection with love this will not be, *pace* Nussbaum, because one is “talking oneself into liking or cherishing someone one really doesn’t like,” NUSSBAUM at 47-48 n.43. For cherishing someone is not a matter of believing that someone is worthy of a particular response; it is a matter of *choosing* to embrace someone. “Talking oneself into cherishing” someone will not be a matter of convincing oneself that one has made a choice one hasn’t—one wouldn’t be engaging in the relevant self-talk if one didn’t affirm the choice to cherish the other—but rather of overcoming contrary thoughts, commitments, or impulses at odds with one’s preferred self-orientation. (Nussbaum is certainly sensitive to this point. She writes: “people cherish and value things that they do not really think good, things that they would not be prepared to commend as good to others. Often they love a person, or a house, or a country, just because it is theirs, the one they have grown up with.” *Id.* at 51. I would simply want to amend this claim by noting that people can make others *theirs* by choice.) Cf. JUDITH SILLS, *A FINE ROMANCE: THE PASSAGE OF COURTSHIP FROM MEETING TO MARRIAGE* 263 (1987) (“The ability to ‘talk yourself into it’ is a necessary ingredient in making a commitment.”). Note that the question whether love is volitional is distinct from the question whether there is an element of volition in the judgments of importance that emotions are. See NUSSBAUM at 46. Whether an *act* of assent is involved when I endorse the proposition that something is important-for-me is one thing; whether that proposition is itself true because of an act—as, in the case of love, the act of committing oneself to forming a “we” and caring for the other—is another. Nothing follows from any of this about the *strength* of love or freedom from

1. An Intention to Form a “We”

A “we” is a shared self, a shared identity.²³ Two people who love do not become a single “I”—their individuality remains, and their differences, as lovers know all too well, continue. But they begin to understand themselves as *belonging together*. They identify themselves with reference to each other. Each becomes increasingly integrated with the other.

To say that love is an intention to form a “we” is to describe it as a stance of the self. It is to deny, in particular, that love is a matter of constant feeling. Love involves a *disposition* to feel delight, care, and a desire for union, but love may be present even when feelings fluctuate or are absent. The disposition to feel may be frustrated while the orientation of the self persists. Love is deeper than feelings. It is an orientation on and toward the other from which, when impediments are absent, feelings naturally emerge.

Love’s will to form a “we” is what distinguishes it from care for a neighbor, enemy, or stranger, including the care for those others who are parents, siblings, and children. This openness also ordinarily distinguishes love from friendship—in degree. Friends seek to be close, but not, typically at least (there is no virtue in dogmatically distinguishing the love we seek and express in friendship from erotic love), to connect, to bond, as intimately as do lovers (and if they did, we would have no real basis to distinguish them from lovers).

conflict regarding love. One’s commitment to forming and maintaining a “we” may waiver. Various beliefs may conflict with the evident reasonableness of the commitment. Alternative commitments may come into play. Inner debate is a crucial part of emotion. Cf. NUSSBAUM at 86-88. Someone is obviously free to say that she does not like my definition of love, that she prefers to treat certain sensations as necessary, or even sufficient, for the occurrence of love. I suggest, however, that love would not be of great moral or existential significance to us if it were identified with particular sensations. The importance we accord romantic and erotic relationships, and the stances toward others love seems to involve adopting, make sense only if love is something other than the sensations we rightly associate with love.

²³ On the meaning of a “we,” see, especially, Robert Nozick, *Love’s Bond, in THE PHILOSOPHY OF (EROTIC) LOVE* 417-32 (Robert C. Solomon & Kathleen M. Higgins eds., 1988).

Love is rooted in a *decision* to be open to the formation of a “we” and is kept alive by the reaffirmation of that decision.²⁴ It may sometimes seem as if we fall passively in love; and this way of looking at things will be exacerbated if we think that love is a feeling, because our feelings rarely seem entirely under our control. But love is a stance of the whole self, not a feeling. And, it is a stance to which we can choose to open ourselves. As we think back on developing love relationships, we can often discern moments at which we chose to entertain and nourish feelings—even here, we are not simply passive. And we can think, often, of times when we chose, more fundamentally, to and open ourselves to those we love. We cannot always choose how we will feel, but we can decide whether or not we will love.

The decision that love is does not have any single foundation. One person may come to want to be open to another for any number of reasons. The authenticity of love is not, however, dependent on the nature of these factors. Perhaps we sometimes go actively seeking lovers who exhibit a range of characteristics we believe are crucial. Or perhaps we discover that bonds have developed because of a history of friendship or casual sexual interaction, bonds which turn out, in retrospect, to have linked us more deeply than we had planned or expected and which we choose to affirm by opening ourselves in love. Perhaps we are sometimes drawn to partners who can help us heal childhood wounds. Perhaps cultural programming sometimes disposes us to appreciate particular physical or personality types. Perhaps we sometimes select partners in order to help us relive and resolve past romantic difficulties. Perhaps our genes sometimes play a part in rendering certain characteristics attractive. Perhaps we sometimes identify prospective partners because of their embodiment of Platonic ideals of beauty and goodness. Whatever the case may be, it does not really matter. We do, indeed, find ourselves disposed to open ourselves in love to others and we do so. And once we have opened ourselves, once we have begun to integrate those we love into our lives, the fact that we have thus integrated them is itself a sufficient reason to continue. We do not need rational, objective reasons to love.

²⁴ Cf. SOLOMON, *supra* note 17, at 36-37.

Emotion is an *affective register of apprehensions of value or meaning*.²⁵ Emotion registers the experienced worth of becoming or being a “we” as well as the experienced worth, to me and to others, of the other’s particular gifts and of the gift of her- or himself. It registers the worth of the other as a unique and irreplaceable and cherishable self. And it registers the worth of the other as someone who, in virtue of commitment or vocational responsibility, looms large in my life, someone whose selfhood, whose well being, has become my sacred trust, someone whose claim on me is now my unique gift and obligation. It is an expression of my devotion, not its cause.

As it registers apprehensions of meaning and value, emotion can prompt us to action. In connection with love, it inspires care, intimacy, and devotion. It can render us vulnerable, and thus, in turn, help to make those we love safe around us, since we are sensitive both to their needs and to their responses to our actions. It reflects not only our perceptions and evaluations of current situations but patterns of experience and interpretation developed over time. Thus, it can provide us with guidance as we ascertain how to respond to new and not-so-new challenges and signals awareness of factors to which we may be oblivious.²⁶ In the absence of emotional responses, we may be passive or unconcerned about others. Emotion is deeply important, and a life bereft of emotion would be a poor life indeed.

But *love* is not identical with feelings of care, compassion, desire, passion, or lust. During the initial experience of new love, we may be driven by passion so overwhelming that no other aspect of love seems important; feeling may seem to be identical with love. Nonetheless, while passionate love and sexual desire are sources of unequalled joy and pleasure in their own right, such feelings can decline over time and are often cyclical. And the impetus of healthy passion draws us to intimacy; and, indeed, the initial passionate joy of healthy love derives precisely from the fact that a shared identity, the state of being a “we,” seems to have been achieved—from the sense of freedom and security that being a “we” offers. Passion’s most significant function is as a spur

²⁵ For a different view, which offers an important survey and critique of the relevant philosophical literature, see Justin Oakley, *MORALITY AND THE EMOTIONS* (1992).

²⁶ Cf. ANTONIO DAMASIO, *DESCARTES’ ERROR* (1994).

to and sign of intimacy.²⁷ And, indeed, the care to which love spurs us—genuine, other-regarding care for the other—may too often be inconsistent with love identified with emotion.

Our—conscious or unconscious, direct or indirect—apprehensions of value and meaning are fallible. Our emotions can be inhibited; we can grow fickle or unconcerned or cold and hard as stone. Anger can prevent one from feeling care. Guilt can keep one from feeling desire. Fear of loss can keep us from feeling delight. The imperfections or moral failures of the other can result in self-righteous judgment that makes positive feelings impossible. An experiential deficit can make one unable to sense the meaning of an event to someone one loves, so that one trivializes something that she or he experiences as a source of joy or humiliation; one does not respond with delight or care because what matters so much to the other seems unimportant. Habituation can blind one to the other's beauty. That one feels no need for the other at a given time can delude and deceive one into thinking that the other is detached, indifferent, not in need of love. But the changes in one's loving feelings may tell one more about one's fickle physiology, one's neuroses, or one's regrettable habituation to the other²⁸—a sign of

²⁷ Cf. ABEL JEANNIÈRE, *THE ANTHROPOLOGY OF SEX* 153 (1967) (“The paroxysmal moment of bodily union is not the goal but the expression of love. The goal is the union it expresses.”). See also Gabriel Madinier, *NATURE ET MYSTÈRE DE LA FAMILLE* 97 (1961) (“Because intimacy leads to union, it is the realization of the most perfect type of social existence The purpose of this union is not some good work or outward arrangement; its source of being and its guarantee lie within itself. It is brought about for itself not something else, and far from drawing its meaning from a larger whole as a cog in a machine, intimacy gives a meaning to all the rest”) (quoting JEANNIÈRE, *supra* note 27, at 168); PHILIP S. KEANE, *SEXUAL MORALITY: A CATHOLIC PERSPECTIVE* 96 (1977) (plausibly hypothesizing that a focus on physical union as the defining element of marriage helps to explain the church's tolerance for early and ill-advised marriages).

²⁸ According to ROBERT J. STERNBERG, *THE TRIANGLE OF LOVE: INTIMACY, PASSION, COMMITMENT* 66-67 (1988), psychological investigation suggests that habituation is simply a feature of ordinary relationship development: “you can experience a surge in passion almost immediately upon meeting another person to whom you are attracted, whether physically or otherwise. This passionate arousal increases quickly but also peaks fairly rapidly. At the peak of arousal, a negative force begins to work literally in opposition to the passion. At this point, the passion you experience begins to decrease; and under the influence of the negative force, you will gradually reach a more or less stable state of habituation of feeling in respect to the person Now

a subtle arrogance, an unwillingness to continue accepting the other *as gift*²⁹—than about the actual nature of one’s relationship with the other. Thus “falling out of love” is no sign of a defect in authentic love (though a lack of genuine connection may certainly accelerate a decline in desire, warmth, or delight in the other).

But truly to care for the other, truly to acknowledge her or his distinctive claim on one, requires a constancy that fickle feeling cannot guarantee (even though we likely have more control over our emotions than we often suppose). If “I love you” were a report on or a prediction regarding my feelings, it would be little more than an ephemeral lure, a mirage.³⁰ Thus, real love must issue in a commitment to that enables us to transcend the loss of the emotional responses the other deserves.³¹ Love is not an affective state; it is a decision. And it is not the doubtful promise of a set of feelings, but of the person whose feelings they are.³² (The good news: feelings of “love may constantly be reawakened and

both the positive and the negative (opponent) forces are in equilibrium.” MICHAEL R. LIEBOWITZ, *THE CHEMISTRY OF LOVE* (1983), reports that our initial feelings of romantic passion are fed by a chemical called phenylethylamine (PEA); the decline in the initial romantic high can be attributed to a gradual drop in PEA levels during the early period of a relationship’s development, a period which normally lasts no longer than eighteen to twenty-four months (and may be much shorter). *See also* DOROTHY TENNOV, *LOVE AND LIMERENCE: THE EXPERIENCE OF BEING IN LOVE* 70-82 (1979); PAUL PEARSALL, *A HEALING INTIMACY: THE POWER OF LOVING CONNECTIONS* 175 (1995).

²⁹ Cf. ROBERTO MANGABEIRA UNGER, *PASSION: AN ESSAY ON PERSONALITY* 222 (1984).

³⁰ Cf. JEANNIÈRE, *supra* note 27, at 165 (“The vow assures continuity of presence against dispersal in the moment. From the start, bodily union is made an expression of a perpetual giving.”).

³¹ I owe this point in part, I think, to MARGARET A. FARLEY, *PERSONAL COMMITMENTS: BEGINNING, KEEPING, CHANGING* (1986), though I think there may be some differences of nuance between us.

³² Cf. GABRIEL MARCEL, *CREATIVE FIDELITY* 161-63 (1964).

nourished by fidelity . . .”³³ to one’s promise, with memory and hope obviously playing an important role.³⁴)

Delighted desire and care dispose us to create a “we”—to transform it from transience to permanence through commitment.

2. Desire

Love is not desire, and deep love can be present when feelings of desire have been stilled by fear, neurosis, or habituation. Nonetheless, love is often prompted and characterized by delighted desire. Desire prompts the formation of a “we” and impels us toward commitment.

Desire wants; but *what* it wants, if it is truly love, is not *things*—photo opportunities, sexual experiences, witty conversations. It wants the beloved; it wants another to share the self with, another who can understand, acknowledge, confirm, support, challenge precisely by *being*. Desiring means wanting to be able to offer all of oneself, to be free not to hold anything back; and one seeks a responsive openness from the other. Desire seeks not the services of the other but the co-presence of the other as comrade, lover, intimate friend. It knows the joy being recognized, known, and accepted by the other, the opportunity to experience at least the beginning of a union without barriers—the deepest and best kind of friendship. Desire will be fascinated by the particularities of the other’s life because they manifest the other in her uniqueness and help to explain who she or he is and how she or he feels.³⁵ While desire may initially mean desire for particular characteristics, it solidifies into a desire for the *whole* of the other. Genuine

³³ EMIL BRUNNER, *THE DIVINE IMPERATIVE: A STUDY IN CHRISTIAN ETHICS* 360 (Olive Wyon trans., 1957); cf. ROBERT N. BELLAH ET AL., *HABITS OF THE HEART: INDIVIDUALISM AND COMMITMENT IN AMERICAN LIFE* 95 (2007). For suggestions, see FARLEY, *supra* note 31, at 54-66. On being responsible for emotions, see JUSTIN OAKLEY, *MORALITY AND THE EMOTIONS* 122-59 (1992). See also CHARLES A. GALLAGHER ET AL., *EMBODIED IN LOVE: SACRAMENTAL SPIRITUALITY AND SEXUAL INTIMACY* 38-61 (1986).

³⁴ I owe this point to FARLEY, *supra* note 31.

³⁵ See JEAN-PAUL SARTRE, *L’ETRE ET LE NÉANT* 453-68 (1943) (quoted in ILHAM DILMAN, *LOVE AND HUMAN SEPARATENESS* 70 (1987)).

desire tends toward permanence.³⁶ Thus, while desire can, on its own, be selfish, while one who desires may be nothing but an aesthete, as soon as it involves desire for the *person* of the other, and not merely her or his particular gifts, even desire moves people beyond egoity, beyond an oppositional individualism, and toward empathic connection. Individual perspectives are transcended, the presumption of the ego is rebuffed. As egoistic selfhood is transcended, the circle of concern, nurture, benevolence, and regard is expanded. By contrast, desire that is concerned simply with gratifying needs, that sees the other as a kind of service provider, exploits the other, diminishes the self, and is untrue to desire's own *telos*.³⁷

Desire reaches its completion in intimate communion. When we seek to disclose ourselves to, and unite with our close friends, we are frustrated by limits. We want to connect, to know, on *every* level. We seek the most extensive, most comprehensive kind of friendship possible. Such friendship must include full sharing on all levels—spiritual, intellectual, imaginative, emotional, and physical. Love means being as close as possible to the other. It involves the construction of a common, shared identity,³⁸ and it seeks intimacy and communion. The one who desires wishes, light as feather, quiet as moonlight, to pass through the beloved, to feel alienation and resistance melt away. Those who desire seek “to give themselves totally to each other, to break down all the barriers of suspicion—and even of privacy. There is a mutuality in this kind of communication: each feels a desire to be dissolved into the

³⁶ Cf. IRVING SINGER, *THE PURSUIT OF LOVE* 51 (1994) (“Though falling in love may involve an intensity of feeling that is basically different from the comfort and orderliness of marriage, as Hume insists, all sexual love contains a desire for continued oneness with the beloved. Plato touches on this point when he says that love is a striving for perpetual possession. In the relationships between men and women in most societies, this longing for permanence translates into the constancy of commitment that marriage entails. To this extent, sexual love and married love are internally related to one another. The former may never issue into the latter, but it contains within it a yearning for the lasting and possibly undying union that matrimony has often signified in the Western world.”).

³⁷ For a biting critique of a “love” understood as designed to meet the individual needs of the lover, see THOMAS MERTON, *LEARNING TO LOVE: EXPLORING SOLITUDE AND FREEDOM* 25-37 (1997).

³⁸ NOZICK, *supra* note 23, at 424.

other, and to accept the other's desire for complete self-giving."³⁹ And, desire seeks not just all of the other now, but all of her or him *over time*. A person is—among other things—the subject of a story that is necessarily extended in time; one could perhaps even say that a person *is* a story. To desire a person, rather than an experience, is precisely to desire an equally intimate friendship that extends over the whole of that person's life. A normative marriage *just is* this sort of friendship.

Desire for the other is not premised on the assumption that she or he is ideally, magically suited for partnership with the other. There is no single other who is predestined to be my intimate counterpart. My personality is not such that one person is inherently superior to all others as a prospective partner; of course, even if there were such a person, I could realistically wait for her or him to appear—I must promise my love to a unique individual who cannot—and should not be expected to—meet *all* of my needs. Nor does the love to which desire leads assume that a partner is *morally* perfect. None of us is in a position to wait for the love of a morally or spiritually flawless person—there are none; even if the principle of loving only the flawless would mean *we* would be excluded from love's ambit. And, in any case, "if we restrict our love to good people, we become bad people"⁴⁰ And, as Martha Nussbaum observes, "[m]orality, at its most generous and best, is something mobile and even volatile, something actively caring and sustaining. Its gestures will be nothing more than gestures of death if it does not retain its capability to move beyond itself into love."⁴¹ Love acknowledges the distinctive beauty and worth of the other without presupposing her or his perfection or idealizing her or him in ways that deny her or his imperfections. Similarly, because no lover is perfect, no lovers will agree on all the same things or exhibit the same

³⁹ DONAL DORR, *INTEGRAL SPIRITUALITY: RESOURCES FOR COMMUNITY, JUSTICE, PEACE, AND THE EARTH* 60 (1990). Cf. PLATO, *SYMPOSIUM* 318 (Benjamin Jowett ed., & trans., 1956); STERNBERG, *supra* note 28, develops a model of love as a synthesis of intimacy, passion, and commitment. Unlike Sternberg, I regard intimacy as the center of marital love.

⁴⁰ ANDREW COLLIER, *BEING AND WORTH* 93 (1999); cf. MARY ELIZABETH HUNT, *FIERCE TENDERNESS: A FEMINIST THEOLOGY OF FRIENDSHIP* 170 (1990) ("People I want to be around do not subject their relationships to a standard of political correctness.").

⁴¹ Martha C. Nussbaum, *Steerforth's Arm: Love and the Moral Point of View*, in *LOVE'S KNOWLEDGE: ESSAYS IN PHILOSOPHY AND LITERATURE* 335, 360 (1990).

virtues, interests, or personality traits. Thus, the communion which love desires cannot lead to a dissolution of individuality that results in the uncritical adoption of the other's moral perspective, in a loss of integrity, as if either lover could trust the other to make her or his moral decisions perfectly. In an imperfect world full of flawed people, moral independence and disagreement are unavoidable even in the context of rich and deep love that truly cherishes and delights in the other.

Even in such a world, however, deep intimacy is profoundly consoling and comfortable. It gives a space where we can feel distinctively, perhaps uniquely, at home. We are not self-sufficient, and the intimate and powerful friendship that is love expands and enriches us in ways impossible for isolated selves. Its enriching closeness is both empowering and liberating. It is an exceptional gift to receive from and give to the other. A commitment to the other solidifies an intimate friendship and gives it a secure foundation on the basis of which intimacy can continue to develop. It gives birth to the security in communion with the other that desire seeks. The disciplining of desire in marriage is a source of tension; it runs the risk of destroying rather than enriching *eros*. But the "wager implicit in an ethic of tenderness is that, in spite of . . . [the attendant] risks, marriage remains the best chance for tenderness."⁴²

3. Care

Like feelings of desire, care can move us toward the decision to form a "we" and to solidify that decision through a commitment. Integral to love is a response to the other's vulnerability and need, in which one offers care, validation, and joy. This kind of self-gift involves availability to the other that renders her or his well being equal with, integral to, and inseparable from one's own.⁴³ In real love, one is *constituted* in part by one's relation to the other. But, love also involves a

⁴² Paul Ricoeur, *Wonder, Eroticism, and Enigma*, *CROSS CURRENTS* 14.1, 137 (Spring 1964).

⁴³ I borrow this account of love from HARRY STACK SULLIVAN, *CONCEPTIONS OF MODERN PSYCHIATRY* 42-43 (1940), who explains that one loves if "the satisfaction or the security of another person becomes as significant to one as is one's own satisfaction or security . . .". Cf. JEANNIÈRE, *supra* note 27, at 144-55 (speaking of a "choice for myself at the cost of sacrificing myself, since without the other I am nothing"). This kind of language will no doubt raise the fashionable specter of

care for the other that acknowledges and affirms her or his distinctness. Love involves an experiential, often emotional, apprehension that the beloved is sacred and infinitely valuable, both distinct and distinctive, that she or he *matters* just because she or he is a thinking, feeling, doing, knowing, suffering, creating person, and that she or he is other than oneself. It involves discerning the beloved's unconditional significance. A person whom I love is somehow revealed to me. I no longer see him through the miasma of his mere relevance to my wants or mere usefulness for my plans and purposes. And when he ceases thereby to be a mere adjunct to my life, I, as it were, break through to him.⁴⁴

“To love a thing is to see a thing as existing in its own right—to go out to its existence [And] the insight into its existence which makes us rejoice in its existence is at the same time an insight into its suffering, its defencelessness, its profound vulnerability”⁴⁵

Care recognizes that the other is *other*.⁴⁶ Lovers do not confront the world with one pair of eyes, one consciousness, one will. And the

codependence in some minds; it needs to be said clearly that this kind of love is not possible for persons who are not self-confident, centered agents.

⁴⁴ J.R. Jones, *Love as Perception of Meaning*, in RELIGION AND UNDERSTANDING 149 (D.Z. Phillips ed., 1967).

⁴⁵ *Id.* at 149-50 (emphasis in the original). Selective quotation enables me to twist Jones's meaning here a bit; I think the seeing to which Jones refers here is integral to love, but I do not think it is simply identical with love.

⁴⁶ Love as sensitive acknowledgment of otherness is a key theme in IRIS MURDOCH, *THE SOVEREIGNTY OF GOOD* (1970). The notion that moral obligation derives from the call of the Other is also sensitively developed by Emmanuel Levinas in various places. See, e.g., Emmanuel Levinas, *Substitution*, in *THE LEVINAS READER* 88-125 (Seán Hand ed., 1989). This essay is a portion of EMMANUEL LEVINAS, *OTHERWISE THAN BEING OR BEYOND ESSENCE* (1981). Murdochian and Levinasian themes are central to the argument developed in WENDY FARLEY, *EROS FOR THE OTHER: RETAINING TRUTH IN A PLURALISTIC WORLD* (1996). See also KNUD LOGSTRUP, *THE ETHICAL DEMAND* (Theodore Jenson trans., 1971); ZYGMUNT BAUMAN, *POSTMODERN ETHICS* (1993); ZYGMUNT BAUMAN, *LIFE IN FRAGMENTS: ESSAYS IN POSTMODERN MORALITY* (1995). See also ZYGMUNT BAUMAN, *Postscript: 'To Die for . . .', or Death and Morality*, in *MORTALITY, IMMORTALITY, AND OTHER LIFE STRATEGIES* 200-10 (1992). Similar themes are developed in JOHN D. CAPUTO, *AGAINST ETHICS: CONTRIBUTION TO A POETICS OF OBLIGATION WITH CONSTANT REFERENCE TO DECONSTRUCTION*, *STUDIES IN CONTINENTAL THOUGHT* (1993); JOHN D. CAPUTO, *DEMYTHOLOGIZING HEIDEGGER* (1993); EDITH WYSCHOGROD, *SAINTS AND POSTMODERNISM: REVISIONING MORAL PHILOSOPHY* (1990); ROBERT GIBBS, *WHY*

deeper and more profound their connection, the more tempting it may be to forget the otherness still present in each. One cannot truly care for the other without acknowledging this otherness. One must recognize that one may be mistaken about the other's desires or needs. Care means not lapsing into a slothful unwillingness to continue exploring her or his depths, discovering the surprises in store in her or his heart and mind. It means refusing to pretend that one can read her or his mind. It means acknowledging that passion can obscure power dynamics which can be especially destructive when people are emotionally vulnerable, when their defenses have been lowered—and that equality and mutuality must be pursued with particular vigor in order to avoid taking advantage of the sensitivities to which love gives rise. It means recognizing that one cannot give oneself if one has no self to give, that nurturing the other's self-confidence, dignity, and capacity for agency is both a way of taking her or him seriously as *other*, and also a means of enriching her or his contribution to her or his ability to give as a lover.

Loving the other entails a deep regard for her or his dignity, freedom, and self-worth. She or he is uniquely vulnerable to me; and I have distinctive “vocational” obligations to her or him; I experience caring for her or him as a task that is uniquely mine.⁴⁷ To value the other in this way is to recognize the extent to which she or he appropriately, unavoidably, fills, as it were, my moral field of vision, requiring my focused attention and concern. I apprehend her or his value through a lens that filters out distracters, that reveals her or him as occupying my moral horizon in a distinctive way, as exerting an irreplaceable claim. My awareness of her or his value reflects the distinctiveness of my unique responsibility for her or him.

The intimacy that is a key feature of love is eminently worth desiring on its own. But it also helps to facilitate the self-giving that is integral to love. Intimacy makes possible a rich awareness of the other

ETHICS? SIGNS OF RESPONSIBILITIES (2000); and DWIGHT FURROW, AGAINST THEORY: CONTINENTAL AND ANALYTIC CHALLENGES IN MORAL PHILOSOPHY (1995). See also COLLIER, *supra* note 40, (defending a Spinozist, particularist ethic focused on response to the intrinsic worth of the other—human and non-human alike).

⁴⁷ On the notion of vocation, see LAWRENCE A. BLUM, MORAL PERCEPTION AND PARTICULARITY 104-10, 118-19 (1994); ROBERT MERRIHEW ADAMS, FINITE AND INFINITE GOODS: A FRAMEWORK FOR ETHICS 292-317 (1999).

in her or his particularity that in turn enables one to respond with particular sensitivity to her or his needs. It also enables one to attend with singular respect her or his freedom and dignity. To avoid using or manipulating the other requires more than simple adherence to general rules regarding consent and regard for freedom; it requires one to know where she or he is especially vulnerable and how her or his freedom can be enhanced rather than restricted by one's choices. Intimacy helps us—almost uniquely—to know the other in this way. This kind of knowing also enables us to render positive assistance to the other, to share her or his objectives, to support her or his projects and empower her or him to achieve her or his goals. Thus, “intimacy . . . offers the best chances for treating others as the persons they are.”⁴⁸

Care empowers the other as it responds to her or his vulnerability and need. At the same time, however, it also enriches the giver. The self-transcendence that self-giving love involves is liberating and empowering.⁴⁹ Having once identified with the other, having incorporated her or him into one's sense of who one is, having bonded with her or him and begun the movement toward a shared identity, toward being a “we,” one will find her or his joy a source of intrinsic satisfaction. Further, one will experience the satisfaction of knowing that what one is in a position to give is valuable. And one will experience the satisfaction of enlarging and transforming oneself, of growing as one gives.⁵⁰

Care incorporates, to an especially pronounced degree, the solicitude for the beloved as other that also marks other close relationships. Part of what makes love distinctive is the priority it assigns the beloved where this kind of care is concerned: it calls the lover to tend to the beloved when she or he is sick, to rescue her or him from danger, to soothe her or him when her or his nerves are ragged, in preference to others. And this kind of priority is itself a valuable gift, and something that symbolizes and helps to constitute the beloved's specialness.

But there is a special kind of care that the lover offers the beloved as well, a kind of care that differs more substantially from the kind of care she might offer others. In addition to meeting the be-

⁴⁸ Onora O'Neill, *Between Consenting Adults*, 14 PHIL & PUB. AFF. 272 (1985).

⁴⁹ See MERTON, *supra* note 37.

⁵⁰ Cf. WILLARD GAYLIN, *REDISCOVERING LOVE* (1986).

loved's need for nurture, pleasure, companionship, support during illness, and so forth, which other friends might do as well, the lover cares for the beloved by offering her or him the gift of being part of a "we." It is in the nature of the case that being part of a "we" is of great benefit to the lover as well. But the beloved is not, or need and should not be, a means to the lover's satisfaction when she or he elects to become, or to be open to becoming, part of a "we." For the kind of connection with another that being part of a "we" offers is a great good for the beloved as well. To offer the beloved the continuing opportunity to be part of a "we" is not simply good for the lover or for the relationship: it is at the same time an appropriate expression of other-centered care for the beloved, a gift to her of great worth.

C. *Devotion and Unconditional Love*

Marital commitment is the volitional structuring of love's own intentions. Love perceives the other as a deeply desired partner; but it also acknowledges her or him as fragile, self entrusted to one's care, as inherently, intrinsically, infinitely valuable and as needing the special gift that one can give so that she or he can blossom in the sunshine of love, and acknowledges the other. It seeks to envelop the other in care, to embrace her or him with nurturant and protective love. It seeks not only to touch the other with grace now, but to do so always.

1. The Value of Unconditional Love

Truly to care for the other, truly to be devoted to the other, is to give the other what she or he most truly needs. And what she or he most truly needs is the security, freedom, support, care, and validation afforded by unconditional love, love that will not abandon or betray or flee. Devoted care for the other prompts, even if it does not compel or necessitate, the gift of this kind of love.⁵¹ Unconditional love is love that

⁵¹ On the value of self-sacrifice, see ERICH FROMM, *TO HAVE OR TO BE?* 100-07, 141-42 (1976); *cf.* FARLEY, *supra* note 31, at 98 (An "abyss . . . lies between the eros for the other, which culminates in a desire for the other's well-being, and the stripping away of personhood by relationships of domination. In examining examples of each phenomenon, the radical difference between them becomes self-evident. Who could confuse the work of a Mother Teresa, Dorothy Day, or the Mothers of the Disappeared

endures, . . . is faithful through all manner of barriers and difficulties, finding the beloved valuable even when others may not see value or may not see it any longer. . . . The great lovers . . . are the ones who *no matter what* continue to find the beloved valuable beyond all reasons that can be given.⁵²

Thus, commitment to unconditional love means an unqualified commitment to permanence.⁵³

with the battered wife syndrome? In the former examples, an energy and power radiates from women consumed with love for others. This love presupposes a strong self, an intelligent and respectful self that is forgetful of itself only in the sense that it is filled with love for others. The self becomes a vehicle for life with and for others.”). The challenge is to specify circumstances that make self-sacrifice good and even obligatory in some circumstances without legislating it in all cases. *See also* GENE H. OUTKA, *AGAPE: AN ETHICAL ANALYSIS* 274-79, 291-312 (1972) (addressing this concern intermittently). I think that the most fruitful path is one which identifies relevant characteristics of agents such that ought to be self-sacrificial; these characteristics might include a psychological readiness for self-sacrifice and the conscious assumption of responsibilities with potentially or explicitly self-sacrificial obligations.

⁵² SALLIE McFAGUE, *MODELS OF GOD: THEOLOGY FOR AN ECOLOGICAL, NUCLEAR AGE* 132 (1987).

⁵³ I have been helped here by the insights of John Powell. *See* JOHN J. POWELL, *THE SECRET OF STAYING IN LOVE* 52-53 (1974) [hereinafter POWELL, *SECRET*]. As Powell observes, the fact that “love is forever” may be understood as “simply a corollary” of the notion that love is unconditional. *Id.* *See also* JOHN J. POWELL, *UNCONDITIONAL LOVE* 64-77 (1978). I find a great deal of Powell’s insights into the power and meaning of unconditional love highly evocative and clearly true. In particular, he is surely right that love must be grounded in a “decision/commitment” if it is to avoid being subject to the fickleness of changing feeling. But I think three qualifications of Powell’s generally helpful position are in order. First, Powell defines love as a decision and commitment to promote the other’s happiness, clearly demarcated as to its extent. I believe love ought to include such a dimension. But for those people who mean something else when they speak of love—who are, among other things, less deliberate and reflective than they should be—such a definition can be unfair. People who did not make a choice based on such an understanding of love can hardly be expected “on the basis of their own free choices” to view themselves as committed in the way he describes. *Id.* at 64. We ought to make such commitments, under appropriate circumstances; and, having made them, we ought to live by them. But we ought not to assume that we have done so if we have not. Second, Powell notes that, for me to say “yes” to growth and integrity, “someone must empower me to believe in myself and to be myself. Only someone who loves me unconditionally can do this.”

Our world is intolerant of vulnerability. We experience alienation and isolation. Can we be truthful about who we are and would be? Can we let go freely, risk ourselves heedlessly? It seems as if any price would be worth paying to find out.⁵⁴ Conditions seem so often to be attached to people's love. Demands are placed on us, demands that we suppress who we really are in order to be accepted. We lack confirmation that we could be accepted, affirmed, and valued as we are, since the messages we hear suggest that conformity is the price of love. So we find it easy to feel "a deep hunger" to be free of the restraints we have internalized, a hunger "to 'just be.'" The more experiences of conditional love we have, the more burdens we bear without knowing that there is somewhere we can truly call home, truly be welcomed as we are, "the more we ache to be loved for who we are rather than what we do."⁵⁵ Our "longing," psychiatrist Gerald May says, "goes so deep that I have never met a person who could not be moved to tears by the full realization of it."⁵⁶

Unconditional love meets this longing. Only in the shade of such love can the other truly grow and flourish; and only in its shade can she or he truly experience the intimacy that is essential to being a "we" or receive or proffer the rich gifts that intimacy offers. If I am always unsure of you, I will never be able to let go, never be able to grow; only if I know I can count on you without question can I really

Id. at 69. And, as he observes, if "I have never had the experience of unconditional love—either as giver or receiver—I tend to doubt its existence. I tend to disbelieve those who claim the experience." *Id.* at 77. But if it is the case that love begets love, then not everyone can be expected to love unconditionally. What Powell intends as a general prescription is, in fact, appropriately applied to those who have the inner strength to give freely and deliberately. Third, related to this point, Powell makes no reference to issues of gender. I do not intend to be anachronistic; this is not a criticism of Powell, but a recognition of the limits on the applicability of what he has said. Women are asked over and over again to love unconditionally as if they were required to do so. A contemporary appropriation of Powell would require us to recognize the problematic nature of this expectation.

⁵⁴ See HENRI J.M. NOUWEN, SEEDS OF HOPE: A HENRI NOUWEN READER 17 (Robert Durback ed., 1989); HENRI J.M. NOUWEN, INTIMACY: PASTORAL PSYCHOLOGICAL ESSAYS 23 (1969).

⁵⁵ GERALD G. MAY, WILL AND SPIRIT: A CONTEMPLATIVE PSYCHOLOGY 72-73 (1987). I do not wish to suggest that May or I suppose that any human being can offer any of us perfect love.

⁵⁶ *Id.*

blossom.⁵⁷ Loved unconditionally, one can be confident that one can be known utterly without boundaries and barriers, with no penalty for being who one is. The other can be real—confident not that everything she or he reveals will be treated lackadaisically as appropriate and acceptable, but that *she or he* is acceptable, valuable, worthwhile—whatever she or he discloses. Unconditional love engenders freedom in the other—freedom to expose her- or himself, freedom to show the mixture of darkness and light, integrity and brokenness, competence and incompetence, kindness and cruelty, that lurks within everyone. At the same time, it enables her or him to develop and display true beauty of soul, spirit, and body—just as sunlight wakes the petals of a rose. It tells the other that there is truly somewhere she or he can call home. It offers dignity, meaning, hope, self-confidence, trust, and a sense of self-worth as the other is nurtured in the warmth and security of her or his partner’s presence.⁵⁸ Because it precludes concern about the possibility of rejection, it sows the seeds of the most profound kind of human flourishing possible. We know this in our bones. We are reminded of it in timeless stories like *The Velveteen Rabbit* and Hans Christian Andersen’s *The Snow Queen*—it is love that heals us, love that makes us real. Unconditional love is an example of “creative justice,” which gives to the other precisely as an expression of care and as a prerequisite to the achievement of mutuality.⁵⁹ Creative justice does not aim at the perpetuation of dependency, but at the empowerment of the other—an empowerment one by-product of which will be the other’s capacity and desire to continue the spiral of giving.⁶⁰

Unconditional love is itself a source of profound security. It also offers a secondary but crucial benefit: it helps us to sustain the other’s sense of self. We depend on each other for our knowledge of

⁵⁷ Cf. PECK, *supra* note 11, at 140-41.

⁵⁸ Peck provides especially clear and compelling examples of the power of loving commitment to enrich and transform human lives. *Id.* at 140-48 (discussing the risk of commitment); *id.* at 170-80 (discussing the relationship between love and psychotherapy). See also *id.* at 134-39 (Peck’s observations regarding the value of love in empowering the beloved).

⁵⁹ See PAUL TILlich, LOVE, POWER, AND JUSTICE: ONTOLOGICAL ANALYSES AND ETHICAL APPLICATIONS 64-66 (1954).

⁶⁰ Mary Daly criticizes Tillich’s notion, “Creative justice is to be expected of those capable of exhibiting it.” MARY DALY, PURE LUST: ELEMENTAL FEMINIST PHILOSOPHY 276-77 (1984).

our own worth. We know ourselves lovable only as we know ourselves loved.⁶¹ That we are thus recognized is a source of power and strength and courage. But if one is rejected after having been deeply vulnerable, it will be difficult not to question one's own value, to begin (again) to doubt whether one really *is* worthy of love. Unconditional love ensures the ongoing validation of our sense of self-worth and value.

A promise matters not only when things are going well but precisely and most importantly when they are not. Love is the means of ending the spiral of violence, recrimination, and revenge. For loving means being willing to experience harm instead of doing it, to absorb its effects in one's own person rather than passing them back to the one who has done harm or passing them on to others. In an intimate relationship, this does not, of course, mean that one accepts harm as *legitimate*. One has both the right and the duty to call cruelty, indifference, and injustice by their right names; indeed, love without such confrontation can be highly counterproductive. But by refusing to respond to them in any way that implies rejection or perpetuates harm, one stops the cycle of pain; one makes healing, growth, and flourishing possible.⁶²

The kind of love most analogous to the kind of unconditional self-gift that ought to mark a marriage is perhaps—in its fidelity, vulnerability, devotion, and unwillingness to hurt—the love of a parent for

⁶¹ Cf. MERTON, *supra* note 37.

⁶² This notion has been explored by a number of writers. See ROBERT CAMPBELL MOBERLY, *ATONEMENT AND PERSONALITY* (1907); ELIZABETH R. MOBERLY, *SUFFERING INNOCENT AND GUILTY* (1978). See also WALTER HAMILTON MOBERLY, *THE ETHICS OF PUNISHMENT* (1968). I am dependent here on Peter Munz's statement that, "[o]nce one understands . . . [the] inexorable chain which constitutes the natural history of evil, the remedy suggests itself immediately." He explains that the "elimination of evil consists in the capacity to suffer evil, i.e. to be used by others for their own ends Goodness consists in the freedom to halt the natural transmission of evil." He also states that "if one loves another person absolutely, unconditionally, and independently of any benefits derived from him, love is spontaneous and incommensurable with any goods received in return. If one loves another person in that way, one will be able to refrain from using him or her for one's own purposes, no matter how great and deep one's needs are. Incommensurable love [by which he means something very close, at least, to what I mean by unconditional love] transcends evil." PETER MUNZ, *RELATIONSHIP AND SOLITUDE* 26-27 (1965).

a child.⁶³ But it can offer more than parental love. To be sure, family members and friends can give us unconditional love. Similarly, a therapist can offer a non-judgmental and reassuring constancy. A partner, however, is more vulnerable to the one she or he loves—so that her or his commitment is more risky, more serious, with the potential for sacrifice and loss. Further, a marriage embraces the partners' lives in a comprehensive way that makes marital commitment and presence especially valuable. Thus, a partner's unconditional love offers the other an irreplaceable gift.⁶⁴

⁶³ I am grateful to Roy Branson for this analogy—even though he intended it critically.

⁶⁴ Judith S. Wallerstein and Sandra Blakeslee provide a discussion of the “rescue marriage.” WALLERSTEIN & BLAKESLEE, *supra* note 18, at 91-149. According to Wallerstein and Blakeslee, “[e]very good marriage provides healing. We marry with the hope that our sadnesses will be comforted, that a loving partner will redress the loneliness, rejections, and disappointments of life.” *Id.* However, “the rescue marriage [in particular] fulfills the child’s fantasy that the early miseries will be canceled by the happiness of adult life. . . . The people in successful rescue marriages experience the enormous relief and pleasure in acceptance that the ugly duckling felt; they feel grateful for their rescue every day of their lives.” *Id.* at 92. It is interesting to note that when Linda Tschirhart and Mary Ellen Donovan discuss the experience of unconditional love, which one would surely think of as perpetually crucial to self-esteem, they do so only with reference to parent-child relationships. LINDA TSCHIRHART SANFORD & MARY ELLEN DONOVAN, *WOMEN AND SELF-ESTEEM: UNDERSTANDING AND IMPROVING THE WAY WE THINK AND FEEL ABOUT OURSELVES* 40, 45, 97 (1985). It never seems to occur to them that a marital relationship might be characterized by this kind of love. *Id.* Additionally, M. Scott Peck states, “For the most part, mental illness is caused by an absence of or defect in the love that a particular child required from its particular parents for successful maturation and spiritual growth. It is obvious, then, that in order to be healed through psychotherapy the patient must receive from the psychotherapist at least a portion of the genuine love of which the patient was deprived. . . . [A] totally uncredentialed and minimally trained lay therapist who exercises a great capacity to love will achieve psychotherapeutic results that equal those of the very best psychiatrists.” PECK, *supra* note 11, at 175. Peck also states, “If we genuinely love our spouse, our parents, our children, our friends, if we extend ourselves to nurture their spiritual growth, should we be practicing psychotherapy with them? My answer is: Certainly.” PECK, *supra* note 11, at 177. Obviously, a therapist’s relationship with a client is different from that of a lover with a beloved; yet it still seems clear to me that, allowing for the differences, love is a means of healing between peers as well as between therapists and clients.

2. The Appropriateness of Unconditional Love

Paul Tillich rejects this vision of unconditional love: “I deny the possibility of a vow because of the finitude of the finite.”⁶⁵ “A vow, if it is an absolute commitment, would make the moment in which we make it infinite or absolute. Other moments may come which reveal the relativity of the moment in which this decision was once made.”⁶⁶ Thus, a vow may be renewed, “or not renewed, according to the situation”⁶⁷ Tillich is clear that “we are not all California movie stars. We have an intimate relationship to other human beings.”⁶⁸ So, as “we all know,”⁶⁹ we “cannot just jump in and out of situations at will”;⁷⁰ still, “a decision should not have an absolute, unconditionally binding power.”⁷¹ But if all vows are relativized then there can be no real security, no deep and unconditional love; love will be unable to offer the partners its own rich and unique gifts. We can rightly argue that some promises are conditional, but it does not follow that all are or should be. Sometimes, unconditional love may be an appropriate expression of care and devotion.

The ability to love is grounded in self-love,⁷² self-confidence, self-esteem,⁷³ inner security, self-respect, inner strength, and courage, and in the transcendence of “dependency, narcissistic omnipotence, [and] the wish to exploit others, or to hoard”⁷⁴ The lover must be sure of the value of her or his love and of her or his own reliability.⁷⁵

⁶⁵ D. MACKENZIE BROWN, *ULTIMATE CONCERN: TILlich IN DIALOGUE* 195-96 (1965).

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² POWELL, *SECRET*, *supra* note 53, at 27.

⁷³ Alfie Kohn discusses self-esteem as facilitating altruistic behavior and summarizes research on the subject. ALFIE KOHN, *THE BRIGHTER SIDE OF HUMAN NATURE: ALTRUISM AND EMPATHY IN EVERYDAY LIFE* 76-77 (1990) (“[S]elf-esteem apparently does not guarantee generosity; it is more a prerequisite for it, with other ingredients required as well.”).

⁷⁴ ERICH FROMM, *THE ART OF LOVING* 26 (1956) [hereinafter FROMM, ART].

⁷⁵ DAVID J. HASSEL, *SEARCHING THE LIMITS OF LOVE: AN APPROACH TO THE SECULAR TRANSCENDENT: GOD* 21-22 (1985); compare DORR, *supra* note 39, at 69

Confident love is born from the “unquestioning attentive love that demands little but expects the best”—offered both by both parents and by peers.⁷⁶ And if one has not experienced sustained and devoted care, if one has not learned one’s value in another’s unconditional love, then the self-love, self-respect, and self-confidence necessary if one is to love another may prove difficult or impossible to muster.⁷⁷ To be sure, subsequent love and security can help to undo past wounds, leaving someone empowered to love in a way that would previously have been impossible for her or him. But this kind of healing is never certain, and it takes time; the capacity to love does not develop over night.

Rooted in strength, self-giving love can be an outgrowth of joy and a means of self-transcendence that responds delightedly to the beauty and vulnerability of the other. By contrast, when imposed by social pressure, chosen with less than full understanding or freedom, it can be alienating and disempowering.⁷⁸ “To demand self-sacrifice from those who are not yet capable of it is . . . to use moral appeals to violate and assault persons.”⁷⁹ A person who lacks an inner abundance out of which to give may experience self-giving love as an overwhelming drain. Thus, someone without a fully developed sense of self, someone whose trust has been shattered rather than affirmed, whose self-confidence has been undermined rather than supported, may well be unable

(Maintaining that should “we reject . . . or fail to savour” experiences of unconditional love—“occasions where we find ourselves totally loved and accepted”—“we shall never be able to reach out unconditionally to others in the love that creates and nourishes friendship and community.”). The question, of course, is whether everyone does, in fact, experience unconditional love, as Dorr supposes, and what can be expected of those who have not had experiences of unconditional love, or have had them insufficiently.

⁷⁶ HASSEL, *supra* note 75, at 21-22.

⁷⁷ POWELL, SECRET, *supra* note 53, at 53, 55.

⁷⁸ DANA CROWLEY JACK, SILENCING THE SELF: WOMEN AND DEPRESSION 49 (1993); compare SIMONE DE BEAUVOIR, THE SECOND SEX 478 (H.M. Parshley ed. & trans., 1953).

⁷⁹ THOMAS W. OGLETREE, HOSPITALITY TO THE STRANGER: DIMENSIONS OF MORAL UNDERSTANDING 52 (1985). However, the claim of the other may entail self-sacrifice. *Id.* at 56. But “morally necessary and . . . morally possible” self-sacrifice, while it may appear to run counter to the flourishing or fulfillment of the ego, may not, in fact, do so. Instead of “negating egoistic enjoyment,” self-sacrifice may “transfigure and ennoble it”; “life” may “be discovered and embraced in the power to give it up for the sake of the other.” *Id.*

to offer the same kind of love she or he might be able to give had she or he received appropriate nurture, care, and love.⁸⁰ The attempt to love from “weakness rather than strength . . . is destructive rather than noble and ennobling.”⁸¹

The call to potentially self-sacrificial unconditional love is especially problematic for those who lack not only self-confidence but social power in virtue of subordinate social positions.⁸² In particular, women in our culture have been shamed and deprived of agency and self-confidence. They have been encouraged to give unstintingly, under circumstances when they have not developed appropriate attentiveness to themselves, as well as the inner power and social power needed to give from a position of strength rather than weakness.⁸³ The characteristic moral failure of women in our culture has been untimely self-denial, a lack of attention to the needs of the self, to sacrifice in the absence of an authentic, developed identity and inner sense of self and power.⁸⁴ Whether female or male, people of either gender who are all too likely to be lost in their relationships, who barely have centered selves to of-

⁸⁰ Compare JUDITH PLASKOW, *SEX, SIN AND GRACE: WOMEN’S EXPERIENCE AND THE THEOLOGIES OF REINHOLD NIEBUHR AND PAUL TILLICH* 115 (1980) with FARLEY, *supra* note 31, at 98 (“The celebration of self-abnegation can contribute to an understanding of ethical existence in which a life of service is imposed upon others as a fate, a fate particularly imposed upon women against their will. It also risks obfuscating the fundamental differences between ethical existence and oppression.”). It may appropriately be questioned whether a person with a developed, strong self who chooses to give a great deal to another is in fact sacrificing. As SHARON D. WELCH, *A FEMINIST ETHIC OF RISK* 162, 165 (1990), notes, love results in an expansion, not a loss, of the self. One finds a new self-in-relation. A lack of love would represent a true and tragic self-loss for a true lover of another person, a community, or the natural world. In love, the other becomes part of oneself; one so identifies with her or him that enriching her or him is itself a source of joy.

⁸¹ PLASKOW, *supra* note 80, at 87.

⁸² Barbara Hilkert Andolsen, *Agape in Feminist Ethics*, 9 *J. OF RELIGIOUS ETHICS* 69 (April 1981).

⁸³ Christine E. Gudorf, *Parenting, Mutual Love, and Sacrifice*, in *WOMEN’S CONSCIOUSNESS, WOMEN’S CONSCIENCE: A READER IN FEMINIST ETHICS* 175 (Barbara Hilkert Andolsen, Christine E. Gudorf, & Mary D. Pellauer eds., 1985). Gudorf emphasizes that sacrificial love, which “is essential in the furthering of the kingdom . . . [.] is always aimed at the establishment of mutual love.” *Id.* at 190.

⁸⁴ PLASKOW, *supra* note 80, at 151-52; cf. Valerie Saiving [Goldstein], *The Human Situation: A Feminine View*, in *WOMAN SPIRIT RISING: A FEMINIST READER IN RELIGION* 25-42 (Carol P. Christ & Judith Plaskow eds., 1992).

fer, who may find their own inner voices so hard to hear, cannot fairly be expected to offer themselves unconditionally to others. Though self-transcending, self-giving love is in principle an ideal for all persons, it cannot be an ideal in the same way for those who have been stripped of selfhood and encouraged to do wrong by rejecting and denying themselves.⁸⁵ This is especially so for women in our culture when men have been trained to expect unconditional love from women without offering it in return themselves.⁸⁶

D. *The Romantic Myth*

The equation of love with emotion is among the misconceptions embodied in the romantic myth popular in our culture. According to one of its most trenchant critics, the substance of this myth is the conviction that “a curious, and usually short-lived, experience . . . [called] ‘being in love’ is the only respectable ground for marriage; that marriage can, and ought to, render this excitement permanent; and that a marriage which does not do so is no longer binding.”⁸⁷ As an ideal type, this myth, perhaps grounded in the songs and stories of late medieval troubadours requires the lover to abandon or betray all other delights and duties at the arbitrary appearance and command of erotic beauty, and never to transform that beauty into the mere friendship and shared duties of a household, but to follow the divine embodied in his lady where it leads. It may even be unwise to consummate the affair, as that

⁸⁵ Lisa Sowle Cahill, *Feminism and Christian Ethics—Moral Theology*, in *FREING THEOLOGY: THE ESSENTIALS OF THEOLOGY IN FEMINIST PERSPECTIVE* 211, 217 (Catherine Mowry LaCugna ed., 1993).

⁸⁶ De Beauvoir quotes Nietzsche as maintaining that, while a woman is inclined to love unconditionally, a man loves in order to receive unconditional love from a woman; “he is in consequence far from postulating the same sentiment for himself as for woman; if there should be men who also felt that desire for complete abandonment, upon my word, they would not be men.” DE BEAUVOIR, *supra* note 78, at 642, 669 (quoting FRIEDRICH NIETZSCHE, *THE GAY SCIENCE* (1882)). De Beauvoir goes on, bitterly, to note that man “has no need of the unconditional devotion he claims, nor of the idolatrous love that flatters his vanity; he accepts them only on condition that need not satisfy the reciprocal demands these attitudes imply.” *Id.*

⁸⁷ C.S. LEWIS, *THE SCREWTAPE LETTERS AND SCREWTAPE PROPOSES A TOAST* 81 (1962).

begins another cycle and may cool the passion. It is better to burn than to marry.⁸⁸

The romantic myth points, simply put, to what happens to real love under the limiting conditions imposed by gender inequality. Feeling takes priority over friendship. Excitement, rather than the connection of which such excitement ought to give evidence, becomes the center and *sine qua non* of love. Desire replaces real intimacy (so that genuine, realized, earthy communion takes all the fun away) and the beloved is idealized,⁸⁹ because being a “we” requires intimacy and equality, which are both lacking in a sexist culture. The beloved’s exotic qualities become central. Sex, rather than love, takes pride of place. Extra-marital rather than marital relations become the norm not only because the romantic myth depends on lack of interest in the mundane, though it does, but because a style of marriage marked by gender inequality and by identity and task differentiation based on dubious assumptions about gender tends to stifle or distort intimate connection. The more exotic the other appears, the better, even if a concern with the exotic leads to relationships in which the familiarity and friendship essential to intimacy are not desired—are, in fact, viewed as sources of disappointment—or are difficult or impossible to achieve. Desire can be kept alive by eroticizing *difference*, by, for instance, encouraging male erotic responses to submission and female erotic responses to dominance.⁹⁰

Passion and devotion lived out in a context of unchosen inequality can replicate that inequality. Passion becomes the glue that binds women into oppressive relationships.⁹¹ When we enter the romantic and sexual arena we have not necessarily moved beyond power and privilege. Indeed, the romantic myth can easily sugar-coat the maldis-

⁸⁸ STEPHEN R. L. CLARK, *THE MYSTERIES OF RELIGION: AN INTRODUCTION TO PHILOSOPHY THROUGH RELIGION* 187 (1986). Clark offers a sharp critique of this myth in favor of a model of marital love to which intimate friendship is central.

⁸⁹ Compare GIDDENS, *supra* note 17, at 59.

⁹⁰ On the eroticization of dominance, see, e.g., Sandra Lee Bartky, *Feminine Masochism and the Politics of Personal Transformation*, in *FEMININITY AND DOMINATION: STUDIES IN THE PHENOMENOLOGY OF OPPRESSION* 45-62 (1990).

⁹¹ I am gratefully dependent here on the analysis of SHULAMITH FIRESTONE, *THE DIALECTIC OF SEX: THE CASE FOR FEMINIST REVOLUTION* 142-75 (1972).

tribution of power and responsibility in a relationship.⁹² It can serve as “a ‘gentle’ way of appropriating a woman; it justifies all the restrictions man imposes, and buys all the devotion he demands.”⁹³ And women’s quest for romantic fulfillment often leads them to submerge their own wishes, desires, and identities as a means of solidifying a relationship or securing a semblance of harmony.⁹⁴

On the other hand, the flaws of the romantic myth should not dispose us to adopt the postmodern alternative Anthony Giddens has termed “confluent love.”⁹⁵ For Giddens, confluent love represents an advance insofar as it is egalitarian and involves truthful awareness of the other rather than a deceptive idealization. But, while romance has often involved abuse and the self-sacrifice of women for men, confluent love is individualistic and egoistic. The focus on cherishing the particular other disappears; increasingly, it is not the “special person” but “the ‘special relationship’ that counts.”⁹⁶ The beloved is now a fungible good. Confluent love is an instance of what Giddens calls a “pure relationship,” which “is entered into for its own sake, for what can be derived by each person from a sustained association with another; and . . . is continued only insofar as it is thought by both parties to deliver enough satisfactions for each individual to stay within it.”⁹⁷

The pure relationship and the model of confluent love represent understandable responses to the destructive consequences of the romantic myth. But they retain emphasis on emotional satisfaction as an end in itself. And they also represent a thoroughgoing capitulation to the consumerist, capitalist ethos. We do not need capitalism to colonize our hearts. We do not need to turn lovers into dispensable commodities. Confluent love cannot answer our need for wholeness in the way that

⁹² CHRISTINE DELPHY & DIANA LEONARD, FAMILIAR EXPLOITATION: A NEW ANALYSIS OF MARRIAGE IN CONTEMPORARY WESTERN SOCIETIES 140 (1992).

⁹³ EMMANUEL REYNAUD, HOLY VIRILITY: THE SOCIAL CONSTRUCTION OF MASCULINITY 91 (Ros Schwartz trans., 1983).

⁹⁴ See JACK, *supra* note 78, at 47-48, 63-66. Note that I am considerably more unequivocal in affirming oneness as a goal than is Jack, but the difference is perhaps explicable in part because of her awareness of the destructiveness of the quest for union in the context of a relationship marred by an imbalance of power.

⁹⁵ See GIDDENS, *supra* note 17, at 61-64.

⁹⁶ GIDDENS, *supra* note 17, at 62.

⁹⁷ GIDDENS, *supra* note 17, at 58.

loving communion grounded in commitment can. We and our lovers alike need the security that comes from commitment and the intimacy that is possible only when commitment offers security. Our own needs and the inner dynamic of love points us toward a kind of love identical neither with mythic romance nor with modern confluent love.

III. MARITAL ETHICS AND SEXUAL ETHICS

Marriage is not about sex; it is about shared identity, about being a “we.” A relationship that is driven primarily by sexual desire, a relationship distinguished from other relationships primarily by sexual exclusivity, a relationship in which sexual activity is not appropriately contextualized in relation to a shared identity—such a relationship is not a marriage in the morally interesting sense. The fact that people are sexually involved with each other, even permanently monogamous, does not make them married (just as the fact that people are celibate does not make them unmarried).⁹⁸

None of this means, however, that sexual ethics are irrelevant to marital ethics. Indeed, to the extent that a marriage *is* a sexual relationship, sexual ethics might be thought to make an independent contribution—over and above the insights available from a consideration of the value and inner dynamics of love itself—to the content of the marital norm. At the same time, however, it is possible to claim too much for the contribution of sexual ethics to marital ethics. In this chapter, I want to suggest reasons why we ought not to accept two related claims often made regarding the implications of sexual for marital ethics.⁹⁹

⁹⁸ I am grateful to Carol Haviland for highlighting the need to make the point articulated in this paragraph more clearly.

⁹⁹ In addition to the sources already cited, a variety of other works on sexuality and related topics have informed my thinking in the synthesis on sexual ethics that follows: CATHERINE M. WALLACE, *FOR FIDELITY: HOW INTIMACY AND COMMITMENT ENRICH OUR LIVES* (1998); ROBERT P. O’NEIL & MICHAEL A. DONOVAN, *SEXUALITY AND MORAL RESPONSIBILITY* (1968); VIKTOR FRANKL, *THE DOCTOR AND THE SOUL: FROM PSYCHOTHERAPY TO LOGOTHERAPY* (1965); VINCENT C. PUNZO, *REFLECTIVE NATURALISM: AN INTRODUCTION TO MORAL PHILOSOPHY* (1969); KAROL WOJTYLA, *LOVE AND RESPONSIBILITY* (H.T. Willetts trans., 1981); ROBERT E. JOYCE, *HUMAN SEXUAL ECOLOGY: A PHILOSOPHY AND ETHICS OF MAN AND WOMAN* (1980); IMMANUEL KANT, *LECTURES ON ETHICS* (Louis Infield trans., 1963); IMMANUEL KANT, *THE PHILOSOPHY OF LAW* (William Hastie trans., 1887); COLIN MCGINN, *MORAL*

The first claim is that sexual intercourse *necessarily* means or implies or requires a commitment to being a “we.” If this claim were correct, anyone who chose to engage in sexual intercourse with another person would be committed to seeking and maintaining a shared identity with that person. Every sexually active person would be committed to adhering to the demanding marital norm that I defend in this article in any sexual relationship in which she or he engaged. This would in many ways be a convenient conclusion. Instead of recommending the marital norm for which I argue primarily because of its contribution to human flourishing, I could maintain that violating this norm was a positive injustice, a violation of a commitment to being a “we” that was renewed or underscored every time a violator engaged in sexual intercourse. But this conclusion is simply too strong. Without further ado, we cannot say that ordinary sexual intercourse, in any context whatsoever, carries the meaning proponents of this argument might wish to suggest it does.

The second, parallel, claim is that accepting the marital norm should mean refusing to engage in sexual intercourse before marriage, as a matter of “prospective fidelity” to one’s partner. This claim, too, has a certain romantic attractiveness. But it depends on assumptions about sex which are difficult to defend.

Both claims trade on the same basic contentions. (1) Sexual activity has an inherent communicative meaning—total commitment. (2) Sexual activity renders people sufficiently vulnerable to each other that their vulnerability must be protected by a commitment to exclusivity and permanence if their sexual contact is to be non-exploitative. (3) Because sexual activity can bond people deeply with each other, it must be engaged in only by those who seek rich connections with each other—otherwise, it will lose its ability to forge deep interpersonal ties.

None of these claims is absurd. But all three seem exaggerated. Considerations relative to the nature of sexuality provide some indepen-

LITERACY, OR HOW TO DO THE RIGHT THING (1992); JOHN D. GERKEN, AN AMERICAN ETHIC: A PHILOSOPHY OF FREEDOM APPLIED TO CONTEMPORARY ISSUES (1995); CHRISTINE GUDORF, BODY, SEX, AND PLEASURE: RECONSTRUCTING CHRISTIAN SEXUAL ETHICS (1994) [hereinafter GUDORF, BODY]; LETHA SCANZONI, SEXUALITY (1984); DAVID HOLBROOK, SEX & DEHUMANIZATION (1998).

dent basis for judging certain patterns of marital relation as morally inappropriate. But the marital norm I have articulated, and which I elaborate further in Part IV, must be derived primarily from an analysis of the dynamics of love. Marriage matters because it serves the interests of love, because it makes a great good, the good of loving, egalitarian life-partnership, possible. It is from the ideal of this sort of partnership that we can plausibly deduce a more detailed normative account of obligation in marriage. Considerations related to the nature of sexuality cannot provide a full-blown justification of such an account.

A. *Protecting Vulnerability*

One especially powerful argument maintains that an unqualified (and so both permanent and unequivocally intimate) commitment provides the only context within which people can safely experience the vulnerability induced by sexual intercourse. Some ethicists have argued that the “act of sexual intercourse inherently contains a meaning level involving personal fidelity and commitment,”¹⁰⁰ that its inherent meaning is unreserved personal union.¹⁰¹ In giving my body, on their view, I give my whole self.¹⁰² Psychically, as well as physically, sex thus constitutes a “*total personal* exchange.”¹⁰³ But if this is what sex is, what it means, a limited sexual relationship runs a grave risk of causing substantial harm to the personalities involved.¹⁰⁴ To fail to give oneself totally to one’s sex partner—to share with her or him in a state of unequivocal intimacy, mutuality, and equality—is to violate one’s own integrity (since one is, in effect, lying with one’s body) and to hazard considerable harm to her or him and, perhaps, oneself.

The argument from vulnerability builds upon a duty to respect the personhood, the dignity, the fragility, the self-image of the other. It

¹⁰⁰ KEANE, *supra* note 27, at 104.

¹⁰¹ This is argued in broadly phenomenological terms by John B. Gruenenfelder, *The Unity of the Marital Act*, in MICHAEL J. TAYLOR, *SEX: THOUGHTS FOR CONTEMPORARY CHRISTIANS* 105-13 (Doubleday 1972).

¹⁰² Cf. VINCENT J. GENOVESI, *IN PURSUIT OF LOVE: CATHOLIC MORALITY AND HUMAN SEXUALITY: THEOLOGY AND LIFE* 153 (Vol. 18 Michael Glazier Books 1987).

¹⁰³ Richard A. McCormick, *Human Significance and Christian Significance*, in *NORM AND CONTEXT IN CHRISTIAN ETHICS* 252-54 (Gene H. Outka & Paul Ramsey eds., 1968).

¹⁰⁴ I owe this way of putting the matter to SCANZONI, *supra* note 99.

seeks to move from considerations related to sexuality in general to the conclusion that total intimacy is necessary if the vulnerability of sex partners is to be respected. If this argument were simply correct, it would be obvious that, for instance, the spouse who failed to engage in intimate sharing, ongoing self-expression, and attentiveness was violating not only the ideal of love but the demands of sexuality itself. We could know immediately that her or his behavior was wrong not just because it flew in the face of love but because a sexual relationship from which such intimacy was absent would itself be wrong; the essential character of sexuality would condemn her or his behavior. A lack of mutuality, equality, and complete intimacy would violate a deontological norm derived from the inescapable features of sexual experience. The success of this sort of argument against non-intimate, non-mutual, non-egalitarian relationships would provide a firm moral foundation for criticisms of inappropriate marital conduct. It would also represent, ironically, a bridge between a generally quite conservative sexual ethic and the feminist critique of marriage. To be sure, I find both of these potential outcomes appealing. But I think some caution is in order. But I am not convinced that the argument as it stands is correct.

To be sure, it is notorious that sexual intercourse can make us vulnerable: by bonding us with our sex partners and making us easily affected by them, it can render us subject to great distress caused by rejection—or the fear of rejection—and manipulation.¹⁰⁵ The need to safeguard ourselves or our sex partners against such rejection and manipulation means that there are moral limits sexual expression: we need to be careful about each other's vulnerability. This need does not in and of itself entail that to be sexual they must be committed to the kind of comprehensive intimate partnership toward which love calls us to aspire. On its own, it cannot establish that spouses are morally obligated

¹⁰⁵ See also Rowan Williams, *The Body's Grace*, in *OUR SELVES, OUR SOULS AND BODIES: SEXUALITY AND THE HOUSEHOLD OF GOD* 58-68 (Charles Hefling ed., 1996). "For my body to be the cause of joy, the end of homecoming, for me, it must be there for someone else, must be perceived, accepted, nurtured. And that means being given over to the creation of joy in that other, because only as directed to the enjoyment, the happiness, of the other does it become unreservedly lovable. To desire my joy is to desire the joy of the one I desire: my search for enjoyment through the bodily presence of another is a longing to be enjoyed in my body." *Id.* at 60-61 (citing THOMAS NAGEL, *MORTAL QUESTIONS* 44-50 (1979)).

to seek complete intimacy, practice unequivocal self-disclosure, or commit themselves to full presence (even if asymptotically). But it does impose meaningful limits on what patterns of relation are appropriate in marriage: at minimum, it requires friendship, honesty, concern, and trustworthiness.

Sex can make us vulnerable to rejection because it can attach us to each other, potentially quite deeply: it can create a novel experience of closeness which may either endure after sexual intercourse has ended or which may appear as a pointer to the possibility of creating and sustaining such intimacy in a non-sexual context. Such bonding can occur without any planning on our part. To engage in sexual intercourse with someone may be to bond with her or him quite unintentionally. A friend recently told me about the frustration that had resulted from a relationship that was intended to be exclusively and casually sexual. On a physical level, the sex was terrific. But my friend was frustrated: the presence of the person with whom my friend had been sexual elicited a strong reaction. My friend felt very sensitive to someone who had really been little more than a companion in play. This sensitivity belied the intended casual character of the relationship.¹⁰⁶

In addition, the bond created by sheer pleasure may prove immensely powerful even if it occurs in relative isolation from personal intimacy. To the extent that a person comes to associate someone else with intense pleasure, she or he is likely to be more attached to that person (and such attachment can in turn, though not only in this way, evoke greater intimacy). But sexual contact can also foster a greater attachment to the other not merely or primarily—at some point perhaps not at all—as a source of physical gratification but as a three-dimensional person. Even a purely physical relationship may bring about a degree of interpersonal connection that includes but transcends the physical. Sex can unexpectedly create affectionate attachment—in part because of relatively automatic biological bonding mechanisms,¹⁰⁷ partly because it will be hard for people who are repeatedly sexual not

¹⁰⁶ Undoubtedly, sexual intercourse can itself *generate* attachment, affection, and dedication. Cf. GUDORF, *BODY*, *supra* note 99, at 110-11.

¹⁰⁷ Cf. HELEN E. FISHER, *WHY WE LOVE: THE NATURE AND CHEMISTRY OF ROMANTIC LOVE* 77-98 (2004).

to grow closer as they ask each other simple questions like, "How was your day?"

Sex can also heighten vulnerability because it can seem instinctively plausible that sexual intercourse is a promise or harbinger of greater intimacy.

Endearments standardly express not just momentary enthusiasm but affection; the contact of eyes, lips, skin conveys some openness, acceptance, and trust (often enough much more); embrace conveys a commitment which goes beyond a momentary clinging If insufficient trust and commitment are present to warrant such expression, then those who use these endearments and gestures risk giving false messages about feelings, desires, and even commitments If the expressions are taken at face value, yet what they would standardly express is lacking, each [sex partner] is likely to deceive the other [R]elationships and encounters which standardly combine superficial expression of commitment with its underlying absence are peculiarly vulnerable to deception. Where too much is unexpressed, or misleadingly expressed, each risks duping the other and using him or her as means.¹⁰⁸

This is doubtless in part a function of the way in which we have constructed the meaning of sexual desire in our society. But that fact hardly makes the apparent meaning of sexual activity irrelevant. We cannot simply eliminate conventional meanings by announcing that we seek to receive and intend to offer only pleasure, without emotional complications. In any case, interpreting sex in this way is not utterly arbitrary and contingent. The commingling of body parts and bodily fluids in sex suggests personal connection. If I am who I am because I am embodied, it will be easy, even if not unavoidable, under some circumstances to read someone's physical proximity to me as emotional proximity, to understand another's presence inside my body as a pointer to personal intimacy. Also, given the capacity of pleasure to bond us to each other, a relationship that involves such pleasure can in turn bring

¹⁰⁸ O'Neill, *supra* note 48, at 269.

about greater intimacy seems plausibly regarded, again, as a more-than-purely-contingent sign of personal connection. Further, quite apart from the communicative meaning of sexual intercourse, the ecstatic character of sexual contact matters as well. In sex, our ego boundaries may be shattered. We may experience ourselves as, at least momentarily, at one with each other or even with some wider whole. The physical connection with the other that occurs in and through the sex act can cause our ego boundaries to drop.¹⁰⁹

To be sure, in the wake of sexual intercourse our boundaries will likely reassert themselves—even if not, perhaps, quite so rigidly. A commitment to being a “we” entails, at minimum, an attempt to establish slowly, through the evolution of friendship, the kind of intimacy at which orgasmic ecstasy hints. More than that, however, if the results of such ecstasy endure at all, it may lead to greater personal bonding, greater identification of self with other.

Jealousy is not inevitable, but susceptibility to jealousy is a sufficiently frequent concomitant of a sexual relationship that raises the problem of vulnerability with particular force.¹¹⁰ Jealousy can cause immense anguish and engender love’s dissipation and demise. Jealousy reflects the sense that one has been displaced from occupancy of the other’s heart—or never enjoyed it at all.¹¹¹ It is concerned with the other’s intentions and desires, with her or his inner self, rather than with

¹⁰⁹ As Katherine Zappone observes, “At the heart of sexual intimacy . . . is the desire to wholly express and nurture the mutuality of committed relationship. Commitment . . . requires the same kind of vulnerability, openness, risk-taking, and trust at the level of genital sexuality as it does within every other dimension of the partnership.” KATHERINE E. ZAPPONE, *THE HOPE FOR WHOLENESS: A SPIRITUALITY FOR FEMINISTS* 97 (Twenty-Third Publications 1991) (quoting CAHILL, *supra* note 85, at 223-24). *But see* JOHN F. DEDEK, *CONTEMPORARY MEDICAL ETHICS* 82-83 (Sheed & Ward 1975).

¹¹⁰ *See* ROGER SCRUTON, *SEXUAL DESIRE: A MORAL PHILOSOPHY OF THE EROTIC* 163-64 (1986).

¹¹¹ *Id.*

her or his body.¹¹² To avoid the destructiveness of jealousy, too, fidelity must be chosen—as vow—and nurtured—as virtue.¹¹³

Sallie Tisdale offers a phenomenology of intercourse that emphasizes the enormously powerful bonding and vulnerability-inducing quality of sexual intercourse.¹¹⁴ We lose control, saying and doing and feeling things that cool-headed rationality might preclude.¹¹⁵ We reveal secrets.¹¹⁶ We can experience a dissolution of selfhood.¹¹⁷ The terror of intimacy is transcended in the movement toward the other.¹¹⁸ One need not—and is driven not to—“hold . . . [one’s] inner self in check even when . . . [one’s] body is fully engaged,” fearing “ontological contamination.”¹¹⁹ Rather, sexual activity “create[s] a place of ontological

¹¹² *Id.* Scruton is certainly right that jealousy of a human rival may in part take the form: “Could you desire someone else? Then do you not desire me uniquely, but simply as the instantiation of properties which someone else doubtless also possesses?” *Id.* But I submit that possessiveness vis-a-vis the other reflects a fear of loss and not only—if at all—a fear of seeing oneself only as an instantiator of properties. *Id.* One fears losing the other to a rival. *Id.* But one also fears losing the other, in ways that are phenomenologically close enough to jealousy of this sort to deserve the same name, when one competes with fantasy objects, with work, with children, with the spiritual life, etc. It is the loss of the other’s heart that is central. Further, I disagree with Scruton, in that I am not sure that jealousy is bound up with the notion that one is or wants to be *primus inter pares*. *Id.* The sensible lover knows that she or he is not likely to be the most beautiful, the most charismatic, the most empathetic, or the most sexually competent person in the world. Surely someone is better in one way or another than I am. And this is so even if we relativize bestness, so that it has to do only with who would be best for this particular other: someone might be better than I in any number of ways. Indeed, it may simply be incoherent to talk about someone as “best overall” as a lover, since a variety of incommensurable qualities go into making someone a good or not-so-good lover. The notion of oneself as unsurpassable is either incoherent or, at best, an egoistic fantasy. Perhaps Scruton would agree, but then go on to argue that the illusion of unsurpassability is an inevitable and valuable part of sexual desire. Because I do not believe desire must depend on illusions, even necessary ones, in the way I think Scruton does, I demur.

¹¹³ *Compare id.* at 339.

¹¹⁴ See Sallie Tisdale, *The Purpose of Sex is Sensual Pleasure*, in *HUMAN SEXUALITY: OPPOSING VIEWPOINTS* 40-45 (Brenda Stalcup et al. eds., Greenhaven 1995).

¹¹⁵ *Id.* at 43.

¹¹⁶ *Id.*

¹¹⁷ *Id.* at 42, 44-45.

¹¹⁸ *Id.* at 45.

¹¹⁹ *Id.* at 44.

surrender.”¹²⁰ For Tisdale, there is “no safe place for the sexual human, no solid barricade behind which we can hide from sex, no defense so strong that the possibility of intimacy can’t slip through.”¹²¹ But within the framework of complete commitment there is no need to erect such defenses.¹²² Comprehensive commitment provides a secure context within which the vulnerability that sexual contact with another occasions can be risked.¹²³

Sex can also make us vulnerable to (intentional or unintentional) dominance and manipulation by another.¹²⁴ Sexual intercourse can create an openness and responsiveness to another person that allows her or his reactions to us, her or his opinions and preferences, to exert a pronounced affect on how we feel about and understand ourselves.¹²⁵ Sex can also reveal aspects or layers of ourselves that might otherwise remain hidden: engaging in sexual intercourse can disclose more of my personality and my identity to my sex partner than she or he might otherwise have seen.¹²⁶ And sexual desire can block out all other desires. At particularly intense—and, fortunately, brief—moments, desire may be so strong that we are prepared to do almost anything to satisfy it. The result may be that we are exceptionally affected by the will, the personality, the presumed wishes and sensitivities, of the desired person.¹²⁷

All of these outcomes are possibilities. It is not certain that sexual intercourse will lead to vulnerability. It may or may not. There are clearly people whose sexual responses have been constructed in such a way that sexual contact does not render them especially vulnerable to rejection or manipulation by those with whom they are sexually involved, at least not when sexual caresses are clearly devoid of intimate meaning, and perhaps not even then. Deliberately or inadvertently, they have learned to be detached. For someone involved with a person who is relatively invulnerable sexually, safeguarding her or his sex partner’s

¹²⁰ *Id.* at 44-45.

¹²¹ *Id.* at 45.

¹²² WALLACE, *supra* note 99, at 67.

¹²³ WALLACE, *supra* note 99, at 67.

¹²⁴ O’Neill, *supra* note 48, at 269-72.

¹²⁵ *See id.* at 270.

¹²⁶ *Id.*

¹²⁷ *Id.*

vulnerability will not be a crucial moral issue. It is worth noting, however, that one may not always be aware of one's own capacity for vulnerability or of another's. The possibility that sex can be painless, without consequences, is not a license to be unconcerned about what may, in fact, occur as a result of entering a sexual relationship.

In any event, we do not think that the risk of loss, of whatever sort, is always unreasonable to accept or impose. We may reasonably recognize that being sexual creates certain risks, but judge that those risks are worth accepting. This is clearly, I think, the way we reason when we consider emotional vulnerability in non-sexual contexts. After all, people's vulnerability may be exposed, they may be manipulated and treated without respect, in emotionally charged close relationships from which sexual intercourse is absent. Especially in the early stages of a dating relationship, the participants' desires may not match. And whether they do or not, it may be quite difficult to determine just what they are. This fact obviously creates the possibility for emotional angst, as does the possibility of the break-up of a non-sexual dating relationship. It is not clear why in principle the introduction of sexual intercourse should make things qualitatively different. And absent good reason to believe that in general or in a particular case sex would likely increase the emotional intensity of a relationship substantially, the same kind of risk we think appropriate in non-sexual but emotionally-laden contexts seems appropriate in ones with explicit sexual components.

To be sure, creating the freedom that enables people to be vulnerable is a good thing. In addition to helping participants in a sexual relationship to avoid pain, it is also a way of enhancing sexual pleasure. We are able to relax, to let go, to experiment without fear of rejection or humiliation or embarrassment in the context of a secure relationship grounded in commitment. We are not only free to be more loving—we are free to be more sexual. Women are reportedly more likely to experience sexual pleasure, for instance, when relaxed and secure in their sexual relationships. This suggests another reason to be careful that sexual activity take place in a safe setting, one in which it is not necessary for sex partners to protect themselves emotionally. It is of course true that, unless we are required always to avoid the good in favor of the best, it may be better to have some sexual pleasure than none at all. On the other hand, consistent emotional self-restraint in a sexual context

may become habitual, so that even when one *is* emotionally safe one may find it hard to let go and experience the full range of possible pleasure. This sort of consideration can hardly ground a deontological prohibition on sex outside a setting of full commitment. It does give us some reason for caution.

Our own vulnerability and that of our sex partners matters, and we need to be careful to protect it. But the kind of moral constraints which follow from vulnerability alone will vary considerably with the individual characteristics of the participants in a given sexual relationship. Commitment makes people safer, and we need to provide others with the safety they need to grow as we engage with them intimately in both sexual and emotional ways. Honesty, sincerity, compassion affection, and respect are always required, as is whatever level of commitment is necessary to make it likely that one will not harm the other's vulnerably exposed and fragile self. And emotional security can have the added benefit of heightening physical pleasure. The extent of the necessary commitment will depend, however, on just how vulnerable the other is, and this is an empirical matter incapable of being settled on an *a priori* basis.

B. Fostering Respect

Sexual intercourse may also make us vulnerable to *disrespect*. What limits does the claim of the other to respect impose on sexual expression? Might a respectful relationship necessarily be one in which the deep intimacy and mutuality characteristic of marriage must be present? If so, the demand that we respect our sex partners might provide another independent basis for the marital norm I have elaborated.

We care about how others view us. In part, of course, this is because we discover who we are as we see ourselves reflected in their eyes: their perceptions play an essential, but instrumental, role in our lives. But I think it is clear phenomenologically that we also care about how we are viewed *for its own sake*. We characteristically regard it as an injury to be *viewed* disrespectfully or contemptuously even if the disrespect or contempt fails to issue in manipulative or abusive conduct.

Consider, then, the way in which sexual desire can shape people's perceptions of and reactions to each other. Our habits of expres-

sing sexual desire and integrating desire into our interpersonal relationships contribute to our attitudes toward and patterns of interaction with others. The intentional character of our actions transforms their meaning. The same physical act—a kiss, say—means something quite different from the intention in which it is grounded: to experience connection, to convey reassurance, to deceive, to play a part in a film. And an integral part of sexual desire is precisely that we seek not only a certain kind of physical interaction with another, but interaction that carries a particular meaning because of the *intention* of the other. This meaning is different if I am desired as an irreplaceable particular rather than as a readily substitutable source of satisfactions. Maintaining a focus on the particularity of the other ensures that she or he is respected, acknowledged, and cherished as an individual, particular person. Individualized desire confirms for the desired and the desiring a distinctive and irreplaceable niche in the world. In erotic desire and love we see disclosed the other as she or he really is and as all people truly are—an object of awe.¹²⁸

But of course there are different ways in which we can construct our sexualities. We can form habits of heart and mind that conduce to treating the other as a particular. Alternatively, we can choose to develop patterns of sexual response that will encourage us instead to see her or him as a means to the end of our pleasure. The more limited one's connection with the other, the harder it will be to desire her or him in her or his particularity. The more detached one is, the less empathic one's response to the other, the more the insistent voice of desire may be likely to crowd out empathic and respectful perceptions of the

¹²⁸ See SCRUTON, *supra* note 110, at 229-51. As Scruton puts the matter so eloquently: "To receive and to give this love is to achieve something of incomparable value in the process of self-fulfillment. It is to gain the most powerful of all interpersonal *guarantees*; in erotic love the subject becomes conscious of the full reality of his personal existence, not only in his own eyes, but in the eyes of another. Everything that he is and values gains sustenance from his love, and every project receives a meaning beyond the moment. All that exists for us as mere hope and hypothesis—the attachment to life and to the body—achieves under the rule of *eros* the aspect of a radiant certainty. Unlike the cold glances of approval, admiration and pride, the glance of love sees value precisely in that which is the source of anxiety and doubt: in the merely contingent, merely 'empirical', [sic] existence of the flesh, the existence which we did not choose, but to which we are condemned. It is the answer to man's fallen condition—to his *Geworfenheit*." *Id.* at 337.

other as a self in her or his own right. And a pattern of sexual encounters disconnected from emotion might lead to the acquisition of habits of detachment, disengagement, and disconnection. Unduly detached sex might inhibit the movement from desire to intimacy. It could preclude the development of intimacy by disposing one to regard the other as mere flesh, so that one no longer desires the other as embodied, but only desires a body, a replaceable source of stimulation.¹²⁹ Avoiding emotional reserve and detachment and seeking intimacy, by contrast, may ensure that the other is cherished in her or his particularity. Absent attentiveness and empathy, sexual desire can be a ready source of objectification: I view you as a source of satisfactions, rather than as a three-dimensional person with your own dignity and needs and desires. If this lack of respect is itself a wrong, then to enter a sexual relationship without love at least to run a significant risk of committing a wrong.

It is not clear that this argument shows that an authentically marital commitment—a genuine commitment to the creation of a shared identity—is an essential context for morally appropriate sexual expression. This argument suggests that we will be most likely to avoid treating our sex partners as objects if we engage with them intimately and vulnerably.¹³⁰ But this conclusion probably cannot rule out relationships grounded in limited commitments as appropriate contexts for sexual expression. Just because sex outside the framework of comprehensive commitment *can* be objectifying and disrespectful is no

¹²⁹ See *id.* at 136-37; see also M.C. Dillon, *Natural Law and Sexual Morality*, in *THE ETHICS OF POSTMODERNITY: CURRENT TRENDS IN CONTINENTAL THOUGHT* (Gary B. Madison & Marty Fairbairn eds. 1999). “Delightful though it might be to some tastes during some phases of life to maximize the number of sexual partners, the number of ways of generating frisson, and the frequency of that generation, this project, if carried out imprudently, is naturally bound to culminate in more pain than pleasure, more misery than happiness. We do not need a god to tell us that promiscuity is evil and threaten punishment. . . . [Sexual intercourse] is . . . a pretty good way to promote intimacy, pleasure, and affection—or alienation, pain, and rancor. Sexual mores have always been guided by *the telos* of happiness to minimize the threats to individual or collective well-being.” *Id.* at 118.

¹³⁰ MCGINN, *supra* note 99, at 62-63. McGinn’s concern here is with perversion, and he quite clearly would not apply the language I have quoted here to the reception of a person in her totality at the present and for the whole of her own and one’s own life. I think it is an interesting question whether, if he is right about perversion, he ought not to revise his earlier claims.

proof that it *must* be. We can be affectionate and empathic even if not fully committed. So, while it helps to highlight the importance of intimacy and fidelity, this argument does not provide a thoroughgoing independent ground for the marital norm.

Immanuel Kant offers a further argument evidently designed to show that sex outside the framework of comprehensive commitment not only *conduces* to disrespect but is itself *inherently* disrespectful.¹³¹ Kant argues that sexual intercourse in the context of a relationship marked by anything less than total commitment is alienating.¹³² There is no way, he argues, of simply using a part of someone's body without thereby having asserted a claim over the person as a whole.¹³³ I can hardly claim to take over your hand or your leg or your voice for some purpose of mine while leaving the integrity of your person undisturbed.¹³⁴ To ask for the kind of intimate access required for sexual intercourse is thus to ask for self-alienation if it involves asking only for a portion of the self or the body; a right to the part implies a right to the whole, because a human being is a unity.¹³⁵ Therefore, only if I have a right to the whole person—which includes not only all of her or his body but all of her or his circumstances, future, self—can I reasonably and rightly enter a sexual relationship with her or him.¹³⁶

But, he maintains, for such all-inclusive claims to be legitimate and non-exploitative, they must be mutual.¹³⁷ To receive all of another's self while giving less in return is to create a relationship marked at its root by injustice.¹³⁸ Therefore, I must convey the same gift of myself to the other that I wish to receive from her or him.¹³⁹ This mutual, complete self-bestowal is what marriage *is* at its root.¹⁴⁰ Each gives her- or himself away, and simultaneously receives her or himself

¹³¹ KANT, LECTURES ON ETHICS, *supra* note 99, at 167.

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *See id.*

¹³⁵ *See id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

back from the other.¹⁴¹ This mutual gift establishes a real unity—grounded in the commitment of each but embracing not only their wills but their feelings, their fates, and their identities.¹⁴²

This argument is not persuasive. Do I really objectify another person, treating her or him with disrespect, if I do not desire *all* of her or him? It does not seem that this would be the case in a non-sexual context. Suppose I want a hug or a kiss from a parent, a friend, or someone with whom I have just gone out on a date. It seems that, by Kant's logic, I would be using a part of her or his body, and thus treating her or him as an object to be used, a source of satisfaction, rather than as a person. But this hardly seems plausible. I am seeking closeness and affection, even if not necessarily full intimacy. I appreciate the other as a person—indeed, it is precisely her or his *personal* closeness that I desire. There is nothing inherently objectifying about my attitude in such a situation.

Kant may be taking the questionable view that what we seek in sexual intercourse is simply physical pleasure. The idea is perhaps that the sexual desire is so imperious that it crowds out my awareness of any other kind of emotion, attitude, or disposition, impelling me to view the other as an object whose sole function is to satisfy my wants. This is obviously not true of all kinds of pleasure: when someone scratches my back or my head or gives me a massage, for instance, I may be conscious simultaneously of her or his affection—presuming it is intended—and of the pleasure produced by her or his actions. My desire for physical pleasure need not be so imperious as to crowd out my respect and affection for someone. And, alternatively, having deliberately committed myself to her or him does not prevent me from being overwhelmed by lust at any given moment, though it may reduce the likelihood that this will occur. Marital commitment seems neither necessary nor sufficient to ensure that sexual contact is not marked by disrespect.

¹⁴¹ *Id.*

¹⁴² *Id.*; cf. KANT, THE PHILOSOPHY OF LAW, *supra* note 99, at § 22-7.

C. *Promoting the Bonding and Communicative Capacity of Sexuality*

Love is not easy. Responding with passion and delight to another person may initially seem effortless; forging a comprehensive intimate bond is demanding. Sexual intercourse can serve to foster such a bond. It has, as I have already suggested, the potential to attach people to each other. It can also open them up to each other emotionally—by expressing their responses to each other, by shattering their ego boundaries, by linking each inextricably in the other's mind with the most exquisite kind of pleasure. A further attempt to show that would-be marriages that fail to adhere to marital norm of comprehensive commitment to the creation and maintenance of a "we" are deficient might be thought to flow from a recognition of the potential of sexual contact to foster deep connection.

Reserving sexual intercourse for a relationship marked by thoroughgoing intimacy—of the sort to which partners in a "we," but not necessarily in every civil or ecclesial marriage, are committed—enables it to carry a substantial weight of meaning, to be an emotionally intense bonding experience, to serve as the "currency of love," a key means by which love is conveyed and loving feelings (not, of course, identical with love itself) aroused.¹⁴³ Limiting full sexual expression to such a relationship makes ongoing involvement and investment in the relationship and fidelity to one's sex partner easier.¹⁴⁴ Integrating sexual desire with love and commitment disposes us to focus on our sex partners as irreplaceable individuals rather than substitutable means of satiating desire.¹⁴⁵ The result may be that we are more likely to be loving, respectful, and trustworthy sex partners. Sex apart from deep intimacy may dull the emotional intensity of sexual activity, diminish the capacity of the participants to give themselves fully to each other in and through sexual intercourse.¹⁴⁶ They might suffer from the loss not only of emo-

¹⁴³ WALLACE, *supra* note 99, at 58-61.

¹⁴⁴ *Id.*

¹⁴⁵ ROBERT E. FITCH, *OF LOVE AND OF SUFFERING: PREFACE TO CHRISTIAN ETHICS FOR HEATHEN PHILOSOPHERS WITH A POSTSCRIPT FOR HEATHEN THEOLOGAINS* 47 (Westminster Press 1970).

¹⁴⁶ For a useful and articulate development of this point, focusing on practice and habituation, see *id.* WALLACE, *supra* note 99, at 58-61. See also DEANE WILLIAM FERM, *RESPONSIBLE SEXUALITY—NOW* 132 (Seabury Press 1971).

tional contact with each other but from the capacity for such contact.¹⁴⁷ They may reach a point at which they are not “able to experience an affective engagement of their entire personality in the sexual act.”¹⁴⁸ Deprived of a genuine experience of sexual love they may partly lose the capacity to give themselves lovingly in and through sexual intercourse and to be touched by the deepest kind of joy sexuality can make possible.¹⁴⁹ And sex will be less and less available to mark a relationship of complete and committed love from other kinds of friendships.

This argument emphasizes the importance of enabling sexuality to *mean* something, of enabling oneself to feel intensely and to give ecstatically. Keeping sex special enables it to bear more meaning, to foster loving feelings, to communicate love. It carries the clear consequence, then, that preserving the communicative and bonding capacity of sexual intercourse means reserving sex for relationships characterized by genuine intimacy and connection. It also supplements the vulnerability argument. It provides a reason for regarding some people’s relative sexual invulnerability as a deficiency, as the lack of a capacity to experience a certain kind of intimacy and closeness. Thus, it provides a reason for someone who is not sexually vulnerable to seek such vulnerability. To the extent that she or he succeeds, she or he and her or his potential sex partners will obviously have reason to be sensitive to her or his (newfound) vulnerability. If sexual intercourse creates intense vulnerability, this vulnerability must occur within a safe context. But if its link with emotion has been attenuated, if its capacity to bond lovers and disclose them to each other has been stunted, this capacity, so powerful and valuable in the context of intimate surrender and marital communion, must be allowed and encouraged to develop. To stunt its flourishing, the argument would go, is potentially to diminish the other—which ought to matter even if one is unconcerned about the relationship and about oneself, which will also be diminished. And this may count as a wrong to a sex partner, since disabling someone’s ca-

¹⁴⁷ See WALLACE, *supra* note 99, at 58-61.

¹⁴⁸ Ricoeur, *supra* note 42, at 139. The reference here is to the disabilities psychoanalysts report regarding their patients. *Id.*

¹⁴⁹ See PEARSALL, *supra* note 28, at 110. His concern here is likely with pre-marital sex, but I think the point is worth making in conjunction with premarital sex of all kinds. *Id.*

capacity to experience a particular good may surely count as a harm to be prohibited on deontological grounds.

This argument is limited insofar as it takes a perfectionistic form. It seems to imply that we must seek to *maximize* the bonding capacity of sexual intercourse. So it falls victim to general criticisms of perfectionism: *Must we always seek to do better? Might not the pursuit of perfection in one part of one's life get in the way of participation in valuable goods in other areas?* It may simply seem to demand too much of us. On the other hand, if we are not always responsible for doing better, for seeking the best, and it seems unlikely that we are, then considerations related to the communicative and bonding function of sexual conduct cannot ground the conclusion that full sexual expression must be reserved for a relationship of comprehensive, committed love. If I need not seek perfection, then perfectionistic considerations do not require me to engage in an imperfect sexual relationship of one kind or another. I may well pursue other goods, even at the cost of not perfecting my capacity for sexual love.

In response, one might be prepared to defend perfectionism with respect to love relationships. One could hold that it really *is* imperative that one do all one can to maximize the intimacy and the likelihood of success of love relationships because of their great value. But such a quest for perfection might reasonably be seen as getting in the way of managing the good but imperfect relationships in which we actually find ourselves. A relationship might well be both good and “good enough,” even if not perfect.

Alternatively, one could argue that such relationships are sufficiently fragile and subject to the contingencies of fate and history that even absent any perfectionism, they need careful and attentive protection. Such protection, one could argue, requires giving them the added boost that reserving sex for complete commitment could provide. It is not the case, on this second argument, that saving full sexual expression for complete commitment makes such commitment easier, but that it makes it *much* easier. Whether this is the case will depend on just how widely drawn one's limits are. Sexual abstinence outside of complete commitment probably does make such commitment easier to sustain than does an indiscriminate attitude toward sex. It is a closer call, I

think, whether abstinence has great advantages than sex reserved for genuinely intimate but not fully committed relationships.

In any case, though, the fact that reserving sex for fully committed relationships can render such relationships more secure and stable does not show that sex must be reserved for such relationships. This would follow only if we knew, in any given case, that our intimate relationships were likely to fail unless we chose to be sexual only with committed intimate partners. We cannot know this, of course, for certain, and I think it is clear that the empirical evidence is against it. People who have had other sexual relationships before becoming sexually involved with those to whom they are committed in intimate relationships can still bond in a significant way with their partners through sex, and their relationships do persist over time.

This is not to say that there are no risks associated with having a wider range of sexual partners. Developing a genuinely casual attitude toward sex could get in the way of communicating and bonding through sex. But this generalization, plausible though it is, does not provide a strong warrant for the judgment that any sexual relationship must be marked by a comprehensive commitment to the creation of a shared identity. So considerations related to the communicative and bonding capacities of sex cannot realistically be expected to ground a normative conception of marriage. Absent a probably unrealistic requirement that we maximize our capacity for intimacy and pleasure, such considerations dictate caution; they do not entail that, on sexual grounds alone, relationships that do not live up to the marital norm, as I have elaborated, are morally inappropriate.

Care and sensitivity, intimacy and respect, are necessary in our sexual relationships. But considerations derived from sexual ethics do not provide strong independent support for what I have suggested should be the marital norm—a permanent commitment to the creation and maintenance of a “we.” The undesirability of marriages that do violate this norm may be evident in light of other considerations I adduce in this article. But I do not think they can be established solely on the basis of an appeal to the nature of sexuality and the moral limits that flow from the inherent character of just any sexual relationship.

D. *Prospective Fidelity*

The qualified character of my conclusions regarding the limits imposed on the marital norm by sexual ethics anticipates the similarly modest verdict I think we must render on comparable arguments on behalf of an additional sexual norm of “prospective fidelity.” On this not unattractive view, choosing to avoid full sexual expression prior to the formation of a relationship of full and permanent commitment—premarital (whether or not pre-marital) sex, to use the traditional expression—is a matter of being “prospectively faithful” to one’s partner, preparing oneself to focus exclusively on her or him. From the very beginning “of sexual relations,” one’s desire—both for shared identity and for sexual pleasure—is “almost automatically centered on her [or his] partner’s personality, and her or his sexual reactions are released almost like a conditioned reflex exclusively by [her or] him.”¹⁵⁰ The argument for prospective fidelity holds that part of one’s responsibility to one’s partner is to avoid sexual intercourse with others before one’s relationship with her or him begins, for essentially the same reason one might avoid extra-marital sexual activity.

The best support that might be offered for these two conclusions would likely be perfectionist in character. A perfectionist argument would hold that (1) an egalitarian, loving marriage is a great good; (2) one is obliged to maximize one’s likelihood of experiencing such a marriage and of giving oneself unreservedly to one’s partner in and through sexual intercourse; and (3) one can do this in no more effective way than by refraining from sexual intercourse outside of marriage; so that (4) one is obligated to avoid sexual contact apart from marriage.

This argument can be challenged on two grounds. *First*, we can ask whether in any given case the likelihood of a successful self-gift in marriage is *significantly* reduced by prior sexual experience with someone other than one’s partner. It seems to be an empirical question whether this is so or not. The recognition that habitually engaging in casual sex can close off one avenue of fostering loving feelings and expressing love is certainly a reason to avoid habitual engagement in casual sex, but—absent a not-necessarily persuasive slippery slope argument—it is not clear that it is a reason to avoid all non-marital sex. It

¹⁵⁰ FRANKL, *supra* note 99, at 166.

may still be possible to develop a deep capacity for genuine love even if one has had more than one sexual partner during one's lifetime.

Consider kissing. We ordinarily think we are free to kiss relatively "promiscuously." We kiss at very early stages in our love relationships. Once in an exclusive dating or marital relationship, however we ordinarily reserve kisses on the lips—with or without the involvement of our tongues—for those with whom we are involved. We do not kiss indiscriminately before we get seriously involved, but we do not save kisses for relationships we are sure will be serious. That does not keep us, usually, from understanding the limits on kissing others once we are involved in committed dating relationships. We recognize that kissing someone other than one's partner is inappropriate, and kissing, which has always been somewhat special, becomes more special because one has reserved it for one's partner.

Perhaps one could make a similar argument about sexual expression. Sex packs more of an emotional punch than kissing, of course. But suppose we reserved sexual expression for relationships in which we really were prepared to love our partners, even if our love, not yet definitively tested, might or might not eventuate in unqualified commitment. We would not engage in full sexual expression indiscriminately outside of such love relationships, even though we would not save sex for relationships we are sure would become permanent and committed. That might not keep us from understanding the limits on engaging in sexual intercourse of any kind with others once we are involved in serious, loving relationships. We would still be able to acknowledge that engaging in sexual intercourse with someone other than one's partner was inappropriate; and sex, which would always have been somewhat special, might become more special once one had reserved it for one's partner.

Second, for any number of reasons marriage may not be an option for someone—who may, let us say, be sufficiently scarred by prior hurts that she or he wishes to preserve independence and avoid the vulnerabilities to which marriage gives rise. Perhaps such a person needs and deserves genuine love; it may nonetheless be the case that she or he is unprepared to receive it. Is it really sensible to suggest that such a person is better off with no love life or sex life? For her or him, the

choice, at least initially, will be between non-marital sex and no sex at all.¹⁵¹ Provided it is respectful and loving, she or he will perhaps be better off with something than with nothing. It may also be the case that only in the context of a relationship in which she or he is not expected to make a serious, permanent commitment can she or he develop the trust required to enable her or him finally to make such a commitment.

In short, just as we cannot judge a sexual relationship within marriage unjust, and so dismiss the marriage as morally inappropriate, simply on the basis of considerations related to the moral limits on sexuality, we also cannot argue plausibly that avoiding sexual contact before marriage is a requirement of anticipatory fidelity to one's spouse.

IV. LOVE'S OBLIGATIONS

Marriage, observes Chuck Gallagher, "can't be an extracurricular activity."¹⁵² A married couple's "*real calling in life is to each other!*"¹⁵³ It is as married that they can and should proceed to care for and respond to the needs of other persons, institutions, communities, and the earth.

Our true fulfillment in life is not to bring the world into our relationship, but to take our relationship into the world! It's not to have a passion for [hu]mankind, but to be devoted to each other! It's not to raise children, it's to delight in each other! It's not to provide security for my spouse, it's to provide *myself* for my spouse!¹⁵⁴

¹⁵¹ Of course, a relationship begun without the pressure to make a more serious commitment may lead to sufficient security and comfort that a wounded person is able to open her or himself up to a commitment she or he had not thought possible. Here as elsewhere, a sexual relationship may result in added pain, greater insecurity. It is vital to avoid driving a hurting person even farther into she or he, using the hope that one's love might be redemptive to license a too-ready sexual involvement. But one must also be alive to the possibilities—and impossibilities—inherent in each situation.

¹⁵² CHUCK GALLAGHER, *LOVE TAKES GREATNESS* 115-17 (Bob Blewett & Lois Blewett eds., W.H. Sadlier 1977) [hereinafter GALLAGHER, LOVE].

¹⁵³ *Id.*

¹⁵⁴ *Id.*

Thus, an “ethic of tenderness” maintains “that the primary aim of marriage is the perfection of the interpersonal relationship”¹⁵⁵ between the partners. Karl Barth rightly discerns that marriage “is too important to be well done if made subservient to any other intention, even the best.”¹⁵⁶ “The object of any other purpose can only be regarded as subsidiary”¹⁵⁷ within marriage to the task of partnership. Marriage “as a life-partnership must first and constantly be considered in and for itself as an end in itself, a question, a task and a work.”¹⁵⁸ It is the fact that it is grounded in the partners’ commitment to “total and all-embracing fellowship for life” that “differentiates marriage from other relations”¹⁵⁹ marriage is even distinguished from the love in which lies at its genesis because their love calls the lovers “to a task and a duty, namely, . . . [their] complete togetherness”¹⁶⁰ And “in marriage this togetherness may and should and must be, in so far as it is true marriage. For marriage ceases to be true marriage in proportion as this fulness is lacking”¹⁶¹

Marital partnership means *being there* with and for the other. Joan Puls quotes a letter from a friend: “[Y]our presence has become a permanent reality. . . . Your support and friendship are grace for me no matter where you are. They help to close the gaps of time and dis-

¹⁵⁵ Ricoeur, *supra* note 42, at 137.

¹⁵⁶ KARL BARTH, CHURCH DOGMATICS 189-90 (Geoffrey W. Bromiley & Thomas F. Torrance eds., A.T. Mackay et. al. trans., 1962); *cf.* JEANNIÈRE, *supra* note 27, at 160 (love’s purpose “is the intimacy created by . . . [the lovers’ reciprocity of giving and mutual dependence]”).

¹⁵⁷ BARTH, *supra* note 156, at 189-90.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.* (emphasis added). It seems unlikely that Barth would be willing to draw from this passage the conclusion to which I think it appropriately leads. *Cf.* GERMAIN GABRIEL GRIZEZ & RUSSELL SHAW, BEYOND THE NEW MORALITY: THE RESPONSIBILITIES OF FREEDOM 156-57 (1988) (“A good family is in many respects a model of community. Its members are joined by ties of mutual dependence, to be sure, but also by a joint commitment to common purposes of a very basic and intimate sort. . . . By contrast, where commitment to such basic goods is lacking, the members of a family may coexist as a socioeconomic unit—as a convenient and perhaps even congenial arrangement—but it is not a genuine community as the word is understood and used here.”).

tance.”¹⁶² Recalling time she herself had spent in India, Puls notes that she felt the presence of those she had left behind “in an unusually vivid manner.”¹⁶³ She knew herself “sent, accompanied and comforted by those who loved me.”¹⁶⁴ She writes: “Our lives intertwined, my experience flowing out to them, their strength fortifying me.”¹⁶⁵ This sense that the other is truly *present* captures a central element in what is meant by love as shared identity.¹⁶⁶ While there may *be* limits on my presence to the other and my self-gift to her or him, I will seek to avoid and to transcend such limits whenever possible. It means weaving identities together in a way that leads to a “sense of uncertainty as to where I end and you, the person I love, begin; the identification of your pain with my pain and your success with my success; the inconceivability of a self that does not include you”¹⁶⁷ Being a “we” involves not only enjoying the self-transcending passion that facilitates presence to the

¹⁶² JOAN PULS, *A SPIRITUALITY OF COMPASSION* 97 (1988).

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.* at 98-99.

¹⁶⁶ *Cf.* MATTHEW FOX & RUPERT SHELDRAKE, *NATURAL GRACE: DIALOGUES ON CREATION, DARKNESS, AND THE SOUL IN SPIRITUALITY AND SCIENCE* (1996). Sheldrake refers to “the older view which saw our souls as extended all around us. Our soul was not confined to our head. *Id.* at 89. It not only permeated the whole body but was involved in all experience and perception.” *Id.* Sheldrake goes on to discuss the implications of this view and to suggest experiments that might confirm it (noting, for instance, evidence that people can tell when they are being looked at from behind). *Id.* at 92. “[O]ur souls are extended all around us,” he suggests. *Id.* “We live in a world of overlapping mental fields, of a shared space which is not just a so-called objective material reality but is encompassed by innumerable minds or psyches, including those of animals.” *Id.* Thus, “[t]he idea that there is an objective reality, totally free from any kind of psychic influence, is an extraordinary illusion from this point of view.” *Id.* Sheldrake’s analysis suggests that “our own psyche is extended [;] [it is] not just confined within our brains. Even our thoughts affect other people, and we in turn are affected by others’ thoughts.” *Id.* at 95. He emphasizes that “[o]ur souls are bound up with those of others and bound up with the world around us.” *Id.* Consequently, while “the individual soul is localized in the sense that the soul is centered on the body,” Sheldrake is clear that on his view “souls can interpenetrate, in the sense that a room full of people will also be full of their extended minds or souls.” *Id.* at 101. *See also* PULS, *supra* note 162, at 97-99.

¹⁶⁷ GAYLIN, *supra* note 50, at 83.

other but seeking it, maintaining it, and avoiding experiences and activities that might impair it.¹⁶⁸

A commitment to shared identity embodies this vision of marriage. In turn, marital commitment necessarily involves a range of subsidiary commitments¹⁶⁹—commitments to communication, truthfulness, vulnerability, acceptance, attentiveness and understanding, respect, equality, and exclusivity. Making a commitment to being a “we” means making these commitments as well.

A. *Communication*

Free self-disclosure “is the real basis for closeness.”¹⁷⁰ This kind of self-revelation is integral to “the ‘giving of oneself’ that we associate with loving relationships.”¹⁷¹ Genuine “intimacy and love rely on voluntary disclosure, not only because that is the only hope of accuracy, but because it is literally the giving of oneself to another.”¹⁷² A person is not only a story but, in another sense, a set of stories—the stories, already past, that have made her or him who she or he is, and the ongoing stories that she or he is telling with her or his life. To give oneself to another is to give her or him these stories. To desire another is to desire to know these stories, not because they are necessarily all inherently appealing but because they are one’s partner’s. Thus, “marriage itself is a matter of words.”¹⁷³ In marriage, the partners’ “two lives form a single, meaningful conversation.”¹⁷⁴

¹⁶⁸ This is, I take it, the point of the claim by Gallagher, Maloney, Rousseau, and Wilczak that the “decline of passion . . . is a violation of a couple’s marriage vows, a genuine infidelity even if neither has sexual relations with another person. . . . The fading of romance is the marring and obscuring of a sacramental symbol. For in their vows, the two had promised to be sexually present to each other all the days of their lives.” GALLAGHER, LOVE, *supra* note 152, at 41 (citing ANDREW M. GREELEY, SEXUAL INTIMACY 171-89 (1975)).

¹⁶⁹ Cf. MILTON MAYEROFF, ON CARING 19-35, 43 (1971) (delineating the concomitants of caring).

¹⁷⁰ MICHAEL E. MCGILL, THE MCGILL REPORT ON MALE INTIMACY 32 (Holt, Reinhart, & Winston 1985).

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ Jonathan Butler, *Marriage: Poetry and the Sears Roebuck Catalogue*, INSIGHT, May 26, 1981, at 3.

¹⁷⁴ *Id.*

Thus, being a “we” entails frequent, consistent, regular, intimate, self-disclosing, truthful *communication*. Each partner must present her- or himself to the other, telling stories, describing feelings, offering analyses and assessments. A couple’s relationship is itself the prime (albeit not exclusive) goal of their conversation.¹⁷⁵ Some of their interchange will be non-verbal; and increasingly, of course, people can and should come to understand each other’s unspoken languages.¹⁷⁶ But each must constantly be prepared to explain her or his thoughts and feelings, to tell her or his stories; to assume that another understands me *perfectly*, or knows *everything* about me, without my giving voice to my thoughts, my feelings, my memories, is to presume an impossible degree of transparency. Talking is not everything, but it is essential. And one must not only volunteer one’s own thoughts and feelings; one must also seek actively to elicit the thoughts and feelings of the other with questions and responses which make clear that one is interested in the experience, perspectives, and memories of one’s partner and that one seeks persistently to understand them. Being a “we” is about sharing the self; and there is no realistic way for such sharing to take place without a great deal of reflective, vulnerable verbal interchange. As Gallagher maintains:

By not communicating, a man can do all the ‘right’ things and still not be a good husband, and a woman can exhaust herself in living up to her responsibilities and still not be a good wife. But if they are constantly ‘in touch,’ communicating with each other in the fullest and deepest sense of that term, they . . . [fulfill] one of the most significant commitments of being a husband or a wife.¹⁷⁷

Death and desolation might be the only things we could hope for, or bring about, if a life of fear, self-protection, self-doubt, and re-crimination proved to be the only kind we could hope to experience. However, the reality of vulnerable love points to, and embodies, an alternative: vulnerable love actually exerts a creative power in our lives.

¹⁷⁵ GALLAGHER, LOVE, *supra* note 152, at 118.

¹⁷⁶ Cf. Trudy Bush, *Happily Married with Children*, CHRISTIAN CENTURY Jan. 31, 1996, 110.

¹⁷⁷ GALLAGHER, LOVE, *supra* note 152, at 118.

It is a brave and difficult thing to display myself authentically to another—to allow someone else to see my brokenness and failure, my small-mindedness and selfishness, my cruelty, violence, and cowardice. But such self-disclosure has the potential to bring a heretofore alien quality of life into being.¹⁷⁸ Out of such mutual vulnerability, “love is born.” One’s own vulnerability welcomes the other into a space in which love and freedom are possible.¹⁷⁹ This vulnerability enables genuine interchange, openness, growth, and understanding on both sides.¹⁸⁰

The opposite of *lover* is not *enemy*; it is *stranger*. To the extent that I hide from or deceive you, that I fail to tell my stories or confess my wrongs, I am not present to you. If I choose to form a “we,” I choose not only to avoid intentionally asserting what I know to be false—we should expect that of everyone¹⁸¹—but as much self-disclosure as one can realistically manage in a given situation.¹⁸² Whatever precludes complete knowledge of each partner by the other, whatever precludes full availability of each to the other, is obviously a barrier to the formation and maintenance of a “we.” And “[b]y withholding the

¹⁷⁸ NOUWEN, *INTIMACY*, *supra* note 54, at 29.

¹⁷⁹ *Id.*

¹⁸⁰ NOUWEN, *SEEDS*, *supra* note 54, at 23-24. This is slightly modified from NOUWEN, *INTIMACY*, *supra* note 54, at 32-3. Nouwen is ambivalent here, I think, on the distinction between the new life of the persons and of the couple on the one hand and the procreative consequence of their union on the other.

¹⁸¹ On “lying and cunning . . . [as] forms of violence,” see JEAN-PAUL SARTRE, *NOTEBOOKS FOR AN ETHICS* 195-204 (David Pellauer trans., 1992). According to Sartre, lying represents the objectification and subjugation of the other. When I lie, I assert my authority over the other; and once I have conceded that I *can* lie, I imply that I am her or his master even if I do not exercise my imagined privilege. See generally SISSELA BOK, *LYING: MORAL CHOICE IN PUBLIC AND PRIVATE LIFE* (1978); BERNARD GERT, *MORALITY: A NEW JUSTIFICATION OF THE MORAL RULES* 126-27 (1988); LEONARD NELSON, *SYSTEM OF ETHICS* 151-55 (Norbert Guterman trans., 1956); CHARLES FRIED, *RIGHT AND WRONG* 54-78 (1978); LEWIS B. SMEDES, *MERE MORALITY: WHAT GOD EXPECTS OF ORDINARY PEOPLE* 211-38 (1988); HARRIET G. LERNER, *THE DANCE OF DECEPTION: PRETENDING AND TRUTH-TELLING IN WOMEN’S LIVES* (1993).

¹⁸² *Cf.* SARTRE, *supra* note 181, at 200 (“By *not saying anything*, I open up a slash of nothingness between two parts of the universe, I create two unconnected universes. But at the same time, the universe where the deceived person lives is distorted, hence false and, moreover, *contained* within the overall universe that includes these two universe[s]. I have set up walls around the person being deceived.”) (emphasis added).

truth from the other person, we remove his or her power of decision; this is a method of control.”¹⁸³ And we exhibit a lack of respect for her or his dignity as someone who can only choose responsibly if she or he knows the truth. By contrast, self-disclosure gives voice to my trust in you, and thus bonds us more intimately. It enables each to learn and grow in dialogue with the other.¹⁸⁴ My self-disclosure expresses my vulnerability, and thus signifies that you can be safe in exposing yourself to me. It is an act of love—in it I offer you myself. It is a guarantee of equality—concealment becomes a way of acquiring or preserving superior power.¹⁸⁵ Finally, because our relationship matters to you as well as to me, knowing what I am thinking and feeling and doing enables you to protect it and keep it strong and healthy.

Not everything can be shared at once; timing is crucial, as are sensitivity and awareness of context. And trust takes time to build. To be sure, some revelations can be painful—too painful to offer at a given time. And one can tell the truth in a way that is not really truthful, retelling facts without providing a historical context, or a context of meaning, to make them comprehensible. There is a sense in which one can lie by telling the truth, *if* telling the truth is understood as making any assertion that is denotatively correct. But being a “we” means accepting, at least as an asymptotic goal, that each knows the other in every way that matters.¹⁸⁶ Claiming the gift of shared identity depends on openness and self-disclosure.¹⁸⁷ Real closeness is impossible if we

¹⁸³ DANA VANNOY-HILLER & WILLIAM W. PHILLIBER, *EQUAL PARTNERS: SUCCESSFUL WOMEN IN MARRIAGE* 83, 174 (1989).

¹⁸⁴ MCGILL, *supra* note 170, at 233-34.

¹⁸⁵ *Cf.* GIDDENS, *supra* note 17, at 190 (“An individual whose real intentions are hidden from a partner cannot offer the qualities needed for a cooperative determination of the conditions of the relationship. Any and every therapeutic text on the subject of relationships will demonstrate why revelation to the other—as a means of communication rather [than] emotional dumping—is a binding aspiration of democratically ordered interaction.”).

¹⁸⁶ One obvious limitation here is that one must respect one’s obligations to protect others’ privacy, though one ought surely to seek not to come into possession of information that one will be morally obliged not to share with one’s partner.

¹⁸⁷ Thus, FRANK S. PITTMAN, *PRIVATE LIES: INFIDELITY AND THE BETRAYAL OF INTIMACY* (1989), maintains that it is precisely the barrier between spouses caused by concealment that is infidelity’s central assault on marriage.

hide ourselves from each other. I must tell you who I am if we are truly to be a “we.”

B. *Vulnerability*

At root, being a “we” demands vulnerability—the willingness truly to be affected by the other. One must be willing to let the other in to one’s private space not only verbally or physically but psychically, emotionally. One’s commitment to being a “we” is fallacious unless one allows the other to become a constituent of one’s identity, permits her or him—not as an object but as a resistant, three-dimensional person—to challenge and disturb one’s feelings. Vulnerability means allowing who she or he is and what she or he does to *matter*. Vulnerability is significant both because it is a way of being present—to avoid being affected by the other is precisely to remove oneself from engagement with her or him—and a way of letting the other truly be present. Self-exposure and vulnerability overcome violence and hostility. The exposure of one’s own vulnerability encourages the other’s own self-disclosure. To welcome and seek the other’s equally vulnerable self-disclosure is to express one’s acceptance of and one’s need for her or him.¹⁸⁸

C. *Acceptance*

Being a “we” is impossible in an atmosphere of fear. Thus, a commitment to shared identity entails complete *acceptance*—not only mentally affirmed but actively, behaviorally and verbally, communicated. I need not allow you to do everything you want to do to me or anyone else. But if you are to risk being a “we,” you need to know that I will accept and care for you whatever you show me. I love *you*; that does not mean that I am willing to endorse everything you do. I may strongly disagree with you, strongly oppose and confront you. But you must know that I will be present to and for and with, *you* whatever you do or have done, whoever you are or will be. I will seek to offer you a passionate, undivided, delight-filled love even when I am angry, even when I profoundly disagree with you. My presence to and with and for you is not complete, nor is yours to me, if I do not accept you as you are; and you, in turn, will find it difficult to be present to and with and

¹⁸⁸ NOUWEN, *INTIMACY*, *supra* note 54, at 29.

for me if I do not offer you such acceptance—and convey it to you clearly. Genuine acceptance—acceptance of the other not because one refuses to see her or him truly but precisely as one sees her or him truly—is liberating and empowering. It conveys the message that one is safe and welcome in the other’s presence. If a shared identity is to be established, the other must be welcomed and embraced, encouraged to display her- or himself in the safety provided by love. “To be in a marital relationship in which one is fully known, in all one’s imperfections and vulnerabilities, and still to be loved with absolute dependability, is deeply humanizing”¹⁸⁹

Forgiveness is the particular actualization of acceptance required when someone has done something harmful.¹⁹⁰ A commitment to being a “we” entails a commitment to acceptance, and thus a commitment to forgive one’s partner when she or he does something harmful. Forgiveness is an essential prerequisite to the establishment and maintenance of a shared identity and a crucial expression of love. Even a spouse who is not a partner deserves forgiveness, of course, although forgiving her or him for wrongful conduct may be quite compatible with ending one’s marriage to her or him. Even when a spouse is also a partner, answering the call to forgiveness is compatible with confrontation, challenge, conflict, and even, if it is necessary to protect oneself or one’s children, indefinite physical separation. Whenever a spouse is a partner, however, and whatever shape one’s forgiveness takes, forgiving her or him is a crucial element of fulfilling one’s promise to her or him of unconditional love.

D. *Attentiveness and Understanding*

The intimacy and interchange integral to being a “we” cannot be achieved without *attentiveness* and *understanding*. Each of us is a mystery, and understanding does not come without the work of paying attention. And without understanding, we remain strangers to each other.

¹⁸⁹ WOGAMAN, *supra* note 14, at 156.

¹⁹⁰ Three good, recent contributions to the substantial literature on forgiveness are L. GREGORY JONES, *EMBODYING FORGIVENESS: A THEOLOGICAL ANALYSIS* (1995); L. WILLIAM COUNTRYMAN, *FORGIVEN AND FORGIVING* (1998); and Marilyn McCord Adams, *Forgiveness: A Christian Model*, in *CHRISTIAN THEISM AND MORAL PHILOSOPHY* 77-106 (Michael D. Beaty et. al. eds., 1998).

A shared identity happens only when we truly know and are truly known by each other. Sensitivity to the other's needs means that I must seek, not to impose my values or preconceptions on her or him, to try to remake her or him in my own image, not to assume that her or his needs are my needs, but rather to seek a genuine comprehension of what her or his needs and desires are. It means being aware of what delights and what annoys her or him. It means, in short, being responsive.

If I am attentively to welcome the other's presence and respond to her or his needs, I must celebrate her or his being and symbolize my acceptance of her or him. Unsolicited gifts of time or affection, of poetry or flowers or art or whatever else best expresses to the other what I wish to convey are an important part of the process of continually inviting the other into a "we" relationship and sustaining and supporting her or him in the context of that communion. These are not pointless, insensational courtship gestures; they are essential means of highlighting and underscoring the other's value as a person and her or his value to me.

E. Respect

Though marriage is about communion, to one degree or another the distinctness of the partners persists—each remains mysterious to the other. Thus, the individuality, the otherness, the integrity, of each deserves respect. This evinces care not only for the other but for the relationship itself. Intimacy depends upon mutual self-giving; one must, therefore, have a self to give. In a relationship in which one lacks time or emotional—perhaps even physical—space of one's own because of conflicting demands, one's identity comes under threat. One must grant one's partner sufficient space truly to be an authentic self. Only in this way can the self-gift involved in the creation of a "we" be offered without the fear that selfhood will be lost in the process.

Respect also entails viewing, treating, and valuing the other as a person. The woman who objectifies a man, "loving" him as a source of financial security or social prestige, fails to respect him—and probably also deceives him as well. The man who objectifies a woman, "loving" her as a sex kitten or a fulfiller of fantasies, fails to respect her—and probably also deceives her as well. To respect another person is to re-

spect her or him as someone uniquely precious, with her or his own needs and perspectives that deserve to be taken into account.

F. *Equality*

It is difficult or impossible truly to respect another whom one regards as one's inferior. *Equality* is thus entailed by respect as essential to a "we" relationship—and not only by respect. How can I safely be fully available to you if you dominate me? How can you respect me if you dominate me? How can real mutuality occur in the absence of an equality of commitment and an equality of power? How can I offer genuine nurture to you in a context of dominance and subordination? Gender equality does not need to be defended on the basis that it follows from the requirements for creating and maintaining a shared identity; it is obviously valuable on its own terms. (And sometimes, of course, an appropriately centered and self-confident partner with access to appropriate emotional resources may need to accept emotional inequality in order to reach out in love and creative justice to the other). But equality is nonetheless a concomitant of a shared identity.

G. *Exclusivity*¹⁹¹

Loving means accepting limits. To love someone is to want her or his whole heart, and to give one's own to her or him. Thus, being a "we" entails *exclusivity*.¹⁹² This is not so much a matter of not *giving* my heart to another as it is a matter of not *taking* it away from my partner. The partners' full and intense love for each other means excluding from their lives those relationships, commitments, choices, and activities that would in any way inhibit or undercut their communion and connection with each other.¹⁹³ This does not mean for instance that

¹⁹¹ Some of the material in this section first appeared in Gary Chartier, *Natural Law, Same-Sex Marriage, and the Politics of Virtue*, 48 UCLA L. REV. 1593, 1614-18 (2001).

¹⁹² For a defense of monogamy and sexual fidelity, see Bonnie Steinbock, *Adultery*, in *THE PHILOSOPHY OF SEX: CONTEMPORARY READINGS* 187-92 (Alan Soble ed., 1991). See also SMEDES, *supra* note 12, at 157-82.

¹⁹³ Cf. ALLEN, *supra* note 21, at 238-43; JEANNIÈRE, *supra* note 27, at 165. Because exclusivity reflects the gift of the self to the other in love—or at least is intended and has the potential to do so—I am puzzled when Andrew Collier argues that because "most human happiness and well-being depends on 'niceness,'" it follows that

married people do not need or should not have close friends who can be integrated into a couple's marital life.¹⁹⁴ It means only that a normative marriage surpasses other relationships in intimacy, intensity, and comprehensiveness.

1. Exclusivity is about more than sexual relationships with other people

One can compromise the exclusivity of one's relationship with one's partner by devoting oneself to one's friends, the community, the church, sporting activities, or other family members in ways that foster or intensify disconnection. One can also do so by refusing to communicate about problems, keeping unnecessary secrets, or otherwise hiding off one portion of one's life from one's partner.¹⁹⁵ One especially common violation of exclusivity is abandoning one's partner for one's work.¹⁹⁶ A professional male interviewed in Phillip Blumstein and Pep-

adultery is not among "the 'weighty matters of the law.'" COLLIER, *supra* note 40, at 91. Collier suggests that niceness means confirming "other people's being" through one's "behaviour and conversation," a goal to be achieved "for instance by showing gratitude for their company and attention to what they are communicating." *Id.* Earlier, he defines niceness as sensitivity "to the nature of other beings, human or otherwise" with the consequent ability and inclination "to give them the appropriate sorts of love." *Id.* Might not exclusivity be an expression of "the appropriate sorts of love?" *Id.* Might it not serve as a way of confirming another's being?

¹⁹⁴ Conversation with Carol Haviland prompted my articulation of my position in this paragraph.

¹⁹⁵ This might be a conclusion to draw from Frank Pittman's argument.

¹⁹⁶ Steinbock, *supra* note 192, at 192. Cf. Ellen Gilchrist, *Mediations on Divorce*, in *WOMEN ON DIVORCE: A BEDSIDE COMPANION* 79 (Penny Kaganoff & Susan Spano eds., 1995) ("We [do not] want to forsake all others. We leave our troubled houses where children are sick and bills must be paid and travel to our offices where there are bright, well-dressed, well-educated people of the opposite sex, and we forsake. Oh, do we forsake! If not in physical ways, then in emotional ways, which are equally damaging to the marriages we left behind that morning."). See also Alisa Burns, *Why Do Women Continue to Marry?*, in *AUSTRALIAN WOMEN: NEW FEMINIST PERSPECTIVES* 228 (Norma Grieve & Alisa Burns eds. 1986) (When children are born, men "can quite readily distance themselves . . . , coming home later and spending more and more time (and money) in the company of freer souls. Many women who subsequently divorce speak of this as a time of betrayal ('just when I needed him most') that destroyed their trust in what they had thought was an equitable relationship.").

per Schwartz's study of American couples exemplifies the problem.¹⁹⁷ "It's not that I don't care,"¹⁹⁸ he said, stressing that his wife was "unfair to make the charge that she did."¹⁹⁹ "My work comes first . . . I love my work; I have to if I'm going to be an expert at it. I count on her to manage things at home so I can be out there, putting myself on the line"²⁰⁰ He justified his behavior by maintaining that he cared—about her, about their relationship.²⁰¹ But if he really meant that his work came first, then he has not opted for exclusivity in the way that a commitment to being a "we" demands. Even when someone does not share this man's disproportionate stress on the importance of work, an insensitive employer may well demand that she or he make work her or his first priority in a way that violates her or his spouse's claim to exclusivity. It is not overly likely that an employer will ask that an employee engage in a sexual relationship with a client to facilitate the achievement of a business goal, but employers are often remarkably unaware of the extent to which their demands encourage employees to compromise their intimate commitments as much as if they *had* proposed that they engage in job-related sexual infidelity.²⁰² Whatever their causes, in any case, a variety of non-sexual involvements and commitments can clearly impede marital communion.

2. Exclusive relationships offer partners a distinctively valuable intimacy, intensity, and security

Authentically to give oneself to one partner requires a choice for the focus necessary to deep and intense love.²⁰³ A commitment to ex-

¹⁹⁷ PHILIP BLUMSTEIN & PEPPER SCHWARTZ, *AMERICAN COUPLES: MONEY, WORK, SEX* 172 (1983).

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *Cf.* WALLERSTEIN & BLAKESLEE, *supra* note 18, at 193-202.

²⁰³ *Cf.* SCRUTON, *supra* note 110, at 337-43. According to Scruton, "Love is the fulfilment [sic] of desire, and therefore love is its *telos*." And "[b]ecause jealousy is one of the greatest of psychical catastrophes, involving the possible ruin of both partners, a morality based on the need for erotic love must forestall and eliminate jealousy." Thus, "[w]hatever the institutional forms of human sexual union, and whatever the range of permitted partners, sexual desire is itself inherently 'nuptial': it involves concentration upon the embodied existence of the other, leading through

clusivity is a reflection of “what it means to love someone deeply and completely,”²⁰⁴ because I can unite “myself fully and intensely with one person only.”²⁰⁵ Trust is crucial to intimate love, and “trust . . . is not a quality capable of indefinite expansion.”²⁰⁶ We are more likely to experience deep and intense emotional connection and vulnerability; exhibit and benefit from the security afforded by a wholeheartedly loving com-

tenderness to the ‘vow’ of erotic love.” *Id.* at 339. Chastity “attempts . . . to sustain a social order that confines the sexual impulse to the personal sphere.” *Id.* at 341. For a brief synopsis of Scruton’s rich and complex argument, see ROGER SCRUTON, AN INTELLIGENT PERSON’S GUIDE TO PHILOSOPHY 127-39 (1996).

²⁰⁴ Steinbock, *supra* note 192, at 192.

²⁰⁵ FROMM, ART, *supra* note 74, at 55; Nozick, *supra* note 23, at 429. GEORG WILHELM FRIEDRICH HEGEL, THE PHILOSOPHY OF RIGHT §§ 162-167 (T.M. KNOX trans., 1952). The ground of marriage lies in the consent of the partners “to make themselves one person, to renounce their natural and individual personality to this unity of one with the other.” *Id.* at § 162. “The ethical aspect of marriage consists in the parties’ consciousness of this unity as their substantive aim, and so in their love, trust, and common sharing of their entire existence as individuals.” *Id.* at § 163. In this case “the spiritual bond of union secures its rights as the substance of marriage and thus rises, inherently indissoluble, to a plane above the contingency of passion and the transience of particular caprice.” *Id.* at 163. Marriage is marked by the “identification of personalities, whereby the family becomes one person and its members become its accidents” *Id.* at § 163. Thus, “[i]n essence marriage is monogamy because it is personality—immediate exclusive individuality—which enters into this tie and surrenders itself to it; and hence the tie’s truth and inwardness (i.e. the subjective form of its substantiality) proceeds only from the mutual, wholehearted, surrender of this personality. Personality attains its right of being conscious of itself in another only in so far as the other is in this identical relationship as a person, i.e. as an atomic individual.” *Id.* at § 167. If a union aims at total union, then its goal will be unachievable in sexually inclusive relationships, even if permanent. Similarly, according to O’NEIL & DONOVAN, *supra* note 99, at 133, if “sexual union is truly the sharing of one’s whole person with another, it seems to follow that there are definite limits to the number of person with whom one can share one’s whole self.” For a parallel argument, see STEPHEN R.L. CLARK, BIOLOGY AND CHRISTIAN ETHICS 174 (2000) (“It is difficult to have more than one intimate: in any threesome one is likely, at any time, to be excluded or frustrated; in any threesome, the sense of being an object for a joint discussion by one’s partners is liable to get in the way of intimate acquaintance. That there are homosexual, and celibate, couples may only be an echo of the heterosexual marriage—but it may also rest upon a profound requirement of the human psyche.”). Cf. BERNARD HÄRING, FREE AND FAITHFUL IN CHRIST: MORAL THEOLOGY FOR PRIESTS AND LAITY 2: THE TRUTH WILL SET YOU FREE 536 (1979).

²⁰⁶ GIDDENS, *supra* note 17, at 138.

mitment;²⁰⁷ and come to know ourselves and our partners truthfully in a focused, exclusive relationship than in a set of “plural or multiple relations.”²⁰⁸

If one seeks to love many people at once, love becomes increasingly superficial and indistinguishable from garden-variety friendship or even sympathy.²⁰⁹ Group marriage is not, perhaps, an impossibility, but it is likely to be immensely taxing and to fail to provide participants with the intensity, intimacy, and security of marriage.²¹⁰ Every time a group of people is enlarged even by one, the number of possible connections among the members increases. The single most significant change occurs, however, with the addition of one or more members to a relationship between two people. A partnership between only two people is a single “symmetrical[,] mutual relationship.”²¹¹ A couple can bond, grow close, share in a manner and to a degree that groups of more than two people cannot.²¹² “Completely self-disclosing conversations or pillow talk cannot be held with two lovers at once.”²¹³ Juggling multiple loves means selling them all short:

How can that mutual liberation and freedom in fellowship which is so constitutive of marriage be genuinely attained if at the same time it is also demanded of a second partner and can be to the advantage of this or that third party? And how can there be fellowship in this

²⁰⁷ JEFFREY H. REIMAN, *JUSTICE AND MODERN MORAL PHILOSOPHY* 182 (1990) (explaining that a commitment to exclusivity offers a security that invites and enables partners to “open themselves to the vulnerability of wholehearted loving”).

²⁰⁸ JOSEPH MONTI, *ARGUING ABOUT SEX: THE RHETORIC OF CHRISTIAN SEXUAL MORALITY* 235 (1995). Monti clearly does not wish to rest his argument for monogamy on these considerations.

²⁰⁹ NICOLAI HARTMANN, *ETHICS VOLUME 2: MORAL VALUES* 370 (Stanton Coit trans., 1932).

²¹⁰ See Stephen R.L. Clark, *Sexual Ontology and the Group Marriage*, 58 *PHILOSOPHY* 215 (1983).

²¹¹ Sidney Cornelia Callahan, *Society Should Uphold Monogamy*, in *HUMAN SEXUALITY: OPPOSING VIEWPOINTS* 60 (Brenda Stalcup et al., eds., 1995). Callahan notes that a Nigerian student defended polygamy on the basis that a woman’s husband would leave her alone more if he had other wives. But surely this is an advantage only if one cannot achieve a genuinely egalitarian and intimate union with one’s husband.

²¹² Callahan, *supra* note 211, at 58-59.

²¹³ Callahan, *supra* note 211, at 60.

freedom if the orientation on each other in which alone it can be realised has to be constantly divided between two very different second partners? . . . In every dimension a third party . . . can only *eo ipso* disturb and destroy full life-partnership. If marriage . . . is full life-partnership, it is necessarily monogamous.²¹⁴

Love is work. An exclusive relationship challenges partners to enrich their bonds, come to know each other more fully, by addressing problems head-on instead of escaping, even if perhaps only temporarily, to another partner.²¹⁵ To love just one other person faithfully, caringly, intensely, and attentively demands a great deal of discipline and commitment;²¹⁶ loving more than one person in this way *simultaneously* is likely to tax most people beyond their capacities. That is one reason it is easier to maintain equality between partners in an exclusive relationship. Balancing multiple relationships makes it all too likely that some people will be short-changed.²¹⁷

3. Exclusivity means emotional exclusivity—giving one’s heart and one’s desires to one’s partner

The focal instance of exclusivity is probably the avoidance of a passionate or lovingly intimate and marital or quasi-marital bond with anyone other than one’s partner. Closely related is cherished desire for someone other than one’s partner. Falling in love with or desiring someone other than one’s partner can pose a particularly powerful threat to one’s communion with her or him.

²¹⁴ KARL BARTH & J.W. EDWARDS, CHURCH DOGMATICS VOLUME III.4: THE DOCTRINE OF CREATION 197 (Continuum International Publishing Group 1961).

²¹⁵ KAREN JOHNSON, TRUSTING OURSELVES: THE COMPLETE GUIDE TO EMOTIONAL WELL-BEING FOR WOMEN 137 (1990).

²¹⁶ PECK, *supra* note 11, at 159. Peck adds “and children” following “spouses.” And he goes on to argue that some people can, in fact, manage deeply loving relationships with multiple partners. But I think this reflects his emphasis on love as self-extension rather than love as union. Deeply intimate union with multiple partners seems impossibly difficult. *Id.*

²¹⁷ KANT, LECTURES ON ETHICS, *supra* note 99, at 167.

Whether or not one acts on it, to embrace or cherish desire for another can be profoundly hurtful and disruptive.²¹⁸ Turning toward another in desire or erotic love is an act of infidelity, as is failing to redirect one's attention back to one's partner from one's new object of desire. Of course we cannot always control our initial responses to and attitudes toward other people. But even if desire or love should turn out to be beyond our control, this does not change the damage to a marriage that falling in love or lust with someone other than one's partner might cause. A rupture, a wound, worthy of censure, is the result whether or not one's inner orientation on someone other than one's partner is voluntary or not.

In any case, however, it is not clear that desire, much less falling in love, is something over which we have no control. We can choose to place ourselves in situations in which our desires are aroused and our vulnerabilities affected. We can thus, at minimum, prepare the ground for a sudden rush of passion. But it is also the case that we can more directly open ourselves, I believe, to others, removing our emotional armor and attending to them mentally in ways that will bond us with them. Finally, having fallen in love, we can choose whether to nurture our newfound passion or to turn our attention elsewhere, to fall deliberately out of love. Thus, there seems no reason not to regard falling in love with someone other than one's partner as itself a kind of infidelity.²¹⁹

4. Sexual exclusivity makes a valuable contribution to emotional exclusivity

Marriage partners may not under all circumstances be sexually active. There may be times when they may be unable to experience genital sexuality; and, while this may be frustrating, "sex" is not essential to marriage. But if the partners in a relationship marked by a commitment to being a "we" *are* sexually active, there are good reasons for them to commit to being sexually active exclusively with each other.²²⁰

²¹⁸ I owe this point to SCRUTON, *supra* note 110.

²¹⁹ *Contra* MIKE W. MARTIN, LOVE'S VIRTUES 85 (1996).

²²⁰ *Cf.* MARIE M. FORTUNE, LOVE DOES NO HARM: SEXUAL ETHICS FOR THE REST OF US 132 (1995) (Monogamy offers "many people . . . a way to focus their emotional and sexual energy in ways that are most fulfilling. It is also practical: given limited

The argument for making such a commitment is relatively simple. Sexual intercourse can bond people intensely with each other. Thus, sexual contact with someone other than one's partner will bond one with that person in a way that may disrupt one's connection with one's partner by displacing her or him from the undisputed center of one's affections²²¹ and creating a space she or he cannot share. The result may be the "piecemeal erosion"—or the dramatic disruption—of one's emotional connection with one's partner.²²² This is true not only because sex can bond people but because non-exclusivity often stands in the way of full verbal openness between partners, as well; worried about the possibility of jealousy—even in theoretically non-monogamous relationships—we conceal our actions, and in turn disconnect our hearts. In some cases, one can train oneself to avoid linking sexual and emotional involvement. But this is easier said than done, and sexual contact and sexual desire may have more unsettling effects than one intends.

Sexual relationships with people other than one's partner drain not only emotional energy but time from one's relationship with her or him. Such relationships can sometimes serve as ways of avoiding the greater intimacy and vulnerability to which a more intense focus on a partner can give rise.²²³ Only a limited number of couples seem to be non-monogamous,²²⁴ and the fact that a relationship is not sexually exclusive may suggest that it is more likely to end than it would were it monogamous.²²⁵ "Most enduring relationships seem to need the relative safety of monogamy."²²⁶ An exclusive relationship seems to be more

time and energy, it is simply easier to manage involvement with only one other person.").

²²¹ Cf. JAMES A. PIKE, *YOU & THE NEW MORALITY: 74 CASES* 132-33 (1967).

²²² Cf. FAIRLIE, *supra* note 10, at 180.

²²³ On the motives for and dynamics of sexual infidelity in committed, exclusive relationships, see generally WALLERSTEIN & BLAKESLEE, *supra* note 18, at 258-66; ANNETTE LAWSON, *ADULTERY: AN ANALYSIS OF LOVE AND BETRAYAL* (1988); FRANK S. PITTMAN, *PRIVATE LIES: INFIDELITY AND THE BETRAYAL OF INTIMACY* (1989); EDWARD O. LAUMANN ET AL., *THE SOCIAL ORGANIZATION OF SEXUALITY* (1994); JANET ALESE REIBSTEIN & MARTIN RICHARDS, *SEXUAL ARRANGEMENTS: MARRIAGE AND THE TEMPTATION OF INFIDELITY* (1993).

²²⁴ JOHNSON, *supra* note 215, at 137-38.

²²⁵ BLUMSTEIN & SCHWARTZ, *supra* note 197, at 313-14.

²²⁶ JOHNSON, *supra* note 215, at 137-38.

stable, more likely, therefore, to offer people the security and empowerment that is love's greatest gift.

Suppose one does train oneself to disconnect sex from emotion when one is sexually involved with someone other than one's partner. One may then find it difficult to open up emotionally when engaging sexually with one's partner. Sexual encounters with multiple people make it more difficult to connect sexually with any of them;²²⁷ "even if it is possible to 'have sex' [the phrase is revealing] with someone . . . [other than one's partner] without loving that person, the fact that no love has been bestowed elsewhere does not mean that none has been withdrawn"²²⁸ from one's partner. Thus, one will have deprived oneself of the capacity to give oneself to, and bond with, one's partner through sexual contact.²²⁹ If a man says his affair means nothing, that it had no emotional significance, he is implying that he is detached—distanced from himself and his wife—that he does not give himself but holds himself in reserve sexually—that he is therefore not present in his sexual activity with his wife.²³⁰ One therefore has a good reason to avoid disconnecting sex and emotion, and to seek their reconnection if one has severed them. If they *are* linked, however, then it is clear that sexual contact with someone other than one's partner poses risks to one's relationship with her or him.

Sexual exclusivity provides a powerful symbolic expression of a partner's primacy in one's life; it indicates that she or he is uniquely

²²⁷ Cf. SIDNEY CORNELIA CALLAHAN, *BEYOND BIRTH CONTROL: THE CHRISTIAN EXPERIENCE OF SEX* 125 (1968) ("The adolescent sexual freedom of a society like Margaret Mead's Samoa, for instance, cannot be automatically applied. In such a system almost everyone becomes adept at giving and getting sexual pleasure and there is less aggression and tension, but then there is also little achievement, individuality, or orientation to an intense marital attachment. The communal family which keeps incidents of premarital pregnancy from being a disaster also engulfs the individual, the marital pair, and the parent-child relationship. A lack of sexual inhibition and restraint in adolescence can be easily managed in a culture in which survival does not depend upon individual disciplined effort to achieve and learn.").

²²⁸ FAIRLIE, *supra* note 10, at 180.

²²⁹ Cf. *id.*; BRITISH COUNCIL OF CHURCHES, *SEX AND MORALITY: A REPORT TO THE BRITISH COUNCIL OF CHURCHES* 56 (1966) (quoting HÄRING, *supra* note 205, at 557, and GERKEN, *supra* note 99, at 116).

²³⁰ Thanks David R. Larson for helping me to see this point.

“welcomed, desired, and treasured.”²³¹ Sexual contact in a non-exclusive relationship will be less likely to carry this meaning.²³² Its ability to do so can enable it not only to communicate love but to serve as a powerful source of support for a relationship. Maintaining intimate connections is difficult; love is work; marriage is work. When partners focus sexually just on each other, they enable their sexual connection to serve as a powerful source of relational bonding. The more attenuated their sexual connection, the less effective it can be in helping them to renew or recover their communion with each other at difficult times. Thus, even if sex with others does not actually disconnect them from each other, it may make it harder for them to draw on their sexual bond to connect or reconnect them with each other.²³³

The majority of couples commit to sexually exclusive relationships; and even in the absence of an explicit promise of exclusivity, each partner is ordinarily entitled to assume that the other has made such a promise, given both the widespread assumption in our culture that exclusivity is part of what we promise when we marry and the valuable role exclusivity can play in sustaining and embodying love. The failure to keep promises of sexual exclusivity is undoubtedly the most dramatic and obvious kind of marital infidelity. This is so because we characteristically assume that sexual contact is intensely emotionally laden; the loss of the beloved’s body matters because it renders more likely the loss of her or his heart. Of course, one can in principle be sexually unfaithful with limited emotional consequences,²³⁴ just as one can avoid sexual contact with anyone other than one’s partner while being emotionally unfaithful in profoundly devastating ways. Sexual exclusivity and fidelity are not identical. Nonetheless, the violation of a commitment to exclusivity can breed disconnect even if the extramarital

²³¹ I owe this phrase to NAOMI WOLF, *THE BEAUTY MYTH: HOW IMAGES OF BEAUTY ARE USED AGAINST WOMEN* 148 (1991), though the context in which she employs it is not directly related to the one in which I make use of it. On the point I make in the text, see MARTIN, *supra* note 219, at 77.

²³² David R. Larson, *Homosexuality* 24 (1983) (unpublished paper presented to a session of the Biblical Research Institute of the General Conference of Seventh-Day Adventists in Loma Linda, California).

²³³ CELIA A. HAHN, *SEXUAL PARADOX: CREATIVE TENSIONS IN OUR LIVES AND IN OUR CONGREGATIONS* 194 (1991).

²³⁴ Though this may be, as I have already suggested, because one has rendered oneself unable to give ecstatically to one’s partner through one’s sexuality as well.

relationship itself is not exceptionally intense. “What comes between a couple when one of them is unfaithful is, not the other woman or the other man, but what now cannot be shared by them.”²³⁵ Extramarital sex is risky at best; and the point of a promise to be sexually exclusive is to remove from the arena of calculation the question of how disruptive an extramarital sexual encounter might be. Such a commitment means, at minimum, that one has ruled out the possibility of taking the risk that such an encounter might pose to one’s relationship with one’s partner.

Over and above the general reasons why couples might wish to commit to sexually exclusive relationships, then, a promise of exclusivity gives each a further reason to avoid extramarital sex. Ordinarily, as long as they are married, this further reason will be decisive, even if more general considerations are not. This is likely to be so because of the centrality of sexual exclusivity to most people’s marital commitments and because of the importance most people assign—and expect their partners to assign—to those commitments in their scale of values. If a commitment to exclusivity is integral to a marital commitment, one will be excused from one’s commitment to exclusivity only if one is excused from one’s marital commitment itself. One’s commitment to intimacy with one’s partner provides an additional reason for not breaking one’s promise, as well: the desire to avoid jealous conflict will almost certainly mean concealing one’s violation of one’s promise, which means in turn that one will have created a further barrier to connection with one’s partner.

There are, of course, circumstances under which promises may, even must, be broken. In the case of less serious commitments, of course, we often readily concede that any number of self-interested concerns justify breach. But given the importance of marital commitments, the centrality of promises of exclusivity within those commitments, and our characteristic view of such commitments as relatively unqualified and designed precisely to preclude certain kinds of self-interested choices, it is difficult to maintain that such concerns would warrant violating promises of sexual exclusivity. Other considerations may. The desire to enhance self-esteem, arouse creative energies, or experience

²³⁵ FAIRLIE, *supra* note 10, at 180.

new pleasures will not suffice.²³⁶ A promise of fidelity may have been premised on significant assumptions that have turned out to be false. It may not have been made freely. These defects in one's commitment are all likely, however, to be associated with flaws—perhaps structural ones—vitiating one's marital commitment as a whole. It is difficult to think of a case (apart from one in which one was released from one's obligation by one's partner or in which one's commitment was qualified by explicit or implicit exception clauses) in which an overall commitment to a partner that included a promise of sexual exclusivity was valid but one was somehow excused from one's sub-commitment to exclusivity.

5. Sexually open relationships are risky for partners

Sexual exclusivity will be a premise of most people's intimate relationships. But some partners may agree that theirs should be a sexually open relationship—one in which, while each remains *emotionally* the center of the other's loyalties, *sexual* involvement with other partners is acceptable under some circumstances. Perhaps we can so separate sexuality from emotion that a loving partnership—indeed a passionate and emotionally exclusive one—could be combined with a sexually open one. I think people ought to be wary about making such arrangements.

For Michel Foucault, if I understand him aright, the privileging of sexuality as central to personality and identity is a contingent and arbitrary product of certain patterns of social relationship. If sexuality is not, as Foucault suggested, it should not be, privileged as the principal site of pleasure, but relativized, and if pleasures are to be sought in diverse places and in diverse ways, sexuality would cease to be emotionally central. Perhaps it would be enjoyed simply as good food is enjoyed, with no assumption that sharing a sexual experience with someone other than one's partner would have any more effect on the partner's emotional centrality than sharing an exquisite meal with someone other than her or him.

Foucault sought to embody this vision of sexuality in his relationship with his partner, Daniel Defert. Deeply attached to Defert,

²³⁶ *Contra* MARTIN, *supra* note 219, at 86-87.

Foucault passed through “torment and despair” when their love seemed threatened with dissolution.²³⁷ His vulnerability and sensitivity to Defert made clear that theirs was anything but a casual and detached relationship. By 1964, the two “were . . . living together in the rue de Dr. Finlay, and had resolved to spend the rest of their lives together.”²³⁸ During this time, each “had numerous more or less casual sexual encounters.”²³⁹ Nonetheless, Foucault told Werner Schroeter in 1982:

I am living in a state of passion with someone. Perhaps, at some given moment, this passion took a turn for love. Truly, this is a state of passion between the two of us, a permanent state with no reason to come to an end other than itself, one in which I am entirely invested, one running through me. I think there is nothing in the world, nothing, no matter what, that could stop me from going to see him again, or speaking to him.²⁴⁰

Foucault clearly believed it was possible to have passionate love—intense, all-consuming, all-embracing love—without monogamy. He could have argued for an individualistic detachment that made the intensity of monogamous exclusivity irrelevant. He did not. He certainly does not seem to have rejected a view of love in which a single partner enjoys unquestioned preeminence in one’s affections and is unequivocally integral to one’s identity. His concerns with how Defert felt about him, his vulnerability to the possibility of losing the relationship, make clear that he did not regard their love as something casual, to be affirmed or dispensed with discretionarily.

²³⁷ DIDIER ERIBON, MICHEL FOUCAULT 141 (Betsy Wing trans., 1991).

²³⁸ DAVID MACEY, THE LIVES OF MICHEL FOUCAULT: A BIOGRAPHY 145 (1994).

²³⁹ MACEY, *supra* note 238, at 145.

²⁴⁰ MICHEL FOUCAULT, CONVERSATION WITH WERNER SCHROETER 43 (Gérard Courant ed., 1982); *see also* ERIBON, *supra* note 237, at 141-42. Macy’s translation of the same passage reads: “For eighteen years, I have been living in a state of passion for someone. Perhaps that passion took the form of love at some given moment. In truth, it is a state of passion between us, a permanent state . . . in which I am completely involved . . . I believe that there is not a single thing in the world, nothing, nothing at all, that would stop me when I have to go back to him, to talk to him.” MACEY, *supra* note 238, at 146.

While the Foucault-Defert relationship may suggest that passionate love and nonmonogamy can coexist, it is not clear that this possibility is sufficient to make nonmonogamy attractive for couples interested in sustaining and deepening their connections with each other.

It may not be easy to dissociate sexual from emotional bonding in the way required to make nonmonogamy work. There may or may not be biological drives that associate sex with feelings of connection, tenderness, and care. Whether there are or not, social conditioning sometimes encourages us to associate sex with attachment and intimacy. Whatever their sources, assumptions about sexuality and a tendency to link emotional and sexual exclusivity would obviously get in the way of attempts to disconnect love and sexuality. Of course, we can, to some extent, reshape or ignore socially or biologically engendered dispositions. But while they continue to obtain in a given person's life, it would be difficult or impossible for that person not to act against her or his marriage through nonmonogamy.

There is, in any case, good reason to think of the body as a natural symbol of the self and of sexual intercourse as a natural and almost perfect symbol of shared identity, of intimate exposure and interconnection. If this is so, then it will be easy—even if by no means inevitable—to build (or discover) a bridge between sex and emotion. And the existence of such a bridge means that monogamy matters if exclusive, intense love matters. The disconnect of sexuality from intimacy required to achieve this goal would make the partners' sexual contact less meaningful and powerful, and deprive their sexual experiences of an emotional valence these experiences might otherwise have.

The construction of male sexuality often generates a detachment and isolation that, as I have already suggested, makes it difficult or impossible for men to be emotionally present in and through their sexuality, to link sex with the sharing of identity. And, engaging in sex with various people, especially (though not only) if one is not emotionally bonded with them, can certainly make such disconnect more likely. For these and other reasons, not everyone will spontaneously experience sex as linked with deep emotion or as contributing to the creation and maintenance of a shared identity. At the same time, the intense desire that

can be associated with sex, and the bonding and vulnerability it can elicit, have the potential to enrich and deepen a personal relationship, to enable even greater disclosure, intensity of focus, and solidity of commitment. Sex cannot, and should not, be the mainstay of a relationship, but as we ask how—as a society and as persons—we might best construct styles of sexual being, we would do well to foster a sexuality that can deepen and enrich our loves. A radical voluntarism is not in order; we cannot simply choose to be a certain way sexually. But we can shape and cultivate sexual styles that will integrate desire and care, sex and love, so that sex can foster, deepen, and intensify personal connection. And if we choose to do so, we will be unlikely to regard nonmonogamy as necessary or desirable.

A comment by Foucault himself points, I think, to the connection between sex and emotion and the power of this connection. Gay relationships, he suggests, are often stereotyped as involving anonymous encounters between beautiful young men—encounters without pasts or futures. Stereotypes like this reinforce unreal expectations regarding beauty. They also make gay relationships less threatening to the established order, he argued.²⁴¹ They do so, he said, because they eliminate the disturbing element in affection, tenderness, fidelity, comradeship, companionship, for which a fairly controlled society cannot make room, for fear that alliances will be formed, that unexpected lines of force will appear. I think it is that that makes homosexuality ‘unsettling’: the homosexual way of life, much more so than the sexual act itself. Imagining a sexual act which is against the law or nature doesn’t worry people. But when individuals begin to love one another, it does become problematical.²⁴²

Is not the implication that the sexual intimacy experienced by two gay men can lead for the formation of alliances, even to love? I think this insightful analysis points precisely to the connection, at whatever level, between sex and the sharing of identity, suggesting that emotional connection and physical connection are difficult to separate from each other. And if this is so, then the cultivation of sexuality in

²⁴¹ Surely rightly. *Liaisons* between nameless, disconnected individuals fit nicely into the satisfaction system of a capitalist economy.

²⁴² *De l’Amitié comme mode de vie*, GAI PIED, April 1981, at 38-39; MACEY, *supra* note 238, at 367. The article is a conversation with an unnamed interviewer.

order to ensure that it contributes to the intensification of the bonding between two people and their vulnerability and devotion to each other remains a relevant task, entailing, among other things, a continued commitment to sexual fidelity as a dimension of shared identity.

The quest for pleasure outside a marriage may not only reflect, but reinforce, doubts about the capacity of the partners to accept each other and explore their sexuality together in enriching ways. By contrast, imagination may enable us to see that the pleasure one may seek outside one's marriage can be achieved in one's relationship with one's partner. Trust, commitment, acceptance, and humor can enable partners to recognize, express, explore, evaluate, and respond to the infinite diversity of their desires. And coming to terms with these desires within the context of the marital relationship can be a source of empowerment and growth for the relationship.²⁴³

6. Sexual exclusivity need not be bound up with patriarchy or subordination

For some people, the rejection of sexual monogamy has become an expression not merely of a desire for diverse kinds of pleasure but of a moral and political opposition to patriarchal dominance and a celebration of autonomy. In a thoughtful, well-written, and morally serious reflection on women and sexuality, Mariana Valverde defends this view, offering—inadvertently—some confirmation, I think, of the claim that nonmonogamy divides and disconnects. She writes:

I was the lover of a woman who had another regular lover. Both her other lover and I experienced jealousy and dejection at various times. Yet there were times when all that vanished, and we felt a disinterested affection for one another, rooted in a sense of common purpose. We felt pleasure in putting our political ideals into practice.²⁴⁴

²⁴³ PENELOPE WASHBOURN, *BECOMING WOMAN: THE QUEST FOR WHOLENESS IN FEMALE EXPERIENCE* 88-89 (1977).

²⁴⁴ MARIANA VALVERDE, *SEX, POWER AND PLEASURE* 205 (1985).

I can only applaud the “disinterested affection”²⁴⁵ that Valverde and her friends felt for each other on occasion, but it is difficult for me not to regard this situation, which Valverde describes as “difficult,”²⁴⁶ as unnecessary, to see the jealousy and dejection as paid needlessly as the price of actualizing political ideals.²⁴⁷ To be sure, monogamy has been forced on women to guarantee men’s sexual control over women and the “purity” of their “bloodlines.”²⁴⁸ But to reject patriarchy’s oppressive use of monogamy does not, I think, require that one subject others and oneself to the pain of jealousy and dejection or to the loss of emotional connection and centrality nonmonogamy is likely to engender.²⁴⁹

The demand for exclusivity—physical and emotional—is ridiculed as exhibiting possessiveness that implies that this fact alone is enough to invalidate it. But there is something disturbingly simplistic about this view. First, to expect fidelity to a promise is no more possessive in marriage than anywhere else. Normally, at any rate, when I have an obligation to you, you have a corresponding right to expect that obligation to be fulfilled. And it is surely reasonable that partners should expect fidelity in the context of marriage.²⁵⁰ Further, talk of “possession” implies a more external relationship between partners than one should obtain in a marriage. No one supposes that I am being “possessive” when I seek to keep my arm from being cut off or my eyes from being poked out. My body is integral to my self. In the same way, another with whom one is deeply united is also integral to one’s identity. To ask that she or he be faithful is not an expression of untoward domination, but rather an attempt to safeguard the integrity of one’s selfhood—and hers or his as well.²⁵¹

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ *Id.*

²⁴⁸ *Id.*

²⁴⁹ *Id.*

²⁵⁰ *Cf.* SCRUTON, *supra* note 110, at 339-43.

²⁵¹ On the connection between dealing with relational ruptures and differing understandings of selfhood in relationships, see JULIUS M.E. MORAVCSIK, *The Perils of Friendship and Conceptions of the Self*, in HUMAN AGENCY: LANGUAGE, DUTY, AND VALUE—PHILOSOPHICAL ESSAYS IN HONOR OF J.O. URMSON 132-51 (Jonathan Dancy et al. eds., 1988).

Real love does require a sacrifice of autonomy and independence; monogamy compromises freedom. In the end of the day, however, freedom from ties with others is not the only good and not the highest good. It is not, indeed, the only kind of freedom that counts. To accept reality is to accept our responsibilities to others. To love is to accept “relative heteronomy,”²⁵² to acknowledge the other’s claim on me and thus my own lack of freedom. At the same time, though, as monogamy is a recognition of the other’s need, to which it enables me more effectively to respond, it also enables *me* to receive more than I otherwise could, an intense and secure and empowering love. It offers the liberating security that only a promised, reliable love can make available.

H. Violating the Marital Norm

Thus, taking the demands of love seriously means recognizing that a wide range of behaviors is incompatible with authentic marriage. It is possible for someone to violate the norms of marriage by not only being sexually unfaithful, humiliating, or physically abusive, but by doing a variety of other things, including:

- accepting or contributing to emotional inequality and unequal emotional engagement;
- asserting independence rather than interdependence;
- assuming she or he is dominant rather than her or his spouse’s equal, or demanding unilateral control of the relationship;
- avoiding, or doing nothing to further, self-disclosure, self-expression, and deep emotional and intellectual interchange, or being silent or passive in the face of engagement—quiet sulking or voiceless nagging are far more frustrating and difficult to deal with than overt conflict (and sex is no substitute for direct engagement);
- being insensitive to her or his capacity to cause hurts of various kinds—perhaps including a willingness to repeat behaviors known to cause distress;

²⁵² AGNES HELLER, *BEYOND JUSTICE* 320 (1987).

- being sexually or emotionally unfaithful;
- condescending;
- conveying the message that her or his spouse ought not to be feeling what she or he does, in fact, feel;
- demonstrating a lack of commitment to drawing her or his spouse out communicatively, to understanding her or his spouse's needs—being present physically without connecting and communicating does not make a spouse a partner;
- disregarding activities or topics her or his spouse regards as centrally important;
- failing aptly to reciprocate her or his spouse's attempts to offer nurture and to avoid aggressive or destructive behavior;
- failing to foster or exhibit mutuality or withholding equal companionship;
- failing to offer credible empathy grounded in clear understanding of her or his spouse's feelings;
- failing to understand or to try to do so, exhibiting an inability or unwillingness to see one clearly;
- failing to volunteer intimate thoughts and feelings and engage in dialogue about them or to disclose fears and hopes;
- fleeing closeness or vulnerability or maintaining distance;
- giving her or his work or her or his relationship with an institution, another person, or a group of people the prime priority or emotional centrality her or his spouse deserves;
- intentionally or unintentionally leaving her or his spouse to guess what she or he is thinking;
- “loving” her or his spouse's money or prestige rather than loving the other as a unique self;
- lying or dissimulating;
- maintaining emotional distance from her or his spouse—especially if she or he simultaneously expects that the spouse offer her or him emotional support;

- making it necessary—by means of passivity or inactivity—for her or his spouse consistently to initiate conversations about serious matters (especially, thought not only, if it appears to derive from a lack of genuine interest in deeper communication)—a deeply intimate friendship is hard to maintain if one feels that one must always do the principal work of sustaining the relationship;
- not accepting her or his spouse as she or he really is or engaging in the intimate communication that makes acceptance possible (both because neither will truly know the other without such communication, and because without it the requisite acceptance will be difficult to convey);
- not being willing to give or accept emotional support, or replacing support with criticism;
- not integrating sexual activity with personal connection;
- not listening—perhaps exhibiting non-verbal cues indicating lack of interest in what one is saying, interrupting, or attempting to one-up rather than engage with her or his spouse;
- not offering verbal feedback;
- presuming that she or he will “star” in the relationship;
- repressing feelings and avoiding deep, serious, intimate emotional engagement;
- substituting need or its reflex, detached care-taking, for loving intimacy, especially if she or he simultaneously expects intimate support; it is good to be needed, but if one spouse consistently confuses needing with loving her or his spouse, she or he is unlikely to be a deeply intimate friend;
- treating her or his marriage as something other than as an inherently, intrinsically valuable intimate relationship; or
- unnecessarily withholding information about her or his plans and hopes for the future, about past or present events and circumstances in her or his life—family relationships, friendships and social encounters, work-related experiences, and religious and sexual experiences—and about her or his intel-

lectual, emotional, sexual, recreational, and other interests, attitudes, inclinations, and desires.²⁵³

A spouse may fail to fulfill these requirements, not out of a desire to dominate, coerce, or manipulate, but because of a genuine incapacity for intimacy, whether innate, inbred, or sedimented through habitual choice. They may reflect the effect of social and structural forces as well as individual challenges and limitations. The absence of intimate connection is painful and debilitating whatever its cause. Someone may be imprisoned within her or his own silence, yearning to connect. Or perhaps she or he is unconcerned about intimacy and is exhibiting contempt by not communicating. Either way, her or his partner will probably be silenced as well.²⁵⁴ And if “dialogue dies, as it can with either person’s failure to speak, to hear, or to acknowledge the other, then part of the self also dies.”²⁵⁵ Being a “we” is serious business.

A commitment to being a “we” gives each partner the gift of a reassuring, empowering love that matters a great deal as a source of identity, value, meaning, and hope. The requirements it generates are correspondingly demanding. But they are not arbitrary impositions; they are expressions of what the deepest and most desirable kind of love—a relationship between deeply intimate friends—is really like.

²⁵³ See HITE, *supra* note 16, at 27-81, 90-158, from which much—though not all—of the material in the next few paragraphs is paraphrased.

²⁵⁴ *Id.* at 44; *cf.* JOHN MILTON, *THE DOCTRINE AND DISCIPLINE OF DIVORCE, THE WORKS OF JOHN MILTON* 391 (1931), and the observations of the women mentioned in HITE, *supra* note 16, at 42-43. According to Hite, 82% of women surveyed “say they are loneliest when married to someone with whom they cannot talk.” HITE, *supra* note 16, at 42-43. Very few women said they “were loneliest when they had no relationship. . . . The harshest loneliness is being with someone with whom you cannot make contact.” *Id.* Or, to quote Germaine Greer, “loneliness is never more cruel than when it is felt in close propinquity with someone who has ceased to communicate.” Ann Hood, *It’s a Wonderful Divorce*, in *WOMEN ON DIVORCE: A BEDSIDE COMPANION* 129 (Penny Kaganoff & Susan Spano eds., 1995).

²⁵⁵ DANA CROWLEY JACK, *SILENCING THE SELF: WOMEN AND DEPRESSION* 36 (1993).

V. CONCLUSION

My goal in this article has been to render a particular vision of marriage as coherent, intelligible, and attractive. It is my hope, in turn, that this vision can provide a useful basis for reflection on the law of marriage—and, more broadly, on the status and significance of marriage as a societal (which need not mean public) institution.

This vision of marriage is rooted in an understanding of marriage as the actualization of love. The account of love that grounds it is, in one sense, recognizably romantic, since it is rooted in a positive valuation of individual choice and personal connection, of very close personal relationship seen as valuable primarily for its own sake. It is not, on the other hand, romantic in another sense, for it understands love as a chosen orientation of the self, not as a fickle feeling. Feelings—of delight, desire, and care—are integral, but not essential,²⁵⁶ to love, and they help to delineate love's *telos*—complete, permanent, and unconditional self-gift. But alterations in mood do not spell the end of love, and so of marriage, as understood here.

Marriage, I suggest, gives love what love wants most. To understand what love desires and intends is to understand what kind of relationship marriage ought to be. Thus, I offer an account of marital obligation rooted in love's own intentions. These intentions, I suggest, point to the conclusion that a properly marital commitment is a commitment to the creation or solidification of a shared identity, a "we," and that this will entail a variety of more specific commitments to communication, truthfulness, vulnerability, acceptance, attentiveness and understanding, respect, equality, and, preferably, exclusivity. This seems to me to be the most fruitful way to proceed: to ask how marriage can serve love's own ends. By contrast, I argue, an alternate approach, one that seeks to elaborate a normative structure for marriage in light of the moral limits on sex, simply does not work. This kind of approach can highlight useful features of human sexual experience, and these will undoubtedly be relevant to thinking about love and marriage. But, it promises too much. Plausible arguments in sexual ethics will not solve all, or even most, of the important questions in marital ethics.

²⁵⁶ I owe this distinction to FARLEY, *supra* note 31.

I do not presume to have shown that no other pattern for organizing the intimate connections, much less the family lives, of human persons is defensible. I do believe, however, that I have shown why a vision of marriage as the committed maintenance of a shared identity might seem to flow naturally from a recognizable and appealing conception of love, and why it might reasonably entail a cluster of familiar expectations.

I have attempted to articulate a morally serious, and simultaneously appealing, account of marriage, one that acknowledges the reasons we have for valuing both individual choice and the stability of relationships, and that roots them both in a coherent and positive vision of love. Accepting this account, which is similar to, but not identical with, either a popular liberal, individualistic, and romantic understanding of marriage and a traditional and often religious vision, could have useful implications for ongoing debates in our society about a variety of issues. It might help to explain, for instance, why it would be perfectly reasonable for appropriate societal institutions to recognize same-sex marriages. And, it could also have implications for the way in which we ought to think about divorce. In a successor article in the *Florida Coastal Law Review*, I will elaborate on the implications for our thinking about divorce, similar to the understanding of marriage, as I have elaborated in this article.