

Marital Pluralism: Making Marriage Safer for Love

Eric M. Cave

Love and marriage, love and marriage,
They go together like a horse and carriage.

—Sammy Cahn and Jimmy Van Heusen,
“Love and Marriage” (performed by Frank Sinatra)

Western-style marriage has been around for a long time.¹ Arguably, romantic love is a more recent product of Western civilization.² And the notion that romantic love and marriage belong together is more recent still.³ But novel or not, the idea that we ought to strive to conjoin love and marriage has its attractions. For marriage typically requires individuals to spend considerable time doing things together. And individuals who love one another typically want to do things together a considerable amount of the time. Thus, love can transform what is potentially a very burdensome aspect of marriage into a benefit.

I regard the conjunction of love and marriage as worth pursuing. But even were it not, we would have reason to concern ourselves with efforts to conjoin these two things.⁴ For one plausible version of the Principle of Autonomy requires us to do what we can to enable individuals to pursue their ends effectively, at least so long as their so doing does not threaten significant harm to themselves or anyone else.⁵ Many among us have as an end conjoining love and marriage. And usually, pursuit of this end does not threaten significant harm to anyone.⁶ Thus, considerations of autonomy require us to do what we can to help those aspiring to conjoined love and marriage to pursue their aspirations effectively.

However we may have fared in the past at conjoining love and marriage, we apparently could use some help in this regard at present.⁷ People have blamed politicians, the entertainment industry, the tax system, and a paternalistic social order, among other things, for our lack of success in conjoining love and marriage. Perhaps there is some truth to some of these accusations. But I want to suggest that our conception of the marriage bond plays a role in our difficulties here.

In marrying one another, members of our community legally obligate themselves to do certain things, and to refrain from doing others. But few regard marriage as involving only legal obligations. Many believe that in the absence of an arrangement to the contrary, married individuals have an extralegal obligation to be sexually faithful to one another.⁸ It is also widely believed that married individuals have an extralegal obligation to share in the domestic tasks involved in maintaining a household together, although

this obligation leaves them considerable latitude in apportioning these tasks. And finally, many believe that married individuals have an extralegal obligation to support one another, economically or otherwise, in times of need, unless they have made alternative arrangements. In the absence of rationally compelling arguments for discounting these beliefs, I shall take it as a *datum* that marriage imposes the set of extralegal obligations they delineate upon those who marry.⁹ Call this set of obligations the *marriage bond*.¹⁰ And call an account of the nature and content of this set of obligations a *conception of the marriage bond*.

Here I sketch a conception of the marriage bond prominent among us, the contract conception. I argue that on this conception, the marriage bond is uncongenial to romantic love among at least some of us, whom I dub the contract-intolerant.¹¹ Drawing upon a recently developed theory of rational commitment, I articulate a conception of the marriage bond more congenial to romantic love among such individuals, then defend this conception from a number of objections. I close by considering the implications of these arguments for how we ought to conceive of the marriage bond in a psychologically diverse community, one containing both contract-tolerant and -intolerant individuals, if we wish to make marriage safer for love.¹²

Marriage, as we currently practice it, yields those participating in it substantial material benefits: affordable health insurance, the right to recover damages in the event of the wrongful death of a spouse, and the like. I shall not here consider whether our practice of extending such benefits to married couples is justified. Nor does the argument developed here imply that we should extend such benefits to all who participate in something that we should recognize as a marriage bond. Determining who, if anyone, ought to receive such benefits requires consideration of many more factors than the congeniality of various marital arrangements with love, the focus of our current inquiry.

A Preliminary Worry about Conjoined Love and Marriage

In motivating this inquiry, we have assumed that the pursuit of conjoined love and marriage does not threaten significant harm to anyone. But feminists have long criticized both romantic love and marriage for being seriously oppressive to women.¹³ If the more extreme of these criticisms are correct, then unless we implausibly suppose that the failings of love and marriage cancel one another out, conjoined love and marriage is a social ill of roughly the same order of magnitude as slavery.¹⁴ As such, it is not sufficiently harmless that we can justify efforts to help those aspiring to it to realize their aspirations by appealing to considerations of autonomy. Conscious of such feminist criticisms of love and marriage, one might worry that any efforts to make marriage safer for love are themselves unjustifiable.¹⁵

But distinguish between *essentially oppressive arrangements*, ones which are presently coercive, unequal, and unfair, and which cannot be rehabilitated without making them something other than what they are (e.g., hereditary caste systems), and *contingently oppressive arrangements*, ones which are presently oppressive, but corrigibly so.¹⁶ Clearly, we cannot appeal to con-

siderations of autonomy to justify efforts to help individuals participate in seriously and essentially oppressive arrangements, for such arrangements always threaten significant harm to someone. But the most plausible feminist criticisms of romantic love, that it renders women dependent and even servile, enables men to be parasitical upon women's energy and labor, mystifies and legitimates male hegemony, tempts women to live for and through men, and robs them of the insight, strength, and will to organize to better their situations, do not establish that love is a seriously and essentially oppressive arrangement.¹⁷ For these failings may not characterize love wherever it presently exists.¹⁸ And even if they do, they may be remediable by means of economic, social, and legal reforms.¹⁹ Nor do the most plausible feminist criticisms of marriage, that it burdens women with economic dependence, unfair distribution of labor, inequalities in power and status, obligations which are not voluntarily assumed, and compromised physical security, establish that it is seriously and essentially oppressive.²⁰ For these failings of marriage may likewise be remediable.²¹ Thus, the most plausible feminist criticisms of love and marriage establish that they are, at worst, seriously and contingently oppressive.

If love and marriage are but seriously and contingently oppressive, then efforts to make marriage safer for love may help at least some individuals within at least some contexts to pursue their ends more effectively. And under the right economic, social, and legal conditions, such efforts may do so without threatening serious harm to anyone. Thus, we can justify efforts to make marriage safer for love by an appeal to autonomy, although perhaps only as part of a package including economic, social, and legal reforms capable of bringing romantic love and marriage into line with the most plausible feminist criticisms of these arrangements. But then I do not intend any measures I end up recommending here to supplant such reforms, only to supplement them.

Love

It would be hard to determine anything about the relative congeniality of romantic love and any conception of the marriage bond without first saying something about the nature of romantic love. Following the path of philosophical least resistance, we shall assume that romantic love is a complex consisting of some combination of the following elements: attitudes, dispositions, judgments, emotions, feelings.²² Here we shall identify a constitutive element of this complex, an element in the absence of which we would normally take ourselves to be dealing with something besides romantic love.²³ To keep things manageable, we shall assume that the two conceptions of the marriage bond to follow are neutral in their effects upon any other such features of romantic love that there might be. Given this assumption, having shown that one of these conceptions is uncongenial to a constitutive feature of romantic love while the other is not, we can conclude that the one is more congenial to romantic love than the other.

Let a *concern* be any consideration that enters an agent's reasoning about what to do. Romantic love, whatever else it involves, involves a concern for

shared agency.²⁴ Shared agency, as I shall understand it, can take one of two forms.²⁵ First, agents might come to share some of the same concerns, then act jointly upon such shared concerns.²⁶ And second, each of the agents might make acting upon some of the other's concerns a concern of her own, then either might act individually upon such a concern.²⁷

We shall understand a concern to participate in both of these forms of shared agency with another, a concern which cannot be reduced to some set of instrumental considerations, to be constitutive of romantic love. This understanding is at odds with at least some established usages of the term "romantic love." Within the literary tradition, for instance, love is sometimes called "romantic" which involves a concern for self-sacrifice of such an extreme sort as to preclude shared agency altogether.²⁸ But the understanding of romantic love as involving constitutively a concern for shared agency is implied by virtually every conception of romantic love inspired by the Aristophanic ideal of erotic love as a passion for union.²⁹ Since this ideal holds wide sway among us, we can expect many to accept this understanding of romantic love on its face. And those who reject the Aristophanic ideal ought to accept this understanding for the sake of argument. For as a matter of practice, both social and legal, marriage conjoins the agency of those who marry in the above ways. Thus, the conceptions of romantic love most compatible with marriage incorporate just the concern for shared agency we have identified. If we fail to make marriage safer for such conceptions, then the attempt to make marriage safer for any conception of romantic love is probably vain.

The Contract Conception of the Marriage Bond

The contract conception of the marriage bond is most fully articulated in the writings of Locke, Kant, and Hegel.³⁰ Although these three disagree on many matters of detail, they agree that in marrying one another, individuals constitute a contract. They agree that the terms of this contract determine the obligations comprising the marriage bond. And they agree that some form of voluntarism grounds these obligations: by agreeing appropriately to the terms of a marriage contract, individuals obligate themselves morally to act by these terms.³¹ We shall take these points of agreement as the defining features of the contract conception. And for the purposes of this paper, we shall assume that in marrying one another, individuals appropriately agree to a contract requiring them to do just the sorts of things required by the marriage bond.³²

One might think that the contract conception is an esoteric philosophical theory, discontinuous with our everyday thinking about marriage and thus incapable of appreciably affecting the course of romantic love among married members of our community. But a contract is just an agreement which brings about an exchange of obligations and rights between two or more individuals. And we treat the extralegal obligations comprising the marriage bond, and any rights that might correspond to these, as if they are the product of an exchange occurring when two people agree (appropriately) to be married to one another. Further, we treat the marriage bond as if its formation can be blocked by precisely the same sorts of things that can block the formation of

extralegal contractual obligations: force, fraud, and incapacitation. Finally, legally speaking, we treat marriage as a contract, albeit one the terms of which are determined primarily by the state, and which can be dissolved only at the state's behest.³³ A consequence of this and of the widely believed claim that we have a moral obligation to fulfill our legal obligations is that marriage involves extralegal obligations determined by a contract constituted by individuals in marrying one another.³⁴ From these observations, I conclude that the contract conception is continuous with our everyday thinking about marriage and thus capable of appreciably affecting the course of romantic love among married members of our community.

Contracts are binding devices. On the contract conception, the marriage bond is a device enabling individuals to bind one another to a set of terms each may subsequently be tempted to violate. But the marriage bond, so conceived, threatens romantic love in two ways.

First, contractual marital obligations affect at least some bound agents in a manner inimical to romantic love. They are typically experienced by bound agents as requirements imposed from outside of themselves by their contractual partners. This is especially true when agents are tempted to do other than what they are contractually obligated to do. But at least some agents respond to obligations experienced as alien impositions with resentment against those binding them and a desire to reestablish their independence. And such a response is incompatible with the concern for shared agency constitutive of romantic love.

One might think that reminding agents of their own roles in constituting the contracts binding them would disalienate them from contractual obligations. In some cases, it might. But as the time separating the temporal stages of an agent increases, the number and strength of psychological connections such as memories, intentions, and beliefs between these stages tend to decrease. And the fewer and weaker the psychological connections between any two temporal stages of an agent become, the less likely the later stage will be to identify with the earlier stage, and to regard the earlier stage's actions as genuinely her own.³⁵ Thus, when an agent's present self has become sufficiently psychologically disconnected from the past self responsible for binding her contractually, an appeal to the past self's actions will fail to disalienate her from her contractual obligations.

Even when there are many and strong psychological connections between an agent's present self and a past self responsible for binding her contractually, there are other factors that can prevent an appeal to the past self's contracting behavior from disalienating her from her contractual obligations. These include the assumption of contractual obligations in the face of limited options, or without due consideration of alternatives, or under considerable stress or pressure, or in the grip of undue optimism about the future. And one or more of these factors is often at work when individuals are marrying one another. For these reasons, we cannot count on reminding agents of their own roles in constituting their marriage contracts to significantly diminish alienation from contractual marital obligations.

Second, contractual marital obligations affect at least some binding agents in a manner inimical to romantic love. Many can sustain romantic love only

if they believe that their love is reciprocated. And at least some are insecure enough about their own lovableness, and about the constancy of their partners, to require periodic assurances that their partners love them romantically to sustain such a belief. The marriage contract, by assumption, requires those bound by it to remain sexually faithful to one another, to cooperate in performing burdensome domestic tasks, and to support one another in times of need. Such behaviors are among the best indicators of the concern for shared agency constitutive of romantic love. But a married individual cannot be sure that such behaviors by her spouse are motivated by a concern for shared agency rather than by a disinclination to violate the obligations engendered by their marriage contract. Thus, by providing married individuals with a plausible alternative explanation for the faithful, cooperative, and supportive behaviors of their spouses, a contractual marriage bond prevents these behaviors from serving as reliable indicators of a concern for shared agency. And by so doing, such a marriage bond makes it difficult for married individuals who can sustain romantic love only if assured that their love is reciprocated to sustain such love for their spouses.

This difficulty is intensified by what we might call the “done deal” syndrome. Before they have bound themselves to a contract, individuals wishing to interact with one another each have an incentive to try to attract and retain the other’s interest. For each knows that her partner, not being bound to continue interacting with her, might forsake her at any moment for interaction with a more attractive prospect. But having bound themselves to a contract, individuals no longer have any such incentive. And at least some respond by allowing their efforts to attract and retain the interest of their partners to lapse. In the context of marriage, such lapses can inspire doubts about whether and how much lapsed individuals care about conjoining their agency with that of their spouses. And such doubts make it even more difficult for those who can sustain romantic love only if assured that their love is reciprocated to sustain such love for their spouses.

One might think that spouses could read one another well enough to obviate the need for such assurances.³⁶ But individuals cannot always make out their own concerns clearly, much less those of their spouses. Indeed, that some who are married complain of having been duped into marriage, that others live double lives, and that still others have secret extramarital affairs should raise doubts about the transparency of married individuals to one another. And even if spouses could perceive one another’s concerns with a high degree of accuracy, many would nonetheless doubt their perceptions as the result of feelings of inferiority, low self-esteem, and similar psychological effects. Thus, the claim that spouses are sufficiently transparent to one another to obviate the need for periodic assurances that their love is reciprocated is implausible.

Contractual marital obligations may not affect all of us so. Some may not respond to being bound contractually with resentment and the desire to reestablish their independence. And they may be able to sustain romantic love without periodic assurances that their love is reciprocated. Indeed, a contractual marriage bond may help some individuals to foster love. They may feel more inclined to love their partners with their fear of being forsaken

allayed by a contractual marriage bond. They may be moved by the threat of being bound contractually to a bitter antagonist to work harder on solving problems within a love relationship.³⁷ And when other concerns compete with love, those concerned to keep their agreements may find that a contractual marriage bond helps them to weather such competition with their love for one another intact.³⁸ Appealing to such claims, one might deny the unqualified assertion that a contractual marriage bond threatens romantic love.

Ceding this point, let us introduce a distinction. Call individuals who respond to contractual marital obligations with resentment and unrelieved insecurity about being loved *contract-intolerant*. And call individuals who do not exhibit such negative responses to contractual marital obligations, or who respond to such obligations positively, *contract-tolerant*. Clearly, the above arguments establish that contractual marital obligations are inimical to romantic love among the contract-intolerant, not the contract-tolerant. And they do not imply the impossibility of conjoining romantic love and such obligations for the contract-intolerant. Rather, they imply that forging a contractual marriage bond threatens the efforts of such individuals to nurture, sustain, or deepen their love relationships.

The Commitment Conception of the Marriage Bond

One might think that that the contract-intolerant are just not set up for marriage, that they would have the same difficulty conjoining love and marriage under any conception of the marriage bond. But this is not so. The contract-intolerant would have greater prospects of success conjoining love and marriage were they to conceive of marriage as involving a characteristic sort of commitment, and the marriage bond as reducing to the set of obligations engendered by this commitment.

The sort of commitment I have in mind is rational, not moral. On the analysis I shall invoke, commitment is our primary means of executing plans which translate our reasoning about what to do in the future into actions consistent with this reasoning.³⁹ To commit to *A*, on this analysis, is to adopt an intention to *A*, with an intention being a pro-attitude with a characteristic inertia that is both conduct-controlling and reason-guiding.⁴⁰

Being pro-attitudes, intentions have a certain motivational force. That is, conjoined to the appropriate beliefs, they can move agents to action. Having a characteristic inertia, intentions tend to persist, once formed, at least until reconsidered. If an intention persists until the time of the action it specifies, then barring some sort of interference, it will issue in this action. In this respect, intentions are conduct-controlling. And for so long as they persist, intentions are reason-guiding, marking off some issues as settled and constraining the further intentions that their possessors can consistently adopt.

Very roughly, a given intention is rational if it was rationally adopted or reaffirmed, and then subsequently rationally nonreconsidered.⁴¹ *S* rationally adopts an intention to *A* if each of the intentions framing *S*'s deliberation about *A*-ing is itself a rational one for *S* to have, and *S* reasonably supposes *A* to be at least as well-supported by her reasons for action as her other admissible alternatives.⁴² *S*'s intention to *A* is rationally nonreconsidered if

her nonreconsideration of it results from general habits of reconsideration and nonreconsideration reasonable for *S* to have, given her circumstances and her reasons for action.⁴³ And *S* rationally reaffirms an intention to *A* if her adoption of this intention was rational, her reconsideration of it results from such habits, and the conditions for her rationally adopting it are (still) satisfied.

Marriage, on the commitment conception, involves the adoption of intentions. The obligations comprising the marriage bond are determined by intentions rationally adopted by individuals in marrying one another, and then subsequently rationally nonreconsidered, perhaps after having been rationally reaffirmed by one or both of them. And what grounds these obligations is their expected tendency to bring those abiding by them to do what they have the most reason to do. To keep our treatments of the contract and commitment conceptions parallel, we shall assume that in marrying one another, individuals adopt intentions to do just the sorts of things required of them by the marriage bond.

One might doubt that such marital obligations are really any different than contractual ones. Spoken to you, "I hereby agree to do *A*" and "I hereby commit to do *A*" might seem to obligate me in similar ways. Indeed, "commitment" is sometimes used interchangeably with "agreement," so that committing to do *A* is equivalent to agreeing to do *A*. Since contracts are just agreements that reconfigure the rights and obligations of those participating in some way, a marriage bond grounded in agreement would be a contractual marriage bond. Thus, were the marriage bond grounded in a "commitment" of this sort, the commitment conception of the marriage bond would collapse back into the contract conception.

But this is not the case. On the commitment conception, "commitment" is used interchangeably with "rational intention," not "agreement." And rational intentions obligate individuals differently than do contracts. Since obligations generated by rational intentions are grounded in agents' own concerns, agents do not experience them as alien obligations to be resented and thrown off.⁴⁴ And since rational intentions are themselves a form of concern, individuals who have adopted intentions of the sort that we have assumed they would adopt have a concern for shared agency. Further, within a commitment marriage, there is nothing to prevent such individuals from taking one another's faithful, cooperative, and supportive behaviors as indicating the presence of this concern. Differing from contractual obligations in these ways, obligations grounded in rational intentions do not threaten love between the contract-intolerant as contractual obligations do. And thus, by conceiving of the marriage bond as grounded in rational intention rather than in contract, the contract-intolerant can resolve the difficulties rendering marriage a threat to their love relationships.

One might deny that rational commitment can genuinely obligate individuals, much less ground the marriage bond. For it is a condition of one individual's being genuinely obligated to another that she cannot release herself from her obligation merely by an act of will.⁴⁵ And it would appear that an individual can release herself from any "obligation" grounded in a rational intention merely by rationally abandoning this intention.

But even if the abandonment of any given intention reduces to an act of will, the *rational* abandonment of at least some intentions does not. For whether abandoning a given intention is rational depends on the intending agent's reasons for action, and what agents will to do does not always correspond to what they have the most reason to do. If an individual abandons a rationally adopted intention, but does not abandon it rationally, then she fails to release herself from the obligations it grounds. Thus, individuals cannot release themselves from obligations grounded in rational intentions at will. And thus, commitment can genuinely obligate individuals.

Even so, one might object to the commitment conception on the grounds that it fails to build into the marriage bond obligations of sexual fidelity, cooperation, and support which will, without fail, persist for so long as two individuals are married. (Call marital obligations which satisfy this condition *persistent*.) For on the commitment conception, marital obligations last only so long as the intentions grounding them are rational. And depending on how a married agent's reasons for action evolve, the intentions grounding any commitment-based marital obligations she has assumed might cease to be rational, in which case she would no longer be bound by these obligations.

We cannot foreclose this possibility if we conceive of the marriage bond as grounded in rational intention. It might be tempting to characterize the possibility of marital obligations lapsing before marriage ends as a cost the contract-intolerant must pay to resolve the difficulties rendering marriage a threat to their love relationships. But this assumes that the contract conception builds persistent obligations of fidelity, cooperation, and support into the marriage bond. And this is not so. For there are releasing conditions on contractual obligations, conditions under which even appropriately constituted contracts cease to obligate morally. First, one contractor may explicitly release the other from her obligation to perform as their contract specifies. Second, one contractor may fail to perform her part in a two-party contract, in which case the other is not obligated to perform her part in it, either. Or third, circumstances may change in ways unforeseen by either party to a contract, so that neither has agreed in any morally interesting sense to doing anything within their changed circumstances. Obligations of fidelity, cooperation, and support grounded in an appropriately constituted marriage contract will endure only for so long as none of these releasing conditions are realized. Thus, the contract conception, no less than the commitment conception, involves the possibility of marital obligations lapsing before marriage ends.

One might find dismaying the prospect of a marriage bond which does not have built into it persistent obligations of fidelity, cooperation, and support. But even if their marital obligations lapse, married individuals are seldom free to have extramarital sex, shirk household tasks, or abandon their spouses in times of need. For they usually have more general obligations to act faithfully, cooperatively, and supportively toward their spouses, moral duties of fairness, beneficence, or respect, as the case may be. And where fairness, beneficence, or respect do not require fidelity, cooperativeness, or supportiveness of one or both parties to a marriage, it is far from obvious that the prospect of one or both having extramarital sex, shirking household tasks,

or abandoning the other in times of need is grounds for dismay. Absent an account of why we should be dismayed by the possibility of marital obligations lapsing before marriage ends, pointing out that the contract and commitment conceptions fail to build persistent obligations of fidelity, cooperation, and support into the marriage bond constitutes an objection to neither of these conceptions.

Taking a different approach, one might argue that commitment marriage is not marriage at all, and thus the commitment conception not a conception of the marriage bond, on the grounds that an arrangement must involve a contract to count as marriage. But the claim that contract is an essential component of marriage is implausible. Various feminists have criticized marriage for its failure to involve anything like a proper contract, pointing out that (1) entry into marriage by women is not voluntary, (2) entry into marriage by women and men is not informed, (3) neither women nor men can do anything to alter the most important roles, rights, and obligations allotted them by marriage, and (4) marriage involves an attempt by women to divest themselves of inalienable rights.⁴⁶ But to accept these criticisms is not to deny that they are criticisms of marriage, even though their truth implies that the contractual aspects of marriage are entirely a sham.

Alternatively, one might claim that an arrangement must involve law to count as marriage, at least marriage as we conceive of it within our community.⁴⁷ On this conception of marriage, law functions to determine who is married and who is not, to define a set of legal obligations that married individuals owe one another, and to determine what benefits the state will provide to married couples and what burdens it will impose on them. But if involvement with something like law is essential to marriage, then clearly, commitment marriage is not an option within our community. For as we have already noted, legally, we treat marriage as a form of contract.

The point about law and marriage is plausible, but it does not imply that commitment marriage is not marriage at all, only that it is not a form of marriage presently available to us. For we could broaden our legal treatment of marriage. In particular, we could recognize the legal equivalent of a commitment marriage bond, a form of association involving its own distinctive (and noncontractual) legal rights and obligations.⁴⁸ We could let these be established by an appropriate mutual declaration of commitment. And consistently with our characterization of commitment, we could allow either party to a commitment marriage to dispel these legal rights and obligations unilaterally, by appropriately revoking her commitment to her marital partner.⁴⁹ By so broadening our legal treatment of marriage, we could make it the case that commitment marriage involved law.

One might worry, however, that even were we to do so, we might not end up with something qualifying as marriage. Ralph Wedgwood asks us to imagine a society with laws defining a relationship involving the same legal rights and obligations as our marriage, but known to only a few legal theorists. And he asks us to imagine that this same society also recognized under some name other than "marriage" a familiar and well-understood relationship undergirded by religious laws similar to those involved in Roman Catholicism. Asserting that only the second of these relationships is truly

marriage, Wedgwood concludes that a practice must be familiar and well-understood, as well as involving law, to count as marriage.⁵⁰ If this is so, then legal reform alone might not be enough to ensure that commitment marriage would really be a form of marriage.

Again, the general point is plausible, and again, all that follows is that commitment marriage is not a form of marriage presently available to us. For there are measures we could take to cultivate among ourselves a shared understanding of marriage that includes commitment marriage. We might, for instance, develop a distinct sort of ceremony to celebrate commitment marriages. Instead of consenting to the terms of some marriage contract, celebrants should exchange statements of intention, at least if they want to avoid confusion. Rather than exchanging rings, celebrants would do better to place their own rings on their own fingers. Those joined by commitment are, after all, bound only by their own rational intentions. And since intentions are not necessarily permanent fixtures of persons, a commitment marriage ceremony should include provisions for the possibility that celebrants may need to renew their commitments to one another, or recommit to one another, at some future time.

Thus, having granted that involvement with law and having a shared social meaning are essential features of marriage, we must admit that commitment marriage is not available to us at this time.⁵¹ But this admission does not endanger our project, which is, after all, to establish that our lack of an option like commitment marriage threatens romantic love. What would endanger our project would be a plausible argument for the incompatibility of commitment marriage and some likely candidate for a constitutive element of marriage. But as we have seen, commitment marriage is compatible with the most likely such candidates, so no such argument is available.

One might yet worry about the commitment conception's implications about the mutuality of the marriage bond. For *S* can acquire commitment-based marital obligations to *T* merely by adopting the right sort of intention, without *T* having acquired any such obligations to *S*. One might think, however, that the marriage bond is essentially mutual, that as a conceptual matter, none of the obligations constituting it can be of a sort that an individual might acquire unilaterally. And appealing to this claim, one might argue that the possibility of *S*'s acquiring commitment-based obligations of fidelity, cooperation, and support to *T* without *T*'s also acquiring such obligations to *S* constitutes a *reductio ad absurdum* of the commitment conception of the marriage bond.

But this argument reduces too much to absurdity. On one fairly traditional view of the marriage bond, call it the promise conception, marriage involves the making of promises, and the marriage bond consists of the resulting set of promissory obligations.⁵² It is possible, however, for *S* to acquire promissory obligations of fidelity, cooperation, and support to *T* without *T*'s also acquiring such obligations to *S*. Thus, the above *reductio* applies as much to the promise as to the commitment conception. But whatever the failings of the idea that the marriage bond is grounded in promise, it is not incoherent, nor wildly at odds with common sense, nor absurd in any other uncontroversial respect.

Even if there is nothing absurd in the marriage bond's consisting of obligations of a sort that an individual might acquire unilaterally, it does seem to be a desideratum of our concept of the marriage bond that it obligate the parties to a marriage mutually. Typically, versions of the promise conception capture this desideratum by stipulating that marriage must involve an *exchange* of appropriate promises, ensuring that each party to a marriage acquires promissory marital obligations to the other.⁵³ But clearly, this desideratum can be captured in similar fashion by the commitment conception. We need only stipulate that commitment marriage must involve the mutual adoption of appropriate intentions, ensuring that each party to such a marriage acquires commitment-based marital obligations to the other.⁵⁴ So let us make this stipulation, and by so doing, lay to rest the worry that the commitment conception cannot account adequately for the mutuality of the marriage bond.

Making Marriage Safer for Love

One might think the above argument establishes that if we are to make marriage safer for love, we ought to replace the contract with the commitment conception of the marriage bond. But it does not. A commitment-based marriage bond enables the contract-intolerant to more readily conjoin marriage and romantic love. But it does not do so for the contract-tolerant. Indeed, as we noted in distinguishing the contract-intolerant and the contract-tolerant, a contractual marriage bond may help some of the latter to foster love. Thus, replacing the contract with the commitment conception of the marriage bond might just make love and marriage harder to conjoin for a different class of individuals.

If we wish to foster the ideal of conjoined love and marriage, we should supplement, not replace, the contract with the commitment conception. And indeed, if there are individuals who are commitment- and contract-intolerant, we may need to supplement the contract conception with more than just the commitment conception if we really want to make marriage safer for love. By expanding our conception of the marriage bond, we enable individuals with different psychologies to forge the marriage bonds least likely to undermine their love relationships.⁵⁵ Among individuals as diverse as we are, we must move from the contract conception to some form of marital pluralism if we wish to make marriage safer for love.⁵⁶

But this conclusion is importantly provisional.⁵⁷ In assessing the relative congeniality of the contract and commitment conceptions to romantic love, we have assumed that the two conceptions are neutral in their effects upon any constitutive features of romantic love there might be in addition to a concern for shared agency. I think that this is a safe assumption, for the commitment conception seems at least as congenial as the contract conception to each plausible such feature that I can think of: admiration, affection, sexual attraction, a concern for the other's welfare. But I cannot prove that it is safe without offering a complete account of the constitutive features of romantic love. And at this time, I have no satisfactory such account to offer.

Absent such a proof, it is most appropriate to regard the argument of this paper as a challenge. Show, if you can, that the contract conception is so congenial to some other constitutive feature of romantic love as to be more congenial, on balance, than the commitment conception to the fostering of such love among the contract-intolerant. If we so regard the argument of this paper, then its conclusion, that we must move to some form of marital pluralism to make marriage safer for love, is provisional upon there not being an adequate answer to this challenge. Time will tell whether or not such an answer is forthcoming.

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Notes

¹For a history of Western-style marriage, see G. Robina Quale, *A History of Marriage Systems* (Westport, Conn.: Greenwood, 1988), 185–210.

²For an exhaustive treatment of the evolution of Western conceptions of erotic love, see Irving Singer, *The Nature of Love*, 3 vols. (Chicago: University of Chicago Press, 1984, 1987).

³See Ernest W. Burgess, Harvey J. Locke, and Mary Margaret Thomas, *The Family: From Institution to Companionship* (New York: American, 1963).

⁴In this paper, “we” are present inhabitants of the United States.

⁵This version of the Principle of Autonomy is a corollary of the Principle of Utility within variants of Act Utilitarianism characterizing utility in terms of desire satisfaction. Further, it is likely to be an element of the set of rules expected to maximize utility within variants of Rule Utilitarianism characterizing utility similarly. And any number of contemporary Kantians embrace something like it as part of an interpretation of the Second Formulation of the Categorical Imperative. See, for instance, Onora O’Neil, “Between Consenting Adults,” *Philosophy and Public Affairs* 14 (1985): 263–66; or Barbara Herman, “Mutual Aid and Respect for Persons,” *Ethics* 94 (1994): 600–602. Affirmed within ethical theories as important and disparate as Utilitarianism and Kantianism, this version of the Principle of Autonomy is far from idiosyncratic.

⁶Some disagree. Later, we shall consider an argument to the contrary based on feminist criticisms of love and marriage.

⁷The prevalence of marital infidelity, domestic violence, and divorce within our community suggests that this is so, at least if we take such things as cheating, abuse, and splitting up as indicating breakdowns in love relationships between the married.

⁸There is an extensive literature on the nature, basis, and extent of this obligation. See, for instance, Richard Wasserstrom, “Is Adultery Immoral?” in *Today’s Moral Problems*, ed. Richard Wasserstrom (New York: Macmillan, 1975), 240–48. Or see Mike W. Martin, “Adultery and Fidelity,” in *Philosophy and Sex*, 3rd ed., ed. Robert B. Baker, Kathleen J. Wininger, and Frederick A. Elliston (New York: Prometheus Books, 1998), 151–64.

⁹To do so is just to give the practical judgments of ordinary people that are not demonstrably wrong the benefit of the doubt, and there is a long tradition of such conservatism. See, for instance, Aristotle, *Nicomachean Ethics*, trans. Terence Irwin (Indianapolis: Hackett, 1985), 19–29; or John Stuart Mill, *Utilitarianism* (Indianapolis:

Hackett, 1979), 23–25; or Immanuel Kant, *Groundwork of the Metaphysics of Morals*, trans. H. J. Paton (New York: Harper & Row, 1948), 55–73.

- ¹⁰In ordinary usage, “marriage bond” sometimes refers to ties of affect between married individuals, sometimes to the sacred joining of two individuals within a particular religious tradition, and sometimes to something else entirely. Thus, as I shall employ it here, “marriage bond” is a technical term.
- ¹¹It may be that the legal obligations involved in marriage are uncongenial to romantic love as well, but I shall not be considering this possibility here.
- ¹²While I shall restrict myself to considering love and marriage among heterosexuals in this paper, nothing in the conceptions of love and marriage articulated here precludes their being extended to gays and lesbians.
- ¹³See, for instance, Simone de Beauvoir, *The Second Sex*, trans. and ed. H. M. Parshley (New York: Alfred A. Knopf, 1957); or Shulamith Firestone, *The Dialectic of Sex* (New York: William Morrow, 1970). There is also a rich tradition of gay and lesbian criticism of romantic love and marriage, and much of it is relevant to an assessment of romantic love and marriage among heterosexuals. See, for instance, Adrienne Rich, “Compulsory Heterosexuality and Lesbian Existence,” in *Blood, Bread, and Poetry* (New York: Norton, 1986), 23–75; or Claudia Card, “Against Marriage and Motherhood,” *Hypatia* 11 (1996): 1–22.
- ¹⁴A number of feminists argue that love and marriage, rather than having offsetting failings, work in tandem to oppress women. See, for instance, Firestone, *Dialectic of Sex*, 138–45. Many have suggested the analogy between marriage and slavery. See, for example, Card, “Against Marriage and Motherhood,” 6.
- ¹⁵I thank Wendy Lee-Lampshire for raising this worry in comments on an earlier draft of this paper.
- ¹⁶For a similar distinction, see Christina Hoff-Sommers, “Filial Morality,” *Journal of Philosophy* 8 (1986): 453.
- ¹⁷For the first of these criticisms, see de Beauvoir, *Second Sex*, 642–53. For the second, see Firestone, *Dialectic of Sex*, 126–27. And for the remainder of these criticisms, see Firestone, *Dialectic of Sex*, 146–55.
- ¹⁸For an argument that rather than exhibiting these failings, romantic love offers women a means of combating patriarchal oppression, see Robert C. Solomon, “Love and Feminism,” in *Philosophy and Sex*, 3rd ed., ed. Robert B. Baker, Kathleen J. Wininger, and Frederick A. Elliston (New York: Prometheus Books, 1998), 57–72.
- ¹⁹Indeed, both Firestone and de Beauvoir suggest that given the right sorts of reforms, love between men and women would cease to exhibit such failings. See Firestone, *Dialectic of Sex*, 128–33, and de Beauvoir, *Second Sex*, 668–69. There is an extensive literature on whether, to what extent, and by what means such failings of love between men and women might be redressed. See, for instance, Kathryn Pauly Morgan, “Romantic Love, Altruism, and Self-Respect: An Analysis of Beauvoir,” in *The Philosophy of Erotic Love*, ed. Robert C. Solomon and Kathleen M. Higgins (Lawrence: University Press of Kansas, 1991), 391–414; or Elizabeth Rapaport, “On the Future of Love: Rousseau and the Radical Feminists,” in *Philosophy of Sex: Contemporary Readings*, ed. Alan Soble (Totowa, N.J.: Rowman & Littlefield, 1980), 369–88.
- ²⁰For the first three of these criticisms, see Susan Moller Okin, *Justice, Gender, and the Family* (New York: Basic Books, 1989), 134–69. For the fourth, see Sara Ann Ketchum, “Liberalism and the Marriage Law,” in *Philosophy and Women*, ed. Sharon Bishop and Marjorie Weinzweig (Belmont, Calif.: Wadsworth, 1979), 184–89, at 185–86. For the fifth, see Card, “Against Marriage and Motherhood,” 13–15, and Ketchum, “Liberalism and the Marriage Law,” 187.
- ²¹There is an extensive literature on whether, to what extent, and by what means such failings of marriage might be redressed. See, for instance, Okin, *Justice, Gender, and the Family*, 170–86. Or see Nan D. Hunter, “Marriage Law and Gender: A Feminist Inquiry,” in Lisa Duggan and Nan D. Hunter, *Sex Wars: Sexual Dissent and Political Culture*, (London: Routledge, 1995), 107–22.
- ²²Most mainstream contemporary philosophical accounts of romantic love characterize it as such a complex. See, for instance, Robert C. Solomon, *Love: Emotion, Myth, and*

Metaphor (New York: Anchor Press/Doubleday, 1981); or Robert Nozick, *The Examined Life: Philosophical Meditations* (New York: Simon & Schuster, 1989), 68–86; or Alan Soble, “The Unity of Romantic Love,” *Philosophy and Theology* 1 (1987): 374–97.

- ²³The “normally” here is to capture the possibility that a constitutive feature of romantic love might be absent because it conflicts with another constitutive feature of romantic love, in which case we still might still consider the complex involved a (defective) instance of romantic love. For more on such cases, see Carol Caraway, “Romantic Love: Neither Sexist nor Heterosexualist,” *Philosophy and Theology* 1 (1987): 361–68, at 364. See also Sharon Bishop, “Love and Dependency,” in *Philosophy and Women*, ed. Sharon Bishop and Marjorie Weinzwieg (Belmont, Calif.: Wadsworth, 1979), 147–54, at 153.
- ²⁴For accounts of romantic love that assign a constitutive role to a concern for shared agency, see Mark Fisher, *Personal Love* (London: Duckworth, 1990); and Nozick, *The Examined Life*, 68–86. And for some worries about such accounts, see Alan Soble, “Union, Autonomy, and Concern,” in *Love Analyzed*, ed. Roger E. Lamb (Boulder, Colo.: Westview, 1997), 65–92.
- ²⁵In developing this understanding of shared agency, I have drawn from Neil Delaney’s discussion of Nozick’s romantic “we” and from Nancy Sherman’s work on friendship. See Neil Delaney, “Romantic Love and Loving Commitment: Articulating a Modern Ideal,” *American Philosophical Quarterly* 33 (1996): 339–56; and Nancy Sherman, “Aristotle on Friendship and the Shared Life,” *Philosophy and Phenomenological Research* 47 (1987): 589–613. See also Nancy Sherman, “The Virtues of Common Pursuit,” *Philosophy and Phenomenological Research* 53 (1993): 277–99.
- ²⁶For a more detailed characterization of this form of shared agency, see Sherman, “The Virtues of Common Pursuit,” 279–81.
- ²⁷For a more detailed discussion of this form of shared agency, see Delaney, “Romantic Love and Loving Commitment,” 340–43. This form of shared agency is distinct from acting jointly upon shared concerns. If I come to share some concern of yours, then I will care about acting upon it even if it ceases to be a concern of yours. But if I have made it a concern of mine to act upon some concern of yours, then I will cease to care about acting upon it under just these conditions.
- ²⁸Goethe’s *Werther* exhibits such love. See Johann Wolfgang von Goethe, *The Sorrows of Young Werther and Selected Writings*, trans. Catherine Hutter (New York: New American Library, 1962). I thank an anonymous referee for this journal for reminding me that not all “romantic love” involves a concern for shared agency.
- ²⁹For the Aristophanic ideal of erotic love, see Plato, *Symposium*, trans. Suzy Q. Grodin (Amherst: University of Massachusetts Press, 1970). For examples of contemporary conceptions of romantic love inspired by this ideal, see Nozick, *The Examined Life*, 68–86; Soble, “Unity of Romantic Love,” 374–97; and J. F. M. Hunter, *Thinking about Sex and Love* (New York: St. Martin’s, 1980).
- ³⁰See John Locke, *Two Treatises of Government* (New York: Hafner, 1947), 159–68; Immanuel Kant, *The Philosophy of Law*, trans. W. Hastie (Edinburgh: T. and T. Clark, 1887), 108–12; and Georg Wilhelm Friedrich Hegel, *The Philosophy of Right*, trans. T. M. Knox, in *Great Books of the Western World*, ed. Mortimer J. Adler (Chicago: Encyclopaedia Britannica, 1991), 61–67. It is perhaps worth noting that when each of Locke, Kant, and Hegel were writing, the contract conception constituted a reformist critique of existing marital practices, in which women were treated little differently than property.
- ³¹What gets packed into the notion of appropriate agreement on a contract depends upon which form of voluntarism we invoke.
- ³²There are, of course, difficulties in isolating a contract to which individuals can plausibly be said to have appropriately consented in marrying one another. We can ignore them here, given our focus on how conceptions of the marriage bond, however imperfectly realized, would affect love relationships among those subscribing to these conceptions. But for a discussion of such difficulties, see Carole Pateman, *The Sexual Contract* (Stanford, Calif.: Stanford University Press, 1988), 155–68.
- ³³Thus, marriage exhibits characteristics of a legal status, a set of legal conditions, rights, and obligations accruing to individuals because of their positions within a particular institution. For more on this aspect of legal marriage, see Harry D. Krause, *Family Law*

in a Nutshell (St. Paul, Minn.: West, 1995), 88–90; and Lenore J. Weitzman, *The Marriage Contract: Spouses, Lovers and the Law* (New York: Free Press, 1981), xix–xxi.

- ³⁴There is surely more to the relationship between our legal treatment of marriage and the marriage bond than this. But here I need say only enough about this relationship to address the worry that the contract conception is discontinuous with our everyday thinking about marriage.
- ³⁵These notions of psychological connectedness and identification are most fully developed in recent work on personal identity. See, for instance, Derek Parfit, *Reasons and Persons* (Oxford: Clarendon, 1984), 199–347; or Raymond Martin, *Self-Concern* (New York: Cambridge University Press, 1988).
- ³⁶I thank William Harms for this objection.
- ³⁷I thank David Shoemaker for this point.
- ³⁸I thank Charles Carr for this point.
- ³⁹This analysis is essentially a simplified version of the one developed with great care and precision by Michael Bratman. See Michael E. Bratman, *Intentions, Plans, and Practical Reason* (Cambridge: Harvard University Press, 1987). There are, of course, other accounts of commitment upon which we might have drawn to develop a commitment conception of the marriage bond. See, for instance, Margaret Gilbert, “Agreements, Coercion, and Obligation,” *Ethics* 103 (1993): 679–706.
- ⁴⁰This account of intention is Michael Bratman’s. See Bratman, *Intentions, Plans, and Practical Reason*, 15–17.
- ⁴¹We are ignoring several complications here. Some intentions deriving from general policies adopted at a previous time may be rational. Some intentions adopted irrationally but then rationally reconsidered and rationally reaffirmed may be rational as well. And some intentions adopted irrationally but then rationally nonreconsidered may also be rational. For a discussion of these complications, see *ibid.*, 87–100.
- ⁴²For a detailed discussion of this proposal, see *ibid.*, 57–59 and 83–86.
- ⁴³For a detailed discussion of this proposal, see *ibid.*, 57–59 and 76–83.
- ⁴⁴Agents in the grip of temptation are a possible exception to this claim.
- ⁴⁵Cf. Gilbert, “Agreements, Coercion, and Obligation,” 686–88.
- ⁴⁶For the first of these arguments, see Sheila Cronan, “Marriage,” in *Radical Feminism*, ed. Anne Koedt, Ellen Levine, and Anita Rapore (New York: New York Times Book Co., 1973), 217. For the remainder of them, see Ketchum, “Liberalism and the Marriage Law,” 184–87.
- ⁴⁷For an argument to this effect, see Ralph Wedgwood, “Same Sex Marriage: A Philosophical Defense,” in *Philosophy and Sex*, 3rd ed., ed. Robert B. Baker, Kathleen J. Winger, and Frederick A. Elliston (New York: Prometheus Books, 1998), 214–18.
- ⁴⁸Here I am taking a cue from the “domestic partnership” ordinances enacted by a number of U.S. municipalities and the legislation establishing “civil unions” in Vermont.
- ⁴⁹One might think that we already do this, under the guise of “no-fault” divorce. “No-fault” divorce laws are a step away from legal contractual marriage and toward something like legal commitment marriage. But the provisions for “no-fault” divorce vary from state to state. And where states require the consent of both partners for a divorce or require partners to cite the “irretrievable breakdown of marriage” as grounds for divorce, “no-fault” divorce is not entirely congruent with the legal provisions I have suggested for commitment marriage. For the legal analogues of obligations of commitment should be unilaterally terminable in a range of cases, not just in case of irretrievable marital breakdown.
- ⁵⁰See Wedgwood, “Same Sex Marriage,” 215.
- ⁵¹Reflection on these two features of marriage should serve to illuminate the difference between commitment marriage and unmarried cohabitation, as currently practiced in our community. And if, as Wedgwood argues, being involved with law and having a shared social meaning enable marriage to benefit individuals in ways that unmarried cohabitation cannot, then this difference is not trivial. See Ralph Wedgwood, “The Fundamental Argument for Same-Sex Marriage,” *Journal of Political Philosophy* 7 (1999): 225–42.

- ⁵²For an instance of this view, see Susan Mendus, "Marital Faithfulness," *Philosophy* 59 (1984): 243–52.
- ⁵³Versions of the contract conception that analyze contractual obligation into promissory obligation effectively do the same thing. For one such version, see Charles Fried, *Contract as Promise: A Theory of Contractual Obligation* (Cambridge: Harvard University Press, 1981).
- ⁵⁴"Appropriate" here is to be glossed in accordance with our earlier assumption about the content of the intentions adopted by the parties to a commitment marriage.
- ⁵⁵This assumes that individuals could classify themselves and their partners as contract-tolerant or -intolerant fairly accurately. Could they not, there are measures we might take to rectify this failing, ranging from imposing a waiting period on marriage licenses to devising and making available an instrument for classifying individuals as contract-tolerant or -intolerant.
- ⁵⁶Others have suggested that a society of diverse individuals ought to embrace some form of pluralism in their marital arrangements. See, for instance, Lawrence Casler, "Permissive Matrimony: Proposals for the Future," *Humanist* 34 (1974): 4–8. An anonymous referee for this journal calls the marital pluralism that I am recommending an "impractical proposal," but I disagree. I have already discussed legal and social reforms that would help us introduce commitment marriage into our community. And our ongoing experience with "domestic partnerships" in a number of U.S. municipalities, and "civil unions" in Vermont, suggests that we are capable of putting into practice proposals providing individuals with a choice among different legally and socially recognized ways of organizing their intimate lives. Indeed, Louisiana has already instantiated a form of marital pluralism, although not one likely to offer any succor to the contract-intolerant. There individuals can choose between standard contractual marriage and "covenant marriage," a form of contractual marriage involving substantially more robust restrictions on its own dissolution than the standard form.
- ⁵⁷I thank William Harms for reminding me of this.